THE

CODE OF CRIMINAL PROCEDURE

(ACT V OF 1898)

WITH

EXHAUSTIVE, ANALYTICAL AND CRITICAL COMMENTARIES

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VOLUME I

SECTIONS 1 TO 220

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THE

PREFACE

ENCOURAGED by the warm reception accorded to their maiden work, *viz.*, the Commentary on the Code of Civil Procedure, and the unprecedented success which the work had in going through two Editions within a couple of years, the Authors have launched on a similar commentary on this, the next important and largely used enactment in the Indian Statute Law.

The aim of the Authors has been, as in the Code of Civil Procedure, to collect all the decisions of the Privy Council and of the several superior Courts in India and Burma and to point out the principles of law underlying them. Such principles of law deduced from the vast mass of decisions have been classified under different headings, prefixed to the commentary under each section, and have been presented in a logical and cogent manner. Wherever there is a conflict of opinion in the decisions of the several courts, care has been taken to point out the conflict, to discuss the question on first principles, to test the several conflicting decisions on such first principles and to offer definite opinions thereon. No pains have been spared in suggesting solutions for the many difficulties that arise in the daily practice and which are covered neither by the provisions contained in the enactment nor by the voluminous case-law. The applicability of the general principles to the facts of particular cases have been indicated by remarks in brackets against the particular decision in the foot-note; the remarks thus amplify and add to the commentary. This, it is hoped, will enable the practitioners to pick out the particular ruling applicable to the case on hand without much difficulty.

The particular page of the report where the discussion of law is found in each decision has been indicated in brackets immediately after the citation.

Since decisions bearing on the earlier enactments on the subject have been cited, the corresponding sections of the

earlier enactments have been given in the foot-notes under each section, so that the decisions may be easily understood in the light of the language of those enactments.

The Code has been amended considerably by the amending Acts of 1923. The changes effected in each section by such amendments have been indicated by printing such portions in italics. Wherever it is necessary to show the difference between the language of the earlier section and the change effected by the Acts of 1923 the two sections have been given in parallel columns.

The Authors trust and hope that this work will receive the same generous support as their work on the Code of Civil Procedure.

The Authors are greatly indebted to Messrs. S. Appu Rao, B.A., B.L., C. Sreenivasa Rao, M.A., B.L., V. Srinivasa Ayyar, B.A., B.L., Advocates, Messrs. T. R. Anantasubramanya Ayyar, B.A., B.L., K. G. Subramaniam, B.A., B.L., C. N. Gopalaratnam Ayyar, B.A., B.L., P. S. Narayana Ayyangar, B.A., B.L., and T. B. Gopalachary, B.A., B.L., Pleaders, Coimbatore, Messrs. V. S. Balkundi, B.A., LL.B., and R. K. Manohar, B.A., LL.B., Pleaders, Nagpur and Mr. J. H. Barboza, B.A., B.L., District Munsif, Dharmapuri for the valuable help rendered by them in compiling this work and to Messrs. T. S. Narasinga Rao, B.A., B.L., and C. R. Krishna Rao, B.A., B.L, Advocates, Madras, for their assistance in compiling this work and passing it through the Press.

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20th November, 1935.

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CHRONOLOGICAL LIST OF ENACTMENTS

Year.	No. of Act.	Name of Act.	How affected.
1835	IV	Justices of the Peace, Calcutta ..	Rep. Act VIII of 1868
1835	VII	Sessions Judges ..	Do. do.
1835	XIII	S. F. Adalat, Bombay ..	Rep. Act XVII of 1862
1835	XIV	Magistrates, Bombay ..	Rep. Act VIII of 1868
1835	XV	Evidence, Contempt, etc. ..	Rep. Act XVII of 1862
1837	I	Justices of the Peace, Calcutta ..	Rep. Act VIII of 1868
1838	III	Joint Criminal Judge, Cochin ..	Rep. Act XVII of 1862
1838	IX	Fines, Bombay ..	Do. do.
1838	XXXI	Criminal Law, Supreme Courts ..	Rep. Act X of 1875
1838	XXXII	Justices of the Peace, Bengal ..	Rep. Act XII of 1873
1839	II	Fines by Magistrates ..	Rep. Act XVII of 1862
1839	XVIII	Thugs ..	Do. do.
1839	XIX	Sentences of imprisonment, Bombay ..	Do. do.
1839	XXII	Prisoner's Counsel, etc., Supreme Courts ..	Rep. Act X of 1875
1840	I	Faujdari Adalat, Madras ..	Rep. Act XVII of 1862
1840	IV	Affrays, Bengal ..	Do. do.
1840	XXII	Vagrants, Presidency Towns ..	Rep. Act XIII of 1856
1841	XVI	Oaths of Justices of the Peace ..	Rep. Act II of 1869
1841	XXI	Local Nuisances ..	Rep. Act XVII of 1862
1841	XXX	Obstructions to Justice ..	Rep. Act VIII of 1868
1841	XXXI	Criminal Appeals, Bengal ..	Rep. Act XVII of 1862
1843	IV	Appeals from convictions ..	Do. do.
1843	XV	Deputy Magistrates, etc. ..	Rep. Act XII of 1873
1843	XVIII	Thugs and Dacoits ..	Rep. Act VIII of 1863
1844	III	Corporal Punishment ..	Rep. Act XVII of 1862
1844	X	Sentences for murder ..	Rep. Act VIII of 1868
1844	XIV	Transportation for Life ..	Rep. Act XVII of 1862
1845	VI	Commissions of the Peace ..	Rep. Act II of 1869
1845	XVIII	Offences by convicts ..	Rep. Act XVII of 1862
1845	XXVII	Assistant Magistrates, Bengal ..	Do. do.
1845	XXIX	Joint Zila and Sessions Judges ..	Rep. Act X of 1872
1845	XXX	Fines in compensations, Madras. ..	Rep. Act XVII of 1862
1847	IV	Military Magistrates ..	Rep. Act VIII of 1868
1847	V	Execution of sentences of Courts in Native States ..	Rep. Act VIII of 1863
1847	X	Sentences to Imprisonment for Life ..	Rep. Act XVII of 1862
1847	XI	Convicts from Hong Kong ..	Rep. Act VIII of 1868
1848	III	Meaning of "Thug" and "Thugee" ..	Rep. Act XVII of 1872
1848	IV	Coroners Juries ..	Rep. Act IV of 1871
1848	V	Penal Recognisances ..	Rep. Act XVII of 1862
1848	XI	Wandering Gang of Thieves ..	Do. do.
1848	XIX	Criminal Sentences, Bengal and Madras ..	Do. do.
1849	VIII	Police Magistrates, Madras Town ..	Rep. Act XIII of 1856
1849	IX	Police Magistrates, Madras ..	Rep Act XVI of 1854
1850	XVI	Fines ..	Rep. Act XVII of 1862
1850	XXXVIII	Prisoner's Counsel ..	Do. do.
1850	XLV	Coroners ..	Rep. Act IV of 1871
1851	XVI	Receivers of Stolen Goods ..	Rep. Act XVII of 1862
1852	XVI	Criminal Procedure, Supreme Courts ..	Rep. Act X of 1875

Year.	No. of Act.	Name of Act.	How affected.
1852	XXIII	Fines, Madras and Bombay ..	Rep. Act XVI of 1874
1853	I	Corporal Punishment, Madras and Bombay	Rep. Act XVII of 1862
1853	VII	Jurisdiction of Magistrates ..	Rep. Act X of 1872
1854	VII	Fugitive foreign offenders ..	Rep. Act XI of 1872
1854	X	Assistant and Deputy Magistrates ..	Rep. Act X of 1872
1854	XXII	British Subjects ..	Rep. Act VIII of 1868
1855	XXV	Sessions at Ootacamund ..	Do. do.
1856	I	Obscene Books and pictures ..	Rep. Act XVII of 1862
1856	XVII	Criminal Process ..	Do. do.
1858	XI	Corporal Punishment ..	Rep. Act VIII of 1868
1858	XVI	Subordinate Criminal Court, Ootacamund ..	Do. do.
1859	III	Cantonment Joint Magistrates ..	Rep. Act VIII of 1887
1859	VI	Ahmedabad Magistracy ..	Rep. Act XII of 1873
1859	XVIII	Magistrates and Justices of the Peace ..	Rep. Act X of 1875
1860	III	Sessions Judges, Bengal ..	Rep. Act XVII of 1862
1861	**XXV**	**Code of Criminal Procedure** ..	**Rep. Act X of 1872**
1862	XV	Amending of the Code of Criminal Procedure ..	Rep. Act VIII of 1869
1862	XVII	Repealing enactments relating to Criminal Law ..	Rep. Act X of 1872
1862	XVIII	Criminal Procedure Code, Supreme Courts	Rep. Act X of 1882
1863	VIII	Confinement of prisoners sentenced by courts ..	Rep. Act V of 1871
1864	XXI	Police Magistrates ..	Rep. Act IV of 1877
1864	XXVII	Justices of the Peace ..	Rep. Act II of 1869
1865	XIII	High Courts Crim. Pro. Amendment ..	Rep. Act X of 1875
1866	VIII	Criminal Procedure ..	Rep. Act VIII of 1869
1867	IV	Meaning of "Offence" ..	Rep. Act XXVII of 1870
1867	XXVIII	Petty Sessions Courts, Agra ..	Rep. Act X of 1872
1869	II	Justices of the Peace Act ..	Rep. Act X of 1882
1869	VIII	Code of Criminal Procedure Amendment ..	Rep. Act X of 1872
1870	XXII	European British Subject ..	Rep. Act X of 1882,
1870	XXVIII	Commitments from Andamans ..	Rep. Reg. III of 1876
1871	XIX	The Bengal Sessions Court ..	Rep. Act I of 1903.
1872	**X**	**Code of Criminal Procedure** ..	**Rep. Act X of 1882**
1872	XVII	Postponing commencement of Code of Criminal Procedure ..	Rep. Act XII of 1873
1872	XXVII	Criminal Procedure Code, Sind ..	Rep. Act XVI of 1874
1874	XI	Crim. Pro. (Amending Act X of 1872) ..	Rep. Act X of 1882
1877	IV	Presidency Magistrates (Court-fees) ..	Rep. Excep. S. 57, Act X of 1882
1882	**X**	**Code of Criminal Procedure** ..	**Rep Act V of 1898**
1884	III	Code of Crim. Pro. Amendment ..	Do. do.
1887	V	Do. do. ..	Do. do.
1891	IV	Do. do ..	Do. do.
1894	X	Do. do. ..	Do. do.
1895	IV	Do. do. ..	Do. do.
1896	XIII	Do. do. ..	Do. do.

Year.	No. of Act.	Name of Act.	How affected.
1898	V	**The Code of Criminal Procedure, 1898.**	Rep. in pt. Act IV of 1909 " " Act IV of 1912 " " Act XXXVII of 1925 " " and Am. Act 4 of 1900 " " " Act 10 of 1914 " " " Act 18 of 1919 " " " Act 11 of 1923 " " " Act 12 of 1923 " " " Act 18 of 1923 " " " Act 32 of 1923 " " " Act 2 of 1926 " " " Act 10 of 1926 Am. Act 12 of 1899 " Act 6 of 1900 " Act 1 of 1903 " Act 8 of 1913 " Act 13 of 1916 " Act 38 of 1920 " Act 14 of 1922 " Act 20 of 1923 " Act 35 of 1923 " Act 37 of 1923 " Act 7 of 1924 " Act 18 of 1924 " Act 8 of 1925 " Act 23 of 1925 " Act 29 of 1925 " Act 10 of 1926 " Act 34 of 1926 " Act 36 of 1926 " Act 25 of 1927 Act I of 1931, Punjab Criminal Procedure Code Amendment Act XXI of 1932.

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ABBREVIATIONS EXPLAINED.

1921 All., Bom., etc.	..	..	..	All India Reporter, Allahabad, Bombay, etc. section of the respective years.
All.	..	..	..	Allahabad (I. L. R.).
Agra	..	..	..	Agra High Court Reports.
All. L. Jour.	..	..	..	Allahabad Law Journal.
All. L. Reporter	..	..	..	Allahabad Law Reporter.
All. W. N.	..	..	..	Allahabad Weekly Notes.
All. W. R.	..	..	..	Allahabad Weekly Reporter
Bom.	..	..	..	Bombay (I. L. R.)
Bom. H. C. R.	..	..	..	Bombay High Court Reports.
B. L. R.	..	..	..	Bengal Law Reports.
Bom. L. R.	..	..	..	Bombay Law Reporter.
Bourke	..	..	..	Bourke's Reports.
Bur. L. R.	..	..	..	Burma Law Reports.
Bom. P. J.	..	..	..	Bombay Printed Judgments.
Cal.	..	..	..	Calcutta (I. L. R.).
Cal. L. Jour.	..	..	..	Calcutta Law Journal.
Cal. L. R.	..	..	..	Calcutta Law Reports.
Cal. W. N.	..	..	..	Calcutta Weekly Notes.
C. P. L. R.	..	..	..	Central Provinces Law Reports
Cor.	..	..	..	Coryton's Report
Cr. C.	..	..	..	Criminal Cases.
Cri. L. Jour.	..	..	..	Criminal Law Journal.
Hay.	..	..	..	Hay's Reports.
Hyde	..	..	..	Hyde's Reports
Ind. Cas.	..	..	..	Indian Cases.
Ind. Jur. (N. S.)	..	..	..	Indian Jurist (New Series).
Ind. Jur. (O. S.)	..	..	..	Indian Jurist (Old Series).
Knapp.	..	..	..	Knapp's Reports.
Low. Bur. Rul.	..	..	..	Lower Burma Rulings.
Lah. L. Jour.	..	..	..	Lahore Law Journal.
Lah.	..	..	..	Lahore (I. L. R.)
Luck.	..	..	..	Lucknow (I. L. R.)
Mad.	..	..	..	Madras (I. L. R.)
Mad. Cr. C.	..	..	..	Madras Criminal Cases.
Mad. H. C. R.	..	..	..	Madras High Court Reports.
Mad. Jur.	..	..	..	Madras Jurist.
Mad. L. Jour.	..	..	..	Madras Law Journal.
Mad. L. Tim.	..	..	..	Madras Law Times.
Mad. W. N.	..	..	..	Madras Weekly Notes.
Mad. L. W.	..	..	..	Madras Law Weekly.
Marsh.	..	..	..	Marshall's Reports.
Moo. Ind. App.	..	..	..	Moore's Indian Appeals.
Ind. App.	..	..	..	Law Reports, Indian Appeals.
Moo. P. C. C.	..	..	..	Moore's Privy Council Cases.
Nag. L. R.	..	..	..	Nagpur Law Reports.
N. W. P. H. C.	..	..	..	North West Provinces High Court Reports.
Nag. L. Jour.	..	..	..	Nagpur Law Journal.
L. R. A.	..	..	..	Law Reports, Allahabad.
U. P. L. R.	..	..	..	United Provinces Law Reports.
Oudh Cas.	..	..	..	Oudh Cases.
Oudh L. Jour.	..	..	..	Oudh Law Journal.
Oudh S. C.	..	..	..	Oudh Sessions Cases.
Oudh W. N.	..	..	..	Oudh Weekly Notes.
L. C.	..	..	..	Lucknow Cases.

Pun. Re.	.. .. ..	Punjab Record (Criminal).
Pun. L. R.	.. .. ..	Punjab Law Reporter.
Pun. W. R.	.. .. ..	Punjab Weekly Reporter
Pat.	.. .. ..	Patna (I. L. R.).
Pat. L. Jour.	.. .. ..	Patna Law Journal.
Pat. L. Tim.	.. .. ..	Patna Law Times.
Pat. L. R.	.. .. ..	Patna Law Reporter.
Pat. H. C. C.	.. .. ..	Patna High Court Cases.
Pat. L. W.	.. .. ..	Patna Law Weekly.
R. & J's.	.. .. ..	Rafique and Jackson's Oudh Privy Council Decisions.
Rang.	.. .. ..	Rangoon (I. L. R.).
Ratanlal	.. .. ..	Ratanlal's Unreported Criminal Cases.
Bur. L. Jour.	.. .. ..	Burma Law Journal.
Bur. L. Tim.	.. .. ..	Burma Law Times.
Sar.	.. .. ..	Saraswathi's Privy Council Judgments.
Sind. L. R.	.. .. ..	Sindh Law Reporter.
Suth.	.. .. ..	Sutherland's Privy Council Judgments
Suth. W. R.	.. .. ..	Sutherland's Weekly Reporter.
Upp. Bur. Rul.	.. .. ..	Upper Burma Rulings.
Shome.	.. .. ..	Shome's Law Reports.
Weir.	.. .. ..	Weir's Criminal Rulings.

Cl.	.. ..	Clause	
C. A.	.. ..	Court of Appeal.	
Cr.	.. ..	Criminal.	
F. N.	.. ..	Foot-Note	
F. B.	.. ..	Full Bench	
N.	.. ..	Note.	
Pt.	.. ..	Point.	
P. C.	.. ..	Privy Council.	
S.	.. ..	Section.	
S. B.	.. ..	Special Bench.	
W. R.	.. ..	Weekly Reporter (Eng.)	

BAKSHI
B.Sc. M.A.LL.B

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THE
CODE OF CRIMINAL PROCEDURE

ACT V OF 1898.

VOLUME I.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON 22ND MARCH, 1898.

An Act to consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal procedure;

It is hereby enacted as follows:—

PREAMBLE.

Synopsis.

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1. Preamble—General.—The purpose for which a preamble is framed is to indicate in general terms the object and the intention of the legislature in passing an Act.[1] The language of preamble cannot, however, be availed of to control the provisions of an enactment so as to restrict or widen the import of the express terms of a section when such terms are clear and unambiguous.[2] The reason is that so far as a Code deals specifically with a point it must be deemed to be exhaustive and the law must be ascertained with reference to its provisions[3] which, when clear and unambiguous, must always prevail against the preamble.[4] But when the language of the section is ambiguous or doubtful[5]

Preamble—Note 1.

(1) (1902) 26 Bom. 759 (764), *Naraindas* v. *Parshottam*.
(1894) 18 Bom. 636 (657), *Altar Caufman* v. *Government of Bombay*.
(1885) 9 Bom. 333 (343), *Queen-Empress* v. *W. D. Edwards* (Per *Scott, J.*).
(1879) 2 All. 218 (225), *Emperor* v. *Sarmukh*.
(1865) 4 Suth. W. R. (P.C.) 109 (109): 7 Moo. I. A. 72 (P. C.), *Nga Hoong* v. *Emperor*.
(1933) 1933 Bom. 51 (55, 57): 57 Bom. 346, *Official Assignee of Bombay* v. *Chimniram Motilal*.
(1884) 7 Mad. 197 (200), *Queen-Empress Subbanna*.
(1932) 1932 Oudh 152 (153) (F.B.), *Kedar* v. *Pearcy*.
[See (1913) 19 Ind. Cas. 197 (201): 40 Cal. 477, *Har Prasad* v. *Emperor*.
See (1910) 8 Ind. Cas. 123 (124) (Cal.), *Gobinda* v. *Apkar*.]
(2) (1927) 1927 Cal. 763 (765): 55 Cal. 67, *Nepra* v. *Sajer Pramanik*.
(1898) 22 Bom. 321 (330-331), *Vithu* v. *Govinda*.
(1913) 21 Ind. Cas. 538 (540) (Cal.), *Keshab Panda* v. *Bhobani Panda*.
(1918) 44 Ind. Cas. 770 (779): 45 Cal. 343: 1919 Cal. 551 (F.B.), *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta*.
(1889) 11 All. 262 (266), *Queen-Empress* v. *Indarjit* (The word 'fraudulent' in the Preamble to Act XIII of 1859, does not control the enactment part of the Act).
(1892) 14 All. 145 (154), *Kadir Baksh* v. *Bhavani Prasad* (Per Straight, J.).
[See however (1878) 2 All. 74 (90), *Uda Begam* v. *Imamuddin*.]
(1865) 4 Suth. W. R. (P.C.) 109 (109): 7 Moo. Ind. App. 72: 1 Sar. 598 (P.C.), *Nga Hoong* v. *Queen*.
(1931) 1931 Lah. 706 (707), *Sahib Singh* v. *Datta Ram*.
(1931) 1931 Mad. 629 (630, 631): 54 Mad. 845, *Kannammal* v. *Kanakasabai*.
(1877) 3 Cal. 63 (82), *Emperor* v. *Burah* (Cannot restrict).
(1846) 4 Moo. Ind. App. 190 (200): 6 Moo. P. C. 12: 1 Sar. 335 (P.C.), *Attorney-General* v. *Brodie* (Do.).
(3) (1923) 1923 Cal. 724 (725): 50 Cal. 872, *Rahim Sheikh* v. *Emperor*.
[See (1902) 29 Cal. 707 (715), *Gokul Mandar* v. *Pudmanand*.
See (1876) 2 Bom. 19 (38), *Baban Mayacha* v. *Nagu Shravucha* (Preamble not part of statute).]
(4) (1919) 1919 P. C. 52 (53): 43 Mad. 529: 46 Ind. App. 302 (P.C.), *Secretary of State for India* v. *Maharaja of Bobbili*.
(1928) 1928 Lah. 35 (38): 9 Lah. 260, *Rajmal* v. *Harnam Singh*.
(5) (1932) 1932 All. 617 (618) (F.B.), *Bhola Umar* v. *Mt. Kausilla*.
(1928) 1928 Lah. 35 (38): 9 Lah. 260, *Rajmal* v. *Harnam Singh*.
(1931) 1931 Lah. 706 (707), *Sahib Singh* v. *Datta Ram*.
(1931) 1931 Mad. 629 (630, 631): 54 Mad. 845, *Kannammal* v. *Kanakasabai*.
(1926) 1926 Mad. 381 (382), *Kesavalu Naicker* v. *Corporation of Madras*.
(1874) 22 Suth. W. R. Cr. 20 (21), *Queen* v. *Jackson*.
(1886) 10 Bom. 274 (281), *Queen-Empress* v. *Mangal Tekchand*.
(1864) 2 Mad. H. C. R. 322 (324), *Chinna Aiyan* v. *Md. Fakruddin*.

or where there is nothing in the express provisions of the Act to the contrary[6] the preamble may be taken into consideration to interpret the enactment. *See also* Note 8 below.

2. "Consolidate and amend".—The Code of Criminal Procedure provides for a machinery for the punishment and prevention of offences against the substantive criminal law.[1-a] The aim of the Legislature in codifying the law of procedure is to lay down the law in specific and clear language without leaving it in doubt for the Judge or the litigant[1] and the object of consolidation is, *firstly*, to collect all the statutory law bearing on a particular subject in order that the Code may be exhaustive on matters specifically dealt with therein.[2] A consolidating Code is intended to be self-contained and its meaning is not to be left to be ascertained by roaming over a vast number of prior decisions of Courts.[3] *Secondly*, such a Code is also intended to be up-to-date and to lay down the law as it exists on the date of the enactment. Any consideration as to the previous state of the law will, therefore, be entirely irrelevant in construing the language of the Code which must always be given its plain meaning.[4] In the case of consolidating *and amending* Act a reasonable interpretation of its provisions is the only means of determining whether any particular section is intended to consolidate or amend the previously existing law.[5]

3. Retrospective operation of the Code.—It is a general principle of law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction;[1] in fact a

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(6) (1890) 12 All. 409 (417, 418), *Shankar Sahai* v. *Din Dial*.

Note 2.

(1-a) (1889) 13 Bom. 590 (598) (F.B.), In the matter of the petition of *Ganesh Narain Sathe*.
(1889) 13 Bom. 600 (606), In re *Ganesh Narayan Sathe*.
(1892) 16 Bom. 661 (669), *Queen-Empress* v. *Mona Puna*.
(1892) 16 Bom. 580 (584), *Queen-Empress* v. *Abdul Rahiman*.
[See (1889) 13 Bom. 384 (388), *Queen* v. *Shankar*.
See (1890) 15 Bom. 491 (504), *Queen-Empress* v. *Fakirappa*.
See (1903) 26 Mad. 55 (65), Re *Palani Palagan*.]
(1) (1892) 14 All. 226 (229), *Md. Naim-ul-lah Khan* v. *Ihsham-ullah Khan*.
(2) (1904) 26 All. 594 (596, 597), *Sham Lal* v. *Bindo*.
(1923) 1923 Mad. 523 (526, 530): 46 Mad. 605 (F.B.), *Gopal Naidu* v. *Emperor*.
(1923) 1923 Cal. 724 (725): 50 Cal. 872, *Rahim Sheikh* v. *Emperor*.
(1906) 33 Cal. 927 (930, 932), *Hukumchand Boid* v. *Kamalanand Singh*.
(3) (1896) 23 Cal. 563 (572) (P. C.), *Norendra Nath Sircar* v. *Kamalbasini Dasi*.
(1896) 23 Cal. 738 (751, 752) (F.B.) *Jonardan Dobey* v. *Ramdhone Singh* [23 Cal. 563 (P.C.) followed].
(1897) 20 Mad. 97 (103), *Kondayya Chetty* v. *Narasimhulu Chetty*.
(1891) A. C. 107, *Bank of England* v. *Vagliano*.
[See (1901) 25 Bom. 202 (227), *Bhagwant Appaji* v. *Kashinath*.]
(4) (1895) 22 Cal. 788 (798), *Administrator-General of Bengal* v. *Premlal Mullick*.
(1923) 1923 Bom. 321 (351): 47 Bom. 843, *Wilkinson* v. *Wilkinson*.
(1925) 1925 Cal. 822 (828): 52 Cal. 721 (F.B.), *Narendra Chandra* v. *Sabarali*.
(1927) 1927 Mad. 327 (328), *Govindasamy Naicker* v. *Perumal Raja*.
(1920) 1920 Mad. 337 (343, 344): 43 Mad. 511, *Yeluchuri* v. *Emperor*.
(1869) 11 Suth. W. R. 29 (31, 32) (F.B.), Re *Gorachand Ghose*.
(1912) 14 Ind. Cas. 896 (941): 35 Mad. 397, *Muthukumaraswami Pillai* v. *Emperor* (Evidence Act).
(5) (1916) 1916 P. C. 7 (9): 40 Bom. 630: 43 Ind. App. 164 (P.C.), *Ramdas* v. *Ameerchand*.
[See (1931) 1931 Cal. 580 (581): 58 Cal. 801, *Satyabala* v. *Sudharmal*.]

Note 3.

(1) (1901) App. Cas. 297, *Smith* v. *Calendar*.
(1892) 3 Ch. D. 402, *Lauri* v. *Renad*.
(1933) 1933 Cal. 732 (734), *Ohuni Lal* v. *Corporation of Calcutta* (Especially criminal ones).
(1928) 1928 Lah. 627 (631) (F.B.), *Kirpa Singh* v. *Rasaldhar Ajaipal* (Some sections retrospective—Act silent as to other sections—Particular section must be examined to see if it is retrospective).
(1922) 1922 Nag. 227 (228): 18 N.L.R. 85, *Mt. Lahiri* v. *Bala*.
(1921) 1921 Mad. 126 (128), *Viswanatha* v. *Sitalakshmi*.
(1910) 32 All. 499 (502), *Kausilla* v. *Ishri Singh*.
(1877) 2 Bom. 148 (158) (F.B.), In re *Ratanei Kalianji*.

Preamble, Note 3.

statute which takes away or affects vested rights, imposes a new disability or confers a new right must be *presumed* not to have a retrospective operation.[2] Enactments dealing with *procedure*, however, are an exception to this rule and

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(1916) 32 Ind. Cas. 774 (778): 43 Cal. 973: 1916 Cal. 446, *Anand Kumar* v. *Secretary of State* (A statute is not retrospective simply because a part of the requisites for the action is drawn from a time antecedent to the passing of the law).
(1916) 35 Ind. Cas. 497 (499): 40 Mad. 34: 1917 Mad. 937, *Frederick Edward* v. *Emperor* (Penal statute has no retrospective operation).
(1919) 50 Ind. Cas. 335 (335, 336): 1919 Cal. 210, *Promonath* v. *Sourav Dasi*.
(1930) 20 Ind. Cas. 689 (691, 692), *Muthiah* v. *Ramaswami*.
(1900) 1900 Pun. L. R. 18, p. 63 (66) (F.B.), *Chowdry Narasingh* v. *Lala Dholan*.
(1875) 1 Ch. D. 48 (50), In re *Joseph Suche & Co*.
(1910) 5 Ind. Cas. 980 (981): 5 L.B.R. 148, *Mashedu Khan* v. *Md. Ajuri*.
(1914) 26 Ind. Cas. 743 (744): 1914 Pun. Re. 86: 1914 Lah. 345, *Karar Hassan* v. *Mustap Hassan*.
(1928) 1928 P. C. 128 (130), *Municipal Council* v. *Margaret* (Section 17 of the Sydney Corporation Act).
(1903) 1903 A. C. 355, *Commissioner of Public Works* v. *Legan*.
(1901) 3 Bom. L. R. 584 (586), *Mukand Ramachandra* v. *Ladu Govinda*.
(1887) 14 Cal. 553 (556), *Joggessur Das* v. *Aisani*.
(1888) 15 Cal. 376 (382), *Tupsee Singh* v. *Ramsurun*.
(1932) 1932 Mad. 734 (736), *Kanji and Mulji* v. *Shanmugam Pillai*.
(1931) 1931 Nag. 60 (63): 27 Nag. L. R. 24, *Banabai* v. *Chandrabhaja*.
(1931) 1931 Nag. 138 (139), *Haralal* v. *Lal Prasad*.
(1932) 1932 Rang. 197 (198): 10 Rang. 465, *Ko Po Kun* v. *Camal Firm*.
(1931) 1931 Cal. 321 (322): 58 Cal. 817, *Kanak* v. *Kripa*.
(1929) 1929 Rang. 278 (279): 7 Rang. 355, *Nga Po Ngwe* v. *Emperor* (A penal provision does not have retrospective effect).
(2) (1911) 9 Ind. Cas. 805 (806) (Cal.) *Kalanand* v. *Bhakh Dhari* (Rights barred under old Act are not revived by new Act).
(1904) 26 All. 119 (130): 31 Ind. App. 30: 7 Oudh Cas. 254: 8 Sar. 593 (P.C.), *Md. Abdus Samad* v. *Qurban Hussain* (Right of succession cannot be divested).
(1914) 1914 P. C. 66 (67): 36 All. 350 (P.C.), *Abdul Majid* v. *Jawahir Lal* (It could not revive a barred right).
(1921) 1921 Nag. 170 (170), *Lakhmichand* v. *Baji Rao*.
(1921) 1921 Oudh 121 (122): 24 Oudh Cas. 157, *Municipal Board* v. *Vidya Dhari*.
(1921) 1921 Pat. 185 (186), *Kedar Nath* v. *Tarini Prasad*.
(1922) 1922 Cal. 491 (492), *Ajit Singh* v. *Bhagabaticharan*.
(1922) 1922 Nag. 227 (228): 18 N.L.R. 85, *Mt. Lahini* v. *Bala*.
(1923) 1923 Cal. 85 (90): 50 Cal. 115, *Makarali* v. *Sapfuddin*.
(1924) 1924 Cal. 240 (243): 50 Cal. 667, *Sundar Mull* v. *Lushu Bam*.
(1925) 1925 Nag. 377 (377), *Durga Prasad* v. *Thakur Prasad* (Decree already passed cannot be invalidated by subsequent Act).
(1925) 1925 Nag. 249 (250), *Champalal* v. *Kanji Lal*.
(1928) 1928 Lah. 627 (631) (F.B.), *Kirpa Singh* v. *Rasaldhar Ajaipal*.
(1928) 1928 Mad. 1194 (1194), *Sri Raja Satrucherla* v. *Maharaja of Jeypore* (Change in law cannot make execution order already passed illegal).
(1928) 1928 Pat. 109 (110), *Sakul Rakhput* v. *Raghu Keeri*.
(1910) 34 Bom. 260 (266), *Mugha Chin Basappa* v. *Muhamada Sanch* (Change in law cannot annul a decree already obtained).
(1912) 6 Ind. Cas. 1002 (1003): 36 Bom. 617, *Lakshman Krishnaji* v. *Balakrishna* (Vested rights under decrees cannot be affected).
(1886) 12 Cal. 583 (586) (F.B.), *Bhobo Sundari* v. *Rakhal Chander*.
(1914) 24 Ind. Cas. 37 (41): 41 Cal. 1125: 1914 Cal. 806, *Gopeshwarpal* v. *Jiban Chandra*.
(1920) 58 Ind. Cas. 327 (330): 1920 Cal. 435: 47 Cal. 1108 (F.B.), *Promotha Nath* v. *Sorar Dasi*.
(1904) 27 Mad. 538 (539), *Vedavalli* v. *Mangamma*.
(1913) 18 Ind. Cas. 64 (66): 38 Mad. 101, *Ramakrishna* v. *Subbaraya*.
(1915) 27 Ind. Cas. 688 (694): 1915 Mad. 1022: 39 Mad. 84, *Venkataperumal* v. *Ramudu*.
(1875) 1 Ch. D. 48, In re *Suche & Co*., (New right of action conferred) [Followed in 1921 Pat. 185 (186).]
(1918) 45 Ind. Cas. 11 (12): 1918 Mad. 162, *Subramanya Aiyar* v. *Namasivaya* (Right to treat decree as final is a vested right).
(1917) 42 Ind. Cas. 384 (385): 13 N.L.R. 165: 1916 Nag. 22, *Nilkant* v. *Gulya*.
(1919) 50 Ind. Cas. 515 (516): 1919 Pat. 202, *Braja Lal* v. *Kanaram*.
(1917) 42 Ind. Cas. 387 (389): 1917 Pat. 171, *Ganpat Mehto* v. *Chotan Ram*.
(1871) 6 Mad. H. C. R. 122 (126), *Morris* v. *Sambamurti*.
(1926) 1926 All. 667 (668), *Kharag Singh* v. *Kiddha*.
(1931) 1931 All. 411 (412), *Bhawani Lal* v. *Gopi Nath*.
(1931) 1931 Cal. 321 (322): 58 Cal. 817, *Kanak* v. *Kripa*.
(1913) 8 Ind. Cas. 64 (65): 38 Mad. 101, *Ramakrishna* v. *Subraya*.
(1913) 20 Ind. Cas. 689 (691, 696) (Mad.), *Muthia* v. *Ramasami*.
(1932) 1932 Sind 71 (72): 26 S.L.R. 204, *Gurmukhdas Rungalmal* v. *Rassomal*.
(1933) 1933 All. 20 (21): 54 All. 1092, *Parmeshawar Kurmi* v. *Bakhtawar Pande* (Amendment to Court Fees Act not retrospective).
(1932) 1932 Mad. 724 (727): 56 Mad. 134, *Ramakrishna* v. *Venkataranga Rao*.
(1924) 1924 Pat. 183 (184), *Gokaran Prasad Singh* v. *Malik Wariz Ali*.

are always retrospective in the sense that their provisions will apply to proceedings already commenced at the time of their enactment.[3] The reason is that no one can have a vested right in forms of procedure.[4] But where some of the provisions of the enactment of procedure do affect vested rights, whether substantive,[5] or remedial,[6] the rule against their retrospective operation will

Preamble, Note 3.

(1931) 1931 Lah. 145 (152), *Parsram* v. *Emperor* (Rule strict in reference to Penal Statutes).
(1914) 1914 Lah. 97 (98): 1913 Pun. Re. No. 26, *Miran* v. *Emperor* (Do.).
(1914) 1914 Cal. 806 (810): 41 Cal. 1125, *Gopeshwar Pal* v. *Jiwanchandra Chandra* (Do.).
(1933) 1933 Bom. 262 (265), ***Sundara Bai*** v. *Manohar Dhondoo*.
(1933) 1933 Cal. 435 (437): 60 Cal. 1037, ***Jiban Krishna Chakraverty*** v. ***Abdul Kader Chaudhuri***.
(1933) 1933 Mad. 57 (58), ***Chengayya*** *Pantulu* v. *Meda Ramatla Kotayya*.
(1932) 1932 Mad. 724 (727): 56 Mad. 134, *Ramakrishna* v. *Venkataranga Rao*.
(1933) 1933 Oudh 38 (40), *Raghunandan Mirza* v. *Mahadeo*.

(3) (1913) 19 Ind. Cas. 793 (798, 799) (Cal.), *Manjuri Bibi* v. *Akul Mahmud*.
(1883) 9 Cal. 513 (517), *Rongai* v. *Empress*.
(1924) 1924 Cal. 983 (984), *Rajib* v. *Jogesh*.
(1910) 5 Ind. Cas. 980 (980): 5 L.B.R. 148, *Mashedee Khan* v. *Md. Azim*.
(1910) 7 Ind. Cas. 11 (14) (All.), *Shamsheryat Khan* v. *Gopalchand*.
(1889) 11 All. 408 (412), *Chajmal Das* v. *Jagdamba*.
(1884) 8 Bom. 511 (523, 524), In re *Bhagwan Dass*.
(1894) 18 Bom. 429 (432), *Hajrat Akranissa* v. *Valiulnissa*.
(1897) 21 Bom. 822 (826), *Ganga Ram* v. *Punam Chand*.
(1886) 12 Cal. 583 (586) (F.B.), *Bhobo Sundari Debi* v. *Rakkul Chander*.
(1904) 27 Mad. 538 (539), *Vedavalli* v. *Mangamma*.
(1921) 1921 Mad. 650 (651), *Vythinatha Aiyar* v. *Govindasami* (Rules of limitation).
(1924) 1924 Cal. 983 (984), *Dhar* v. *Jogesh Chandra Das*.
(1924) 1924 Mad. 657 (657): 47 Mad. 384, *Nataraja Pillai* v. *Ramaswami Pillai* (Criminal Procedure Code).
(1924) 1924 Nag. 24 (25), *Commissioner of Income-tax* v. *Dharamchand*.
(1926) 1926 All. 667 (668), *Kharag Singh* v. *Kiddha*.
(1926) 1926 Pat. 561 (563), *Chotlal Nand* v. *Tula Singh*.
(1927) 1927 Nag. 127 (128): 23 N.L.R. 50, *Kedarnath* v. *Netram*.
(1878) 3 App. Cas. 582 (601), *Gardner* v. *Lucas*.
(1875) 1 Ch. D. 48 (50), In re *Joseph Suche & Co*.
(1917) 41 Ind. Cas. 268 (268): 1918 Mad. 919, *Nimmala Matan Kali* v. *Kalla Kuri Subbarao*.
(1911) 11 Ind. Cas. 912 (913): 7 N.L.R. 125, *Shankar Gir* v. *Ramchandra*.
(1921) 61 Ind. Cas. 4 (Pat.), *Kedar Nath* v. *Tirani Prasad*.
(1910) 18 Oudh Cas. 152 (154), *Gokul Prasad* v. *Ali Baksh*.
(1910) 8 Ind. Cas. 999 (1030): 1910 Pun. Re. 97, *Nihal Devi* v. *Kohorechand*.
(1878) L. R. 3 Q. B. 160, *Gardiner* v. *Lucas*.
(1890) 14 Bom. 516 (525), *Javanmal Jitmal* v. *Muktabai*.
(1895) 19 Bom. 204 (206), *Balkrishna* v. *Bapu*.
(1912) 13 Ind. Cas. 264: 5 S.L.R. 184, *Hemandas* v. *Chellaram* (Declaratory enactments are also retrospective).
(1919) 53 Ind. Cas. 765 (767) (Cal.), *Nawab Khaja* v. *Khaja Soleman* (Do.).
(1916) 33 Ind. Cas. 54 (56): 1916 Cal. 861, *Jotiram Khan* v. *Jonaki Nath* (Do.).
(1868) L. R. 3 Q. B. 161, *Kimbray* v. *Draper*.
(1908) 12 Cal. W. N. 987 (989), *Rahimuddin* v. *Jagat Kishore*.
(1932) 1932 All. 30 (31), *Hazari* v. *Mt. Makhla*.
(1926) 1926 All. 667 (668), *Kharag Singh* v *Kiddha*.
(1933) 1933 Oudh 274 (275): 8 Luck. 504, *Nagi Ahmad* v. *Sheo Shankar Lal* (Unless the contrary is expressed).
(1913) 20 Ind. Cas. 821 (822) (Cal.), *Budhu* v. *Hafiz* (Limitation Law).
(1926) 1926 All. 725 (727), *Mr. Mohammadi* v. *Kashi* (Declaratory Act also have retrospective operation).
[See also (1873) 19 Suth. W. R. 57 (59, 60), *Queen* v. *Jaffir Ali*.]

(4) (1909) 4 Ind. Cas. 492 (493) (All.), *Indarjit* v. *Oushad*.
(1927) 1927 All. 657 (659), *Nisar Hussain* v. *Sunder Lal*.
(1910) 7 Ind. Cas. 11 (14) (All.), *Shamsheryar* v. *Gopalchand*.
(1911) 9 Ind. Cas. 800 (801) (All.), *Payne & Co.* v. *Brahmdeo*.
(1914) 25 Ind. Cas. 668 (669): 1914 Oudh 125, *Sankatha Prasad* v. *Rajakrishna Dat Singh*.
(1921) 61 Ind. Cas. 4: 1921 Pat. 185 (186), *Kedar Nath* v. *Tarini Prasad*.
30 L. J. Exch. 40, *Wright* v. *Hale*.
(1877) L. R. 4 Ch. D. 752, *Warner* v. *Murdoch*.

(5) Such as rights of property or of contract.—
(1931) 1931 All. 735 (736), *Bunni Pandy* v. *Brahmdeo Pandy*.
(1925) 1925 Lah. 446 (448): 6 Lah. 262, *Crown* v. *Fitzmaurice* (Right of trial by jury).
(1927) 1927 Cal. 748 (749), *Shiba Kali Kumar* v. *Chuni Lal Chatterjee*.
[See also (1925) 1925 Lah. 330 (331), *Jowahar Lal* v. *Jaggu Mal*.]

(6) Such as right of appeal or of reference, see below cases in Foot-note 7.
(1928) 1928 All. 437 (438): 50 All. 965, *Ramsingh* v. *Shankar*.
(1924) 1924 All. 563 (563), *Kashmiri Lal* v. *Mt. Kishen Dei* (Sanction to prosecute under S. 195 refused under old section—Sanction given on appeal after 1923 amendment—The amendment does not affect it).
[See also (1866) 5 Suth. W. R. 8 (11), Re *Radhajeebun*.]

Preamble, Notes 3—4.

apply[7] unless there is an indication to the contrary in the Act.[8]

Such indications can be found in the following circumstances:—

(1) When the commencement of the Act is *postponed* to a particular day. The object of the *postponement* is to enable persons to enforce their rights, if any, before the new Act comes into force, negativing such rights.[9]

(2) When the language of the enactment implies it.

4. Code, if and when exhaustive.—The Code is exhaustive on all matters *specifically dealt with by it*. The law in such matters must be ascertained only with reference to its provisions and a Judge cannot disregard or go outside the letter of the enactment according to its true construction in the view of the Judge.[1]

But the absence of any provision on any particular matter does not mean that there is no such power.[2] It is a rule of construction of every statute, that

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(7) (1910) 5 Ind. Cas. 102 (105) (Mad.), *Venkatanarasimha* v. *Lakshmi Venkayamma*.
(1906) 33 Cal. 789 (801), *Budree Das Mukim* v. *Cooni Lal Johumy*.
(1927) 1927 Sind 270 (271): 21 S.L.R. 195, *Gangaram* v. *Secretary of State*.
(1909) 3 Ind. Cas. 497 (498) (All.), *Jug Ram* v. *Jewa Ram* (Liability under the old Code to pay purchase money in pre-emption suit is not a matter of procedure).
(1911) 12 Ind. Cas. 553 (553) (Mad.), *Gurumurthi* v. *Varadappa* (Benefit of order obtained under old Code).
(1924) 1924 Nag. 24 (25), *Commissioner of Income-tax, C. P.* v. *Dharam Chand* (Rule regarding vested rights applies to remedial rights).
(1913) 18 Ind. Cas. 64 (66): 38 Mad. 101, *Ramakrishna Chetty* v. *Subbraya Iyer* (Rule applies to remedial rights also).
(1915) 31 Ind. Cas. 214 (214): 1916 Mad. 1035, *Raja of Kalahasti* v. *Swarnam* (Right of appeal cannot be taken away).
(1917) 41 Ind. Cas. 581 (583): 1918 Mad. 548, *Doraiswami* v. *Vaidyalinga* (Do.).
(1928) 1928 All. 437 (438): 50 All. 965 (F.B.), *Ram Singh* v. *Shankar Dayal* (Do.).
[See (1879) 3 Cal. L. R. 437 (438), *Nadir Hossain* v. *Bissen Chand Basarat* (Right of second appeal).]
(1923) 1923 Nag. 227 (228): 19 N.L.R. 110, *Hidnu Singh* v. *Mangal*.
(1924) 1924 Pat. 183 (184), *Gokaram Prasad* v. *Waris Ali*.
(1927) 1927 P. C. 242 (244): 54 Ind. App. 421 (P.C.), *Delhi Cloth and General Mills Co., Ltd.* v. *Income-tax Commissioner* (Provisions which deprive orders of their finality touch existing rights).
(1912) 15 Ind. Cas. 725 (727): 1913 Pun. Re. 1, *Ganda Mal* v. *Piran Ditta* (Right of appeal is not a matter of procedure).
(1915) 27 Ind. Cas. 625 (627): 1915 Pun. Re. 30: 1915 Lah. 171, *Mugens* v. *Sutley Flower Mills* (Right of appeal).
(1864) 1864 Suth. W. R. (Gap) 35, *Captain Warrot* v. *Ramsahay*.
(1928) 1928 Cal. 640 (644) (F.B.), *Sadar Ali* v. *Dolüluddin* (Letters Patent amendment restricting appeal is not retrospective).
[See (1930) 1930 Oudh 148 (153): 5 Luck. 552, *Bahadur Singh* v. *Ram Phal* (*Per* Wazir Hosan, J.).]
(1928) 1928 Lah. 627 (631) (F.B.), *Kirpa Singh* v. *Rasaldhar Ajaipal Singh*.

(8) See S. 154 of the Code.
[See (1878-79) 3 Bom. 161 (166), *Rustomji* v. *Kessowji Naik* (Under Code of 1877).
See (1879) 4 Cal. 825 (828), *Elahi Buksh* v. *Morachow*.]

(9) (1916) 35 Ind. Cas. 67 (69): 1916 Pun. Re. 88: 1916 Lah. 146, *Asaram* v. *Budhumal*.
(1922) 1922 Mad. 417 (418, 419), *Ganapathy* v. *Krishnamachary*.

Note 4.

(1) (1902) 29 Cal. 707 (716): 29 Ind. App. 196: 8 Sar. 323 (P.C.), *Gokal Mandar* v. *Pudmanund*.
(1934) 1934 Cal. 428 (429), *Nagen Kundu* v. *Emperor*.
(1914) 20 Ind. Cas. 815 (816) (Cal.), *Peary Mohan* v. *Durlavi Dassya*.
(1901) 23 All. 167 (173), *Habil Baksh* v. *Baldeo Prasad*.
(1906) 33 Cal. 927 (931), *Hukum Chand* v. *Kamalanand*.
(1908) 35 Cal. 353 (359), *Shiba* v. *Baban*.
(1909) 1 Ind. Cas. 829: 36 Cal. 354, *Burn & Co.* v. *Colin Macdonald*.
(1909) 4 Ind. Cas. 442 (445) (Cal.), *Bidhumukhi* v. *Jitendra*.
(1926) 1926 Lah. 670 (671), *Nathu Mal* v. *Lachmi Narain*.
(1926) 1926 Cal. 568 (574), *Ganga Prasad* v. *Kuladananda*.
(1913) 40 Cal. 433 (439), *Kari* v. *Emperor*.
(1904) 27 Mad. 531 (534), *Sur* v. *Madula*.
(1923) 1923 Mad. 523 (526, 538): 46 Mad. 605, *Gopal Naidu* v. *Emperor*.
(1912) 17 Ind. Cas. 559 (565): 1913 Pun. Re. No. 6, *Emperor* v. *Brian*.
(1907) 29 Mad. 558 (560, 561), *Thomas* v. *Emperor*.

(2) (1909) 1 Ind. Cas. 677 (681) (Cal.), *Bachu Singh* v. *Bichharam Sahu*.
(1934) 1934 Cal. 428 (429), *Nagen Kundu*

the Court ought not to act on the principle that every procedure is to be taken as *prohibited* unless it is expressly provided for, but should proceed on the converse principle that every procedure is to be understood as *permissible* till it is shown to be prohibited by law.[3]

The Code is thus not *exhaustive* of *all* forms of procedure necessary to be used in the administration of justice.[4] For instance where a Court had a power before the Code was passed and the same *is not taken away* by the Code, the power remains.[5]

5. Interpretation of the Act—General.—It is a cardinal rule of construction of Statutes in general that the intention of an enactment should be gathered from the *language* employed by it,[1] and that where the words used are

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v. *Emperor* (On matters not specifically dealt with Court has inherent power to pass such orders as justice requires).
(1910) 6 Ind. Cas. 95 (96) (Cal.), *Abdul Razab* v. *Basiruddin Ahmad*.
(1909) 1 Ind. Cas. 913 (917): 36 Cal. 193, *Gurdeo* v. *Chandrika*.
(1906) 3 Cal. L. J. 29 (31, 35), *Panchanan* v. *Dwarka Nath*.
(1906) 33 Cal. 1094 (1098), *Rasik* v. *Bidhumukhi*.
(1907) 17 Mad. L. J. 143 (144), *Nataraja* v. *Veerabadran*.
(1895) 17 All. 29 (31), *Durga Dihal* v. *Anoraji*.
(1906) 33 Cal. 927 (931), *Hukumchand* v. *Kamalanand*.
(1920) 58 Ind. Cas. 748 (749): 1 Lah. 339: 1920 Lah. 304, *Abdul Rahman* v. *Shahana*.
(1913) 41 Cal. 173, *Governor of Bengal* v. *Moti Lal* (Power to punish for contempt is not negatived by the Code).
(1884) 8 Bom. 380 (387), In re *Bai Amrit* (Do.).
(1893) 15 All. 84 (95) (F.B.), *Dhonkal* v. *Phakkar*.
(3) (1882) 5 All. 163 (172) (F.B.), *Narsing Das* v. *Mangal*.
(1925) 1925 Mad. 42 (44): 48 Mad. 494, *Sooryaprakasam* v. *P. I. Munusamy*.
(1889) 11 All. 267 (287) (F.B.), *Mahomed Sulaiman* v. *Md. Yarkhan*.
(1910) 5 Ind. Cas. 532 (534): 37 Cal. 399, *Chhayamannessa* v. *Kazi Basikar*.
(1906) 29 Mad. 126 (130, 145), *Emperor* v. *Chinna Kaliappa*.
(1933) 1933 Pat. 242 (244): 12 Pat. 234, *Sideshwari Prosad* v. *Ram Kunwar Rai* (Laws of procedure not meant to hamper administration of justice).
[See (1901) 28 Cal. 652 (661, 676), *Dwaraka Nath Mondal* v. *Beni*.]
(4) (1917) 39 Ind. Cas. 763 (765): 1917 Pat. 495, *Sukh Deo Das* v. *Ritto Singh*.
(1906) 33 Cal. 927 (932), *Hukumchand* v. *Kamalanand*.
(1917) 39 Ind. Cas. 779 (782): 1917 Pat. 375, *Raghunandan* v. *Parmeshwar*.
(1912) 16 Ind. Cas. 257 (300) (Cal.), *Pulin Behary Das* v. *Emperor*.
(1923) 1923 Cal. 724 (725): 50 Cal. 872, *Rahim Sheikh* v. *Emperor*.
(1921) 1921 Cal. 30 (31, 32): 48 Cal. 522 (S.B.), *Pigot* v. *Ali Muhammad Mandal*.
(5) (1880) 5 Cal. 819 (820), *Durga Churan* v. *Nittokally*.
(1907) 34 Cal. 97 (99), *Rash Behary* v. *Bhavani Churan*.
(1880) 13 Cal. 189 (191), *Beni Ram* v. *Ram Lal*.

Note 5.

(1) (1928) 1928 P. C. 24: 7 Pat. 221: 55 Ind. App. 18 (P.C.), *Mt. Ramanandi* v. *Mt. Kalawati*.
(1920) 1920 P. C. 181 (184) (P.C.), *Quebec Railway* v. *Vandry*.
(1925) 1925 Lah. 436 (437), *Nur Md.* v. *Lal Chand*.
(1924) 1924 Lah. 513 (514): 5 Lah. 147 (F.B.), *Lee* v. *Lee*.
(1924) 1924 All. 792 (793): 47 All. 13, *Mehlal* v. *Ramji Dass*.
(1923) 1923 Bom. 321 (351): 47 Bom. 843 (F.B.), *Alfred Wilkinson* v. *Wilkinson*.
(1926) 1926 Bom. 57 (59): 50 Bom. 34, *Gamadia* v. *Emperor*.
(1928) 1928 Sind 1 (9): 22 Sind L. R. 157 (F.B.), *Emperor* v. *Noor Md.*
(1916) 33 Ind. Cas. 489 (490): 1915 Nag. 10: 12 N.L.R. 51, *Balaji* v. *Gopala Rao*.
(1922) 1922 Oudh 289 (291, 292): 25 Oudh Cas. 319, *Mirza Sadiq Hussain* v. *Md. Karim*.
(1922) 1922 Oudh 236 (246): 25 Oudh Cas. 189, *Kuar Nageshar* v. *Kuar Mathura Prasad*.
(1920) 1920 P. C. 56 (59): 43 Mad. 550: 47 Ind. App. 33 (P.C.), *Krishna Iyengar* v. *Nallaperumal*.
(1918) 1918 P. C. 352 (354) (P.C.), *The Australian Alliance Assurance Co.* v. *Attorney-General* (Court is not concerned with the policy of the Act—Novelty of language is no ground for disregarding plain words of enactment).
(1915) 29 Ind. Cas. 325 (329): 1915 Nag. 2: 11 N. L. R. 76, *Saiyyad Rahim* v. *Emperor* (Intention of the Legislature does not mean a speculative opinion as to what it would have probably meant).
(1921) 1921 Pat. 193 (198) (F.B.), *Hari Kishan Sen* v. *Umash Chandra Dutt* ("No suit shall lie" means "no suit shall lie" even on ground of fraud).
(1920) 53 Ind. Cas. 847 (851): 1920 Mad. 640: 43 Mad. 94, *Gadi Neelaveni* v. *Marappa Reddy* (Affirmative language may be construed as having a negative implication if it is a necessary and reasonable one).
(1926) 1926 Oudh 2 (4, 8): 29 Oudh Cas. 51, *Achal Singh* v. *Shagunath Kuar*.
(1924) 1924 Sind 89 (90): 17 Sind L. R. 52, *Official Assignee* v. *Firm of Chandulal* (The word "includes"

Preamble, Note 5.

clear and unambiguous, it is the duty of the Court to give effect to them according to their *plain meaning* neither adding to, nor subtracting from them.[2] In other words, the interpretation should not where the language is clear, be in-

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enlarges the meaning of the term and makes it include matters which the ordinary meaning would not include).
(1931) 1931 All. 162 (175, 176): 53 All. 239, *Anand Prashad* v. *Narain Das* (Statute presumed to enact everything for its existence).
(1891) 13 All. 171 (182), *Queen-Empress* v. *Popin*.
(1926) 1926 Cal. 856 (858): 53 Cal. 615, *Intaz* v. *Dina Nath*.
(1932) 1932 Pat. 293 (295): 12 Pat. 46 (S.B.), *Radha Kishun* v. *Emperor*.
(1893) Rat. 658, *Queen-Empress* v. *Mahadu* (Grammatical meaning of words).
(1903) 26 Mad. 394 (403), *Sevakilandai* v. *Ammayan*.
(1913) 19 Ind. Cas. 204 (205, 206): 37 Bom. 402, *Emperor* v. *Jaffar Mohomad*.
(1927) 1927 Bom. 483 (487): 51 Bom. 896, *Emperor* v. *Kadarbhai*.
(1892) 16 Bom. 580 (583), *Queen-Empress* v. *Abdul Rahman*.
(1918) 45 Ind. Cas. 511 (512, 513): 1918 Bom. 226: 42 Bom. 400, Re *Crawford*.
(1910) 7 Ind. Cas. 743 (744): 34 Mad. 130, *Veeraraghavalu* v. *President* (Principles applicable to local Acts).
(1869) 6 Bom. H. C. R. 15, *Reg.* v. *Cannon* (Do.).
(1888) 10 All. 207 (213), *Queen-Empress* v. *Maru* (Principle applicable to special Act).
(1917) 38 Ind. Cas. 976 (976, 977): 1918 Mad. 439: 40 Mad. 880, Re *Piranu* (Do.).
(1931) 1931 Cal. 633 (634), *Jugal Kishore Dhar* v. *Emperor* (Principles applicable to ordinances).
[See (1922) 1922 Pat. 269: 1 Pat. 104 (F.B.), Re *Hazra* (The meaning of a statute is that which it intended at the time of its enactment).]
(2) (1928) 1928 All. 241 (246): 50 All. 569, *Aziz Ahamad Khan* v. *Chhote Lal*.
(1889) 16 Cal. 610 (613), *Bikao Khan* v. *Queen-Empress* (Police circulars not to be referred in order to explain the law).
(1914) 23 Ind. Cas. 888 (889): 10 N. L. R. 42, *Miya Saheb* v. *Champa Lal* (Though it has the effect of divesting a vested right).
(1910) 5 Ind. Cas. 714 (716) (Lah.), *Abdur Razar* v. *Gohir Nath* (Statutes clear—Effect cannot be modified on ground of public policy).
(1925) 1925 Mad. 449 (451): 48 Mad. 559, *R. Arunachala Naidu* v. *S. R. Balakrishna*.
(1912) 17 Ind. Cas. 979 (983): 1912 Pun. Re. 5, *Ghulam Mahomed* v. *Mt. Zewaro*.
(1912) 16 Ind. Cas. 947 (949, 950): 37 Mad. 113, *Secretary of State* v. *Kalekhan* (Court cannot graft on exceptions to a section which is universal in terms).
(1917) 39 Ind. Cas. 87 (88): 1917 All. 295, *Damodar Das* v. *Jahoo Singh* (Court cannot read into statute words not found there).
(1928) 1928 Lah. 337 (340): 9 Lah. 689, *Gur Dial* v. *Central Board*.
(1910) 5 Ind. Cas. 503 (509, 510) (All.), *Nemichand* v. *Ganesh*.
(1921) 1921 P. C. 240 (242) (P.C.), *Corporation* v. *Bishop* (Reasonableness of the provision is only material when the statute is not clear).
(1921) 1921 Bom. 374 (374, 375): 45 Bom. 672, *Fernandez* v. *Emperor* (Plain meaning not to be controlled by considerations of convenience).
(1922) 1922 Pat. 435 (436): 2 Pat. 94 (F.B.), *Sheobalak* v. *Kamaruddin*.
(1922) 1922 Low. Bur. 27 (28): 11 L.B. R. 316, *Collector of Rangoon* v. *Abdul Rahim Sirkar*.
(1923) 1923 Lah. 655 (656): 4 Lah. 323, *Piara Singh* v. *Mulamal*.
(1910) 7 Ind. Cas. 935 (936): 34 Bom. 593, *Emperor* v. *Ramachandra* (Words must be construed in the popular sense unless there is something in the context to the contrary or the law has attached a technical sense to it).
(1923) 1923 Sind 5 (9): 16 Sind L. R. 112 (F.B.), *Mt. Huri* v. *Roshan Khudabux* (Words must be assumed to be used in their popular meaning unless they have acquired a technical meaning).
(1918) 47 Ind. Cas. 771 (772): 1918 Sind 38: 12 Sind L. R. 20, *Jewanjee* v. *Gulam Husain* (Do.).
(1887) L. R. 4 Q. B. 406, *Lawson* v. *The Queen* (Do.).
(1928) 1928 Sind 118 (119): 22 Sind L. R. 441, *Vasanbai* v. *Radhibai* (Words not to be treated as superfluous).
(1925) 1925 All. 610 (612): 48 All. 175 (F.B.), *Ram Sarup* v. *Gaya Prasad* (Words not to be found in a section may be supplied by necessary implication if the context so requires it).
(1924) 1924 All. 684 (686): 46 All. 611, *B. Ram Nath* v. *Emperor* ("The" is often used in the same sense as the Greek "Tis").
(1925) 1925 Cal. 1067 (1068), *Nayan Manjari* v. *Chairman, Howrah* ("And" and "or" are sometimes interchangeable).
(1925) 1925 Mad. 723 (724): 48 Mad. 454, *Official Assignee* v. *Basudeva Doss* (Instrument defined by Act—Understanding of common people not to be considered).
(1925) 1925 Oudh 419 (420): 29 Oudh Cas. 80, *B. & N. W. Ry.* v. *Special Manager, Court of Wards* ("May" in certain circumstances means "shall").
(1925) 1925 Sind 49 (51): 18 Sind L. R. 19 (F.B.), *Hiramal* v. *Hasari Singh*.
(1926) 1926 Lah. 357 (359): 7 Lah. 348, *Hari Singh* v. *Emperor*.
(1926) 1926 Lah. 447 (449): 7 Lah. 507, *Emperor* v. *Barkat* (Command to a body to make rules is whether directory or mandatory depends on scope and object).
(1926) 1926 Oudh 101 (111), *Baij Nath* v. *Rajju Singh* (Clear words cannot be destroyed on the ground of equity or unreasonableness).
(1896) 23 Cal. 563 (572): 23 Ind. App. 18: 6 Sar. 667 (P.C.), *Norendranath* v. *Kamalbasini*.

fluenced by *extraneous considerations*, such as the previous state of the law,[3] or

Preamble, Note 5.

(1915) 25 Ind. Cas. 957 (962): 1915 Mad. 63: 38 Mad. 1144, ***Meenakshi*** v. *Muniandi* (Words must be construed in their primary sense).
(1917) 39 Ind. Cas. 741 (745): 1918 Mad. 1076: 40 Mad. 594 (F.B.), *Kunhaloor Puthia Veetil* v. *Parkum Punnisseri Kelappa* ("And" may be read as "or" to carry out obvious intention of the legislature).
(1904) 6 Bom. L. R. 131 (210): 27 Bom. 189, *Jehangir* v. *Secretary of State*.
(1909) 4 Ind. Cas. 1115 (1116) (Mad.), *Velayutha* v. *Govindasami* (Court cannot introduce equities to modify express provisions).
(1917) 35 Ind. Cas. 782 (785): 1917 Cal. 392, *Kasim Ali* v. *Chairman, Chittagong*.
(1921) 1921 Cal. 397 (399): 48 Cal. 556 (F. B.), *Nilamani Kar* v. *Raja Sati Prasad*.
(1926) 1926 Mad. 1017 (1018), *Varanari Annapurnamma* v. *Kantikappa Venkamma* (Moral rules should not be introduced).
(1890) 12 All. 129 (141) (F.B.), *Balkaran Rai* v. *Gobind Nath* (Practice of the Court cannot be used to nullify express enactment).
(1881) 7 Cal. 127 (130, 132), *Gureebullah* v. *Mohun Lal*.
(1891) 13 All. 432 (457), *Matadin* v. *Kazim Hussain*.
(1918) 45 Ind. Cas. 519 (520): 1918 All. 168: 40 All. 393, *Maha Ram* v. *Emperor*.
(1924) 1924 Bom. 241 (242, 245): 48 Bom. 241, *Municipal Corporation, Bombay* v. *Mallandaine*.
(1922) 1922 Cal. 59 (62): 49 Cal. 682, *Ram Sagar* v. *Alek*.
(1912) 35 Mad. 39[illegible] (498), *Muthukumaraswami* v. [illegible]*mperor*.
(1914) 1914 Lah. 214 (217): 1913 Pun. Re. 111, *Barru* v. *Lechman*.
(1904) 27 Mad. 531 (534), *Suri* v. *Madula*.
(1919) 49 Ind. Cas. 481 (487): 1919 Pat. 27, *Mt. Kesar* v. *Emperor*.
(1891) 13 All. 171 (182), *Queen-Empress* v. *Popin* (Grammatical and natural meaning to be given).
(1931) 1931 All. 162 (175, 176): 53 All. 239, *Anand Prakash* v. *Narain Das* (Do.).
(1931) 1931 Cal. 550 (552), *Nafar* v. *Bhiker* (Do.).
(1925) 1925 Cal. 845 (851): 52 Cal. 894, *Becharam* v. *Purna Chandra* (Do.).
(1931) 1931 Lah. 399 (400): 12 Lah. 658, In re *Jamadar Munesh Ram* (Do.).
(1893) Rat. 658, *Queen-Empress* v. *Mahadu* (Do.).
(1927) 1927 All. 50 (51): 49 All. 240, *Emperor* v. *Bhairon* (Do.).
(1894) 16 All. 136 (148), *Queen-Empress* v. *Gangaram* (Sometimes meaning of words may depend upon circumstances).
(1910) 7 Ind. Cas. 935 (936): 34 Bom. 593, *Emperor* v. *Ramchandra Bhaskar Mantri* (But words of known legal import not to be construed in popular sense).
(1921) 1921 Cal. 1 (5, 6): 48 Cal. 388, *Satish Chandra* v. *Ram*.
(1913) 19 Ind. Cas. 204 (206): 37 Bom. 402, *Emperor* v. *Jafar*.
(1865) 4 Suth. W. R. P. C. 109 (111): 7 Moo. Ind. App. 72: 1 Sar. 598 (P.C.), *Nga Hoong* v. *Queen-Empress*.

(1925) 1925 Cal. 822 (829): 52 Cal. 721, *Narendra* v. *Sabarali*.
(1931) 1931 All. 294 (297): 53 All. 612, *Radh Mohan Dutt* v. *Abbas Ali Biswas*.
(1922) 1922 Cal. 59 (66): 49 Cal. 682, *Ram Sagar* v. *Alek*.
(1925) 1925 Cal. 34 (41): 52 Cal. 1, *Rogers Fralt & Co.* v. *Secretary of State*.
(1910) 6 Ind. Cas. 101 (106) (All.), *Rustam* v. *Emperor*.
(1909) 4 Ind. Cas. 416 (417): 36 Cal. 955, *Jyothish Chandra* v. *Emperor* (Custom cannot alter the plain words of the statute).
(1921) 1921 Bom. 374 (374): 45 Bom. 672, *Emperor* v. *Fernandez* (Do.).
(1911) 11 Ind. Cas. 995 (995): 36 Bom. 81, *Municipal Commissioner* v. *Mathuradas* 'Expressio unius est exclusio alterius').
(1933) 1933 Sind 151 (154): 27 S. L. R. 121 (F. B.), *Pahlumal Santdas* v. *Naraindas Dipchand* (Do.).
(1924) 1924 Cal. 881 (882), *Nandlal* v. *Jogendra* (Fiction not to be introduced in interpreting statutes).
(1932) 1932 Cal. 236 (240): 59 Cal. 40, *Pramotha* v. *Bhagwandass*.
(1924) 1924 Cal. 1 (8): 51 Cal. 1 (F.B.), *Government of Assam* v. *Sahebulla* (Reasonable construction).
(1913) 20 Ind. Cas. 998 (1001): 37 Bom. 666, *Emperor* v. *Balkrishna Vaman Kulkarni*.
(1929) 1929 Lah. 641 (643): 11 Lah. 55, *Thiraj* v. *Emperor*.
(1926) 1926 Lah. 357 (359): 7 Lah. 348, *Hari Singh* v. *Emperor*.
(1926) 1926 Bom. 57 (59): 50 Bom. 34, *Gamadia* v. *Emperor*.
(1904) 31 Cal. 542 (549), *Hari Singh* v. *Jadu Nandan Singh* (Common words to be given popular meaning).
(1928) 1928 Lah. 609 (624): 9 Lah. 701, *Khangul* v. *Lakha Singh* (Ordinary meaning to be given in the absence of technical definition in the Act).
(1931) 1931 Nag. 177 (177): 27 N.L.R. 217, *Rameshwar* v. *Emperor*.
(1886) 10 Bom. 131 (145), *Queen-Empress* v. *Dorabji*.
(1920) 1920 Mad. 19 (19): 43 Mad. 709, *Sundaresan* v. *Emperor*.
(1933) 1933 All. 321 (324): 55 All. 468 (F.B.), *Ram Swarup* v. *Jotti*.
(1933) 1933 Cal. 467 (468): 60 Cal. 379, *Maktan Lal Laha* v. *Nagendranath* (Technical language to be given technical meaning).
(1933) 1933 Nag. 193 (199): 29 N. L. R. 278 (F.B.), *Vithoba Ohimnaji* v. *Govinda Vithalrao*.
(1933) 1933 Mad. 120 (122), *Katani Reddi Rami Reddy* v. *Sreeramulu Reddy*.
(1933) 1933 Mad. 207 (210): 56 Mad. 177, *Mercantile Bank of India* v. *Official Assignee of Madras*.
(1929) 1929 Cal. 822 (824), *Emperor* v. *Mathews*. (No rules of practice or procedure can override express language of statute).
[See (1917) 37 Ind. Cas. 741 (747, 748): 1918 Mad. 1187: 40 Mad. 989, *Aiyasamier* v. *Venkatachala*.]

(3) (1928) 1928 P. C. 16 (18): 55 Ind. App. 96: 55 Cal. 519 (P. C.). *Abdul Rahim* v. *Abumal Barkat Ali*.
(1928) 1928 P. C. 2 (4): 55 Ind. App. 18: 7 Pat. 221 (P.C.), *Mt. Ramanandi* v. *Mt. Kalawati*.
(1921) 1921 Cal. 397 (399): 48 Cal. 556

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hardship[4] or the policy or the intention of the law[5] or the reference to, or analogy of, other enactments,[6] or the terms of the enactment being against general principles of law or equity[7] or that the giving effect to the words leads to absur-

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(F.B.), *Nilmani* v. *Sati Prasad.*
(1930) 1930 Oudh 148: 5 Luck. 552 (F.B.), *Bahadur Singh* v. *Ram Phal.*
(1921) 1921 Cal. 1 (7): 48 Cal. 388 (S.B.), *Satish Chandra* v. *Ram Doyal De.*
(4) (1916) 36 Ind. Cas. 179 (180, 182): 1917 Cal. 841: 43 Cal. 95, *Janardhan Kishore* v. *Sir Prasad.*
(1934) 1934 Bom. 74 (78), In re *Lloyds Bank, Ltd.*
(1919) 47 Ind. Cas. 502 (505): 1919 Cal. 819: 46 Cal. 199, *Secretary of State* v. *Shib Narain Hazra.*
(1917) 43 Ind. Cas. 31 (38): 1919 Mad. 972: 40 Mad. 1040 (F.B.), *Mulla Vittil* v. *Kunhi Pathumma.*
(1910) 7 Ind. Cas. 754 (757): 34 Mad. 1, *Santhalava* v. *Manjamsa.*
(1890) 12 All. 129 (137, 138) (F.B.), *Balkaran Rai* v. *Gobind Nath.*
(1927) 1927 Cal. 474 (476), *Fool Kumar Dasi* v. *Khirod Chandra.*
(1913) 19 Ind. Cas. 239 (240): 1913 P. R. 79, *Saghar* v. *Nurahmad.*
(1910) 9 Ind. Cas. 720 (721): 4 Sind L. R. 214, *Emperor* v. *Hatimati.*
(1912) 13 Ind. Cas. 234 (235, 236): 5 Sind L. R. 125, *Mansoor* v. *Mino Sahebdin.*
(1902) 24 All. 532 (537) (F.B.), *Jamna Bibi* v. *Sheikh Jhan.*
(1912) 14 Ind. Cas. 849 (861): 35 Mad 247, *Emperor* v. *Nilakanta.*
(1922) 1922 Cal. 454 (456): 49 Cal. 721, *Imperial Tobacco* v. *Secretary of State.*
(1908) 35 Cal. 34 (55), *Kripa Sindhu* v. *Annada.*
(1911) 11 Ind. Cas. 995 (996): 36 Bom. 81, *Municipal Commissioner of Bombay* v. *Mathuradas.*
(1932) 1932 All. 494 (498) (F.B.), *Kaulpati Kunwar* v. *Ram Baran Singh.*
(1919) 49 Ind. Cas. 593 (599): 1919 Pat. 84, *Purshottam* v. *Chief Secretary.*
(1933) 1933 Cal. 124 (126, 127): 60 Cal. 571, *Nilratnam Ganguli* v. *Emperor.*
(5) (1924) 1924 Lah. 513 (514): 5 Lah. 147 (F.B.), *Lee* v. *Lee.*
(1915) 30 Ind. Cas. 423 (424): 1916 Mad. 1: 38 Mad. 419, *Abdul Kadir* v. *Ahammad Shaiwa.*
(1868) 5 Bom. H. C. R. (O. C. J.) 55 (58), In re *Mancharji.*
(1925) 1925 Bom. 505 (508), *Emperor* v. *Thakurdas Motiram.*
(1915) 33 Ind. Cas. 675 (677): 1916 Sind 17: 9 S. L. R. 126, *Municipality of Karachi* v. *Md. Ali Essaji.*
(1867) 8 Suth. W. R. 1 (12): 11 Moo. Ind. App. 75: 2 Sar. 218 (P.C.), *Appovier* v. *Ramasubba Aiyar.*
(1911) 13 Ind. Cas. 244 (249): 5 S.L.R. 155, *Doulatram* v. *Halo Kanya.*
(1911) 12 Ind. Cas. 646 (646, 647): 5 S. L. R. 54, *Imperator* v. *Jaro.*
(1933) 1933 Rang. 1 (2): 10 Rang. 505, *Maung Ba Thin* v. *Pannawuntha.*
(1895) 22 Cal. 291 (295), *Sidheswar* v. *Gyanada.*
(1931) 1931 Lah. 283 (287): 12 Lah. 345, *Prithvi Das* v. *Emperor.*
(1931) 1931 Lah. 87 (92): 12 Lah. 129, *Commissioner of Income-tax* v. *Mahomed Hayat.*
(1914) 1914 Lah. 8 (9): 1914 P. R. 16, *Abdul Haq* v. *Emperor.*
(1865) 4 Suth. W. R. P. C. 109 (111): 7 Moo. Ind. App. 72: 1 Sar. 598 (P.C.), *Nga Hoong* v. *Queen-Empress.*
(1932) 1932 Nag. 105 (106): 28 N. L. R. 98, *Prayagrao* v. *Betul District Council.*
(1924) 1924 Lah. 65 (67): 4 Lah. 367, *Gobindas* v. *Roop Kishore.*
(1925) 1925 Lah. 436 (437), *Nur Mohomad* v. *Lalchand.*
(1910) 7 Ind. Cas. 186 (187, 188): 33 All. 36, *Emperor* v. *Ibrahim Khan.*
[See however (1899) 21 All. 391 (396, 402, 403), *Empress* v. *Hori* (Literal construction given place to intention of legislature—Case under S. 16 of Reformatory Schools Act, VIII of 1897).]
(1927) 1927 Mad. 327 (328), *Govindasami* v. *Perumal.*
(1922) 1922 Pat. 435 (436): 2 Pat. 94, *Shebalak Singh* v. *Camoruddin.*
(1933) 1933 Pesh. 69 (70), *Government Advocate* v. *Fazul Rahim.*
(1916) 36 Ind. Cas. 749 (767): 1917 Cal. 445: 44 Cal. 219, *Trustees, etc.* v. *Chandra.*
(1932) 1932 All. 110 (110): 54 All. 1, *Mt. Mammadi* v. *Emperor.*
(1933) 1933 Lah. 492 (493): 14 Lah. 389, *Mt. Surji* v. *Sheoram.*
(1933) 1933 Pesh. 3 (5), *Public Prosecutor* v. *Sheo Muquarrab.*
[See (1932) 1932 Sind 107 (110), *Jethamal Parsaram* v. *Emperor* (Policy of Government stated in a Government circular regarding Government prosecutions—Not to be referred to).]
(6) (1924) 1924 Cal. 405 (408): 51 Cal. 62, *Chandmull Kungoria* v. *Debichand.*
(1924) 1924 Cal. 881 (882), *Nandi Ram* v. *Jogendrachandra.*
(1925) 1925 Cal. 116 (138), *Protab Chandra Deo* v. *Jagadischandra Deo.*
(1887) 11 Bom. 727 (732), *Khusbrobhai Nasarvanji* v. *Hormazsha Phirozsha.*
(1933) 1933 All. 36 (40), *Emperor* v. *Ibrahim.*
[See also (1932) 1932 Cal. 753 (757), *Jatendra Nath Ghose* v. *Chief Secretary to the Government of Bengal.*]
(7) (1923) 1923 P. C. 211 (216): 51 Cal. 86: 1 Rang. 637: 50 Ind. App. 283 (P.C.), *Imperial Bank* v. *Rai Gyaw Thu & Co.* (Considerations of facility and practical importance are out of place).
(1900) 23 All. 152 (156, 157): 27 Ind. App. 209: 7 Sar. 788 (P. C.), *Bhup Inder* v. *Biji Bahadur.*
(1918) 46 Ind. Cas. 429 (431) (Cal.), *Dhananjoy* v. *Upendra Nath Deb.*
(1911) 8 Ind. Cas. 364 (365): 34 Mad. 543, *Velayutha Chetty* v. *Govindaswamy.*
(1917) 1917 Nag. 215: 42 Ind. Cas. 200 (213): 13 Nag. L. R. 130 (F. B.), *Salu Bai* v. *Bajat Khan.*
(1912) 19 Ind. Cas. 838 (840): 6 Sind L. R. 250, *Abdul Wahib* v. *Manager, Encumbered Estate.*
(1923) 1923 Lah. 529 (530), *Hadayatullah* v. *Ghulam Md. Beg* (Avoiding anomaly is no proper ground).

dity or inconvenience or injustice.[8] In this connection *see* the observations of Lord Brougham in *Crawford* v. *Spooner*.[8-a]

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The Court's function in fact, is to say, not what the Legislature meant or ought to have meant but what *it has said* it meant.[9] It is always dangerous to paraphrase an enactment even if badly worded.[10]

Where, however, the language of the enactment *is not itself precise* or is *ambiguous or of doubtful import* or the question arises as to what extent changes in the pre-existing law have been effected by any particular amendment, recourse

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(1931) 1931 All. 277 (291): 53 All. 334, *Nannu Mal* v. *Ram Chander* (Equity).
(1907) 29 All. 685 (696, 699), *Emperor* v. *Ganga Prasad* (Indian Law clear—English maxim is not applicable to modify).

(8) (1921) 1921 P. C. 240 (242) (P. C.), *Corporation of Victoria* v. *Bishop of Vancouver*.
(1892) 1 Q. B. 290, *Queen* v. *Judge of City of London Court*.
(1928) 1928 Sind 1 (11): 22 Sind L. R. 157 (F. B.), *Emperor* v. *Noor Md.*
[But see (1921) 1921 Cal 397 (399): 48 Cal. 556 (F. B.), *Nilmani* v. *Sati Prasad*.
And also (1928) 1928 Sind 149 (158): 22 Sind L. R. 349, *Emperor* v. *Jiand* (Ordinary meaning to be modified to avoid absurdity, repugnance or inconsistency).]
(1910) 32 All. 427 (440) (F. B.), *Wallis Alikhan* v. *Parshottam Narain*.
(1924) 1924 Lah. 65 (67): 4 Lah. 367, *Bhajat Gobind* v. *Rup Kishore*.
(1923) 1923 Lah. 655 (656): 4 Lah. 323, *Piara Singh* v. *Mula Mal*.
(1923) 1923 Bom. 321 (351): 47 Bom. 843, *Wilkinson* v. *Wilkinson*.
(1910) 6 Ind. Cas. 101 (106) (All.), *Rustam* v. *Emperor*.
(1841-46) 3 Moo. Ind. App. 468 (483): 1 Sar 305: 5 Moo. P.C. 276 (P.C.), *Queen-Empress* v. *Eduljee*.
(1931) 1931 Lah. 87 (92): 12 Lah. 129 (F.B.), *Commissioner of Income-tax* v. *Mohomed Hajat*.
(1910) 7 Ind. Cas. 186 (187, 188): 33 All. 36, *Emperor* v. *Ibrahim*.
(1928) 1928 Bom. 69 (73), *Omar* v. *Ismail*.
(1925) 1925 Bom. 505 (508), *Emperor* v. *Thakordas*.
(1914) 1914 Lah. 8 (9): 1914 Pun. Re. 16 (S.B.), *Abdul Haq* v. *Emperor*.
(1857) 7 Moo. Ind. App. 72 (103): 1 Sar. 598 (P.C.), *Nga Hoong* v. *Empress* (Supposed justice of a particular case is no rule of construction).
(1917) 49 Ind. Cas. 481 (488): 1917 Pat. 27, *Musst. Kesar* v. *Emperor* (Do.).
(1931) 1931 Lah. 320 (325), *Chhunna Mal* v. *Commissioner of Income-tax*.
(1931) 1931 All. 162 (173): 53 All. 239, *Anand Praksh* v. *Narain Das* (Inconvenience).
(1922) 1922 Mad. 512 (513): 45 Mad. 820, *Maduramuthu* v. *Emperor* (Do.).
(1881) 5 Bom. 338 (346), *Emperor* v. *Moorga Chetty* (Do.).
(1913) 19 Ind. Cas. 204 (206): 37 Bom. 402, *Emperor* v. *Jaffur*.
(1918) 46 Ind. Cas. 514 (515): 1918 All. 99: 40 All. 661, *Emperor* v. *Kedar Nath* (Defect in law is no valid consideration).
(1932) 1932 Mad. 612 (619): 55 Mad. 883, *Raja of Mandasa* v. *Jagannayakulu* (Do.).
(1932) 1932 Mad. 369 (371): 55 Mad. 622, *Ponnuswami Goundan* v. *Emperor*.
(1905) 32 Cal. 1093 (1102), *Tarapada Biswas* v. *Nurul*.
[See (1893) 1893 Rat. Un. Re. Cr. Cas. 658, *Empress* v. *Mahada*.]
[See also (1933) 1933 Pat. 508 (512), *Abdul Aziz* v. *Emperor* (Not being in conformity with public opinion is not a matter for consideration).]

(8-a) (1846) 4 Moo. I.A. 179 (187), In re *Crawford*.

(9) (1900) 27 Cal. 724 (755), *Lala Surya* v. *Golabchand*.
(1924) 1924 Cal. 881 (882), *Nandi Ram* v. *Jogendrachandra* (To read into a statute words which are not there is objectionable).
(1924) 1924 Lah. 65 (67): 4 Lah. 367, *Gobind Das* v. *Rup Kishore*.
(1895) 1895 App. Cas. 216, *Brophy* v. *Attorney-General*.
(1917) 37 Ind. Cas. 525 (590): 1918 Mad. 1210: 39 Mad. 1085, *Besant* v. *Emperor* (Meaning of Government established by law in British India in S. 4 (1) (*c*) of the Indian Press Act I of 1910).
(1917) 39 Ind. Cas. 87 (88): 1917 All. 279, *Damodar Das* v. *Jhaoo Singh* (Not permissible to read into statute words not there).
(1910) 33 All. 36 (40), *Emperor* v. *Ebrahim*.
(1912) 17 Ind. Cas. 536 (537): 40 Cal. 356, *Ganpat Rai* v. *Emperor*.
(1932) 1932 Cal. 753 (755), *Jitendra Nath Ghose* v. *The Chief Secretary*.
(1931) 1931 All. 162 (175, 176): 53 All. 239, *Anand Prakesh* v. *Narain Das*.
(1872) 9 Bom. H. C. R. 358 (383), *Reg* v. *Navroji*.
(1867) 8 Suth. W. R. P. C. 3 (12), *Buzloor Ruheem* v. *Shum Soonisa*.
(1925) 1925 Cal. 822 (825): 52 Cal. 721 (F. B.), *Narendra Chandra* v. *Sabarali*.
(1916) 36 Ind. Cas. 749 (767): 1917 Cal. 445: 44 Cal. 219, *Trustees, etc.* v. *Chandra*.
(1893) 17 Bom. 573 (577, 578), *Queen-Empress* v. *Bal Krishna Vithal*.
(1897) 19 All. 390 (407), *Queen-Empress* v. *Mannu*.
(1933) 1933 Cal. 322 (324): 60 Cal. 296, *Bijoy Kumar Addy* v. *Corporation of Calcutta*.
(1933) 1933 Bom. 91 (92), *Currim Bhoy Abdul Hussain* v. *Ahmed Alli Lakmanji*.

(10) (1890) 18 Cal. 23 (30): 17 Ind. App. 122: 5 Sar. 560 (P. C.), *Durga Chowdhrani* v. *Jewahir*.

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may be had to extraneous considerations.[11] Thus the provisions of *other statutes* which are in *pari materia*[12] or the previous state of the law,[13] or the scope and intention of the Act[14] may be considered.

Subject to the broad principles mentioned above, the following general rules of interpretation of statutes should also be borne in mind in construing the sections of the Code—

(1) Where an Act is divided into sections and rules, the section must be taken to lay down *general principles* and the rules as providing the machinery or means of applying them.[15]

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(11) (1928) 1928 P. C. 16 (18): 55 Ind. App. 96: 55 Cal. 519 (P. C.), *Abdur Rahim* v. *Abu Md. Barket Ali*.
(1925) 1925 Cal. 34 (41): 52 Cal. 1, *Rogers Pratt Co.* v. *Secretary of State*.
(1924) 1924 Cal. 257 (272) (F. B.), *Emperor* v. *Barendra Kumar*.
(1924) 1924 All. 328 (335, 336): 46 All. 489 (F. B.), *Mubarakh Hussain* v. *Ahmad*.
(1922) 1922 Mad. 491 (492), *Administrator-General, Madras* v. *V. V. Ramiah*.
(1899) 21 All. 391 (396, 403) (F.B.), *Empress* v. *Hori*.
(1920) 58 Ind. Cas. 205 (211): 1920 Bom. 121: 44 Bom. 986, *Hargobind* v. *Bai Hirbai* (The Judge may infer that no change in the law is intended unless the contrary inference is necessary to be drawn owing to expediency or convenience).
[Cf. however (1923) 1923 Cal. 74 (77) *Dinanath* v. *Sati Prasad* where the contrary is held.]
(1904) 6 Bom. L. R. 131 (210): 27 Bom. 189, *Jehangir* v. *Secretary of State* (Where the language is doubtful, the practice of the Court and administrative convenience may be looked to).
(1920) 1920 P.C. 181 (184, 185) (P.C.), *Quebec Railway* v. *Vandry*.
(1930) 1930 Lah. 781 (786): 12 Lah. 26, *Des Raj* v. *Emperor* (Two possible constructions—What is most beneficial to subject to be preferred).
(1930) 1930 All. 265 (267): 52 All. 568, *Emperor* v. *Himan Ohat Singh* (Language doubtful—Construction most beneficial to subject or preventing abuse of process of Court must be put).
[See (1917) 37 Ind. Cas. 741 (747, 748): 1918 Mad. 1187: 40 Mad. 989, *Aiyasamier* v. *Venkatachala* (Construction modifying meaning of words and structure of sentences may be adopted to avoid manifest absurdity, hardship or injustice).
(1894) 16 All. 136 (148), *Queen-Empress* v. *Gangaram* (Circumstances with reference to which words of statute were used considered in aid of construction).
(1888) 11 Mad. 253 (256), *Jennings* v. *The President, Municipal Commission, Madras* (Manifest inaccuracy in language must be eliminated).
(1927) 1927 Bom. 278 (300): 51 Bom. 516, *Hakimbai* v. *Framroz*.
(12) (1899) 22 Mad. 494 (502), *Assan* v. *Pathumma*.
(1925) 1925 Pat. 1 (8): 3 Pat. 371, *Balmukand* v. *Basant Kumari* (*e.g.*, the Limitation Act).
(1931) 1931 Pat. 241 (246): 10 Pat. 670 (F.B.), *Tribeni Prasad* v. *Ramaray Prasad* (Do. per Jwala Prasad).
(1910) 7 Ind. Cas. 196 (198): 32 All. 351: 37 Ind. App. 124: 13 Oudh Cas. 165 (P.C.), *Sheoraj Kunwar* v. *Hari Har Baksh Singh*.
(1932) 1932 Oudh 210 (216): 7 Luck. 601, *Md. Baqar* v. *Md. Qasim*.
(13) (1928) 1928 P. C. 16 (18): 55 Ind. App. 96: 55 Cal. 519 (P.C.), *Abdur Rahim* v. *Abu Md. Barkat Ali*.
(1924) 1924 Cal. 257 (272) (F.B.), *Emperor* v. *Barendra Kumar*.
(1924) 1924 All. 328 (335): 46 All. 489 (F. B.), *Mubarak Hussain* v. *Ahmad*.
(1921) 1921 Cal. 397 (399): 48 Cal. 556 (F.B.), *Nilamani Kar* v. *Raja Suti Prasad*.
(1884) 10 Cal. 166 (184, 192, 193) (F.B.), *Mothora Kant* v. *India General Steam Co*.
(14) (1924) 1924 All. 328 (336): 46 All. 489 (F.B.), *Mubarak Husain* v. *Ahmad*.
(1914) 23 Ind. Cas. 689 (693): 1914 L. B. 15: 7 L. B. R. 306, *Seena M. Haniff & Co.* v. *Liptons, Ltd.*
(1918) 44 Ind. Cas. 94 (103): 1918 Pat. 398 (F.B.), *Janaki Singh* v. *Jagannath*.
(1914) 25 Ind. Cas. 594 (595), *Gulam Sarvar* v. *Md. Ambar Ali Khan*.
(1899) 21 All. 391 (396, 397), *Empress* v. *Hori*.
(1907) 31 Bom. 480 (488, 491), *Emperor* v. *Atmaram Govind* (Sweeping words—Bombay Police Act—Policy and scheme of Act considered).
(1918) 43 Ind. Cas. 423 (427): 1918 Pat. 179, *Ghinua* v. *King-Emperor*.
(1931) 1931 All. 162 (175): 53 All. 239, *Anand Prakash* v. *Narain Das-Dori Lal*.
(1918) 45 Ind. Cas. 519 (520): 1918 All. 168: 40 All. 393, *Emperor* v. *Maha Ram*.
(1892) 16 Bom. 580 (583), *Queen-Empress* v. *Abdul Rahiman*.
(1907) 31 Bom. 611 (627), *Emperor* v. *Jeevanji*.
(1933) 1933 Cal. 358 (360): 60 Cal. 820, *Soleman Bibi* v. *East Indian Railway* (Popular meaning of words modified to advance remedy provided).
(1933) 1933 Bom. 272 (274): 57 Bom. 377, *Shidramappa Nilappa Ujalambe* v. *Nilava Ban Chan Basappa*.
(1933) 1933 Nag. 193 (197): 29 Nag. L. R. 278 (F.B.), *Vithoba Chimnaji* v. *Govinda Rao Vithal Rao Potdar*.
(15) (1917) 1917 Cal. 657 (658): 43 Cal. 148, *Manimohan* v. *Ramratan* (Section creates jurisdiction, rules indicate mode).
(1913) 20 Ind. Cas. 39 (40): 41 Cal. 108, *Nabinchandra Tripoli* v. *Prankrishna Dey* (Rules restrict sections).

(2) Where two constructions are possible a section should be construed so as to *harmonise* with the other provisions and so as to avoid *inconsistency* of meaning[16] or the making of a word, clause or sentence either superfluous or insignificant.[17] In other words the statute should be examined as a self-contained unity, the different sections being considered simultaneously in view of each other.[18] It follows from this that where two remedies

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(1917) 41 Ind. Cas. 598 (600): 1917 Cal. 44: 44 Cal. 929 (F.B.), *Ghuznavi* v. *Allahabad Bank* (View that rules restrict sections is dissented from at 41 Ind. Cas. 602 by Mookerjee, J.).

(16) (1928) 1928 Lah. 609 (613, 614): 9 Lah. 701 (F.B.), *Khangul* v. *Lakha Singh*.
(1886) 8 All. 354 (361) (F.B.), *Ajudia Prasad* v. *Balmukund*.
(1928) 1928 Sind 149 (159): 22 S.L.R. 349 (F.B.), *Emperor* v. *Jiand*.
(1924) 1924 Bom. 219 (225, 226): 48 Bom. 214 (F.B.), *Ganpat Chandra Bhan* v. *Tulshi*.
(1925) 1925 Lah. 415 (416): 6 Lah. 276, *Wadhwamal* v. *Karim Baksh*.
(1927) 1927 Sind 173 (173), *Md. Abdul Majid* v. *Emperor*.
(1927) 1927 All. 346 (348), *Debi Sahai* v. *Daulat*.
(1909) 1 Ind. Cas. 447 (449): 36 Cal. 115, *Karuna Uraon* v. *Baraik Debi*.
(1914) 22 Ind. Cas. 756 (758): 1914 Mad. 258: 37 Mad. 119, *Kambam Bali* v. *Emperor*.
(1913) 19 Ind. Cas. 347 (347): 16 Oudh Cas. 5, *Bacchulal* v. *Raja Ram*.
(1915) 2 Oudh L. Jour. 614 (619), *Wasiali* v. *Jang Bahadur Singh*.
(1914) 23 Ind. Cas. 935 (937): 1914 Oudh 199: 17 Oudh Cas. 99, *Prius* v. *Murray & Co*.
(1928) 1928 Lah. 325 (329): 9 Lah. 649, *Dial Singh* v. *Gurudwar Sri Akal Takht* (Anomaly to be avoided).
(1917) 37 Ind. Cas. 525 (590): 1918 Mad. 1210: 39 Mad. 1085, *Besant* v. *Emperor*.
(1929) 1929 All. 750 (750): 51 All. 996, *Mansa Singh* v. *Emperor* (Two possible constructions—Common sense construction to be given).
(1932) 1932 Cal. 699 (700, 701): 60 Cal. 233, *Giribala Dasi* v. *Madar Gazi*.
(1913) 1913 A. C. 107 (126), *Vacher* v. *London, etc.*
(1916) 35 Ind. Cas. 213 (214, 216): 1917 Mad. 958: 40 Mad. 529, *Sankara Venkataratnam* v. *Varadaraja Appa Rao*.
(1918) 45 Ind. Cas. 519 (520): 1918 All. 168: 40 All. 393, *Emperor* v. *Mata Ram*.
(1914) 1914 Mad. 258 (260): 37 Mad. 119, *Kambam Bali Reddi* v. *King-Emperor*.
(1933) 1933 Mad. 207 (210): 56 Mad. 177, *Mercantile Bank of India* v. *Official Assignee of Madras*.
(1933) 1933 Rang. 68 (69): 11 Rang. 182, *C. T. Mudakar* v. *Maymyo Municipal Corporation*.
[See also (1934) 1934 Bom. 213 (214), *Emperor* v. *Bastiao Andradez* (Wording open to two possible constructions—That which appears to be real object of Act should be taken.]
(17) (1909) 4 Ind. Cas. 801 (802): 5 N.L.R. 189, *Sakaram* v. *Soma* (Previous cases relied on).

(1917) 40 Ind. Cas. 811 (813): 1918 Mad. 921, *Srinivasa Ranga Rao* v. *Raja of Karvetnagar*.
(1925) 1925 Cal. 1 (3): 52 Cal 275 (F.B.), *Barada Kanta* v. *Shaik Majuddi*.
(1926) 1926 All. 653 (656), *Chotelal* v. *Bansidhar*.
(1914) 1914 All. 191 (191), *Har Narain* v. *Ramji* (Wider meaning given to words when restricted meaning results in surplusage).
(1891) 13 All. 171 (181), *Queen-Empress* v. *Pohpi*.
(1911) 10 Ind. Cas. 787 (789) (Rang.), *Md. Jewa Motelal* v. *M. S. Wilson*.
(1896) 18 All. 364 (365), *Queen-Empress* v. *Mirchia*.
(1932) 1932 Oudh 63 (64, 65): 7 Luck. 350, *Bankey* v. *Abdul*.
(1914) 1914 All. 191 (191), *Har Narain* v. *Ramji*.
(18) (1914) 23 Ind. Cas. 689 (693): 1914 L.B. 15: 7 L.B.R. 306, *Seena M. Haniff* v. *Liptons Ltd*.
(1896) 23 Cal. 738 (742), *Jonordan Dobey* v. *Ramdhone*.
(1909) 1 Ind. Cas. 280 (281), *Emperor* v. *Abdul Ali*.
(1911) 12 Ind. Cas. 364 (368): 7 N.L.R. 136, *Sukhnandan* v. *Lakshmichand*.
(1911) 12 Ind. Cas. 357 (358): 7 N.L.R. 130, *Mahadeo* v. *Nago*.
(1915) 29 Ind. Cas. 272 (273): 1914 Lah. 511: 1916 Pun. Re. 20, *Daulat Rai* v. *Wazir Chand*.
(1920) 1920 P. C. 181 (184, 185) (P.C.), *Quebec Railway* v. *Vandry*.
(1916) 35 Ind. Cas. 305 (312, 313): 1916 Cal. 136: 43 Cal. 790, *Mathuramohan* v. *Ram Kumar*.
(1928) 1928 All. 207 (210): 50 All. 625, *Emperor* v. *Shera*.
(1932) 1932 Bom. 427 (428): 56 Bom. 264, *Emperor* v. *Munshi*.
(1920) 1920 Pat. 428 (429), *Lalji Tewari* v. *King-Emperor*.
(1932) 1932 Oudh 152 (153) (F.B.), *Kedar Nath* v. *Peary Lal Gupta*.
(1931) 1931 Lah. 476 (479): 12 Lah. 635, In re *Kairatiram*.
(1897) 19 All. 390 (407), *Queen-Empress* v. *Mannu*.
(1928) 1928 Lah. 609 (614): 9 Lah. 298, *Khan Ghul* v. *Lakan Singh*.
(1932) 1932 Mad. 391 (395): 55 Mad. 903, *Syamo Maha Patro* v. *Emperor*.
(1929) 1929 Bom. 274 (275): 53 Bom. 627, *Ratansi Hirji* v. *Emperor*.
(1913) 19 Ind. Cas. 387 (390): 37 Bom. 231, *Rangachary* v. *Dasacharya* (Later Act not superseding earlier Act—Two enactments to be read together).
(1933) 1933 Cal. 283 (283, 284): 60 Cal. 289, *Aghore Chandra Jalui* v. *Rajnandini Debi*.
(1913) 21 Ind. Cas. 502 (508) (Cal.), In re *Kerr* (All sections of repeatedly amended Act to be considered).
(1932) 1932 Bom. 210 (211), *Someshwar Rajaram* v. *Mantlal*.

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or two procedures are provided for, one must not be taken as operating in derogation of the other.[19]

(3) Everything is to be taken as permissible unless there is some prohibition against it.[20] In the case of consolidating statutes the *statute itself* must be consulted in order to find the authority for the prohibition.[21]

(4) Where the statute is not clear, a *reasonable construction* should be adopted.[22] A construction which leads to an absurd result[23] or produces injustice[24] or defeats the object of the Act itself[25] should, if possible, be avoided.

(1919) 52 Ind. Cas. 193: 1919 Pat. 350, *Lalji Tewari* v. *King-Emperor*.
(1932) 1932 P. C. 168 (171): 56 Bom. 313: 59 Ind. App. 258 (P.C.), *Vacuum Oil Company* v. *Secretary of State*.
(1933) 1933 Cal. 283 (283, 284): 60 Cal. 289, *Aghore Chandra Jalui* v. *Raj Nandini Debi*.
(1933) 1933 All. 230 (230): 55 All. 241, *Pandit Madho Prosad Vyas* v. *Madho Prasad*.
(1933) 1933 Cal. 443 (445): 60 Cal. 1008, *Bankim Chandra Dutt* v. *Khagendra Nath Ganguli*.
(1887) 11 Bom. 657 (658), *Queen-Empress* v. *Sitaram* (Saving clause cannot extend meaning of the section).
(1931) 1931 All. 49 (50): 53 All. 233, *Shib Charan* v. *Emperor*.

(19) (1886) 8 All. 354 (361), *Ajudhia Prasad* v. *Balmukund*.
(1876) 25 Suth. W. R. 304 (305), *Rung Lal* v. *Tokhun Misser*.
(1922) 1922 P. C. 17 (19): 44 All. 185: 49 Ind. App. 60: 25 Oudh Cas. 8 (P.C.), *Md. Sher* v. *Swami Dayall*.
(1926) 1926 Nag. 491 (492), *Pundlik* v. *Bhagwant Rao* (Procedural law, *e.g.*, Evidence Act, S. 115, cannot override substantive law such as Contract Act, S. 11).
(1927) 1927 Mad. 602 (602): 50 Mad. 845, *Public Prosecutor* v. *Ranganayakalu*.

(20) (1889) 11 All. 267 (287) (F.B.), *Md. Sulaiman* v. *Md. Yarkhan*.
(1925) 1925 Mad. 42 (44): 48 Mad. 494, *Suryaprakasam* v. *Muniswami*.
(1882) 5 All. 163 (172) (F.B.), *Narsingdas* v. *Mangal* (Followed in (1910) 5 Ind. Cas. 532 (534): 37 Cal. 399, *Chhayunnessa* v. *Basikar Rahman*).
(1907) 31 Bom. 438 (444), *Emperor* v. *Fernad* (Authority to delegate implies authority to act oneself).
(1913) 19 Ind. Cas. 204 (206): 37 Bom. 402, *Emperor* v. *Jaffer* (Do.).

(21) (1889) 11 All. 267 (287, 288) (F.B.), *Md. Sulaiman* v. *Md. Yarkhan*.

(22) (1921) 1921 P. C. 240 (242) (P.C.), *Corporation* v. *Bishop*.
(1933) 1933 Cal. 280 (282), *Jogendra Chandra Roy* v. *Superintendent of the Dum Dum Special Jail*.
(1918) 44 Ind. Cas. 770 (789): 1919 Cal. 551: 45 Cal. 343 (F.B.), *Manilal* v. *The Trustees for the Improvement of Calcutta*.
(1927) 1927 All. 50 (51): 49 All. 240, *Emperor* v. *Bhairon*.
(1926) 1926 Sind 1 (3): 20 S. L. R. 34 (F.B.), *Emperor* v. *Nabu*.
(1928) 1928 All. 207 (210): 50 All. 625 (F.B.), *Emperor* v. *Shera*.
(1888) 10 All. 223 (234) (F.B.), *Md. Husain* v. *Ghushalo*.
(1881) 7 Cal. 127 (130, 132), *Bureebullah Sirkar* v. *Mohanlal*.
(1931) 1931 Lah. 353 (359): 12 Lah. 604, *Kundan Lal* v. *Emperor*.

(23) (1928) 1928 Mad. 571 (577), *Mohideen Pichai* v. *Tinnevelly Mills Co*.
(1928) 1928 Mad. 746 (765), *Subramania Iyer* v. *Swaminatha Chetty*.
(1921) 1921 Cal. 397 (399): 48 Cal. 556 (F.B.), *Nilamani Kar* v. *Sati Prasad* (Case-law relied on).
(1928) 1928 Sind 149 (158): 22 S. L. R. 349 (F. B.), *Emperor* v. *Jiand*.
(1926) 1926 Sind 81 (83), *Dost Md.* v. *Mohandas*.
(1893) 17 Bom. 573 (579), *Queen-Empress* v. *Balkrishna Vithal* (Public policy and intention of legislature considered).

(24) (1926) 1926 All. 617 (622) (F. B.), *Ram Sahai* v. *Debi Din*.
(1919) 46 Ind. Cas. 977 (982): 1918 Pat. 103, *Sheo Nandan* v. *Emperor*.

(25) (1891) 14 Mad. 342 (362) (F. B.), *Queen-Empress* v. *Fischer*.
(1911) 10 Ind. Cas. 787 (789) (Rang.), *Md. Jewa* v. *Wilson*.
(1912) 17 Ind. Cas. 370 (370): 8 N. L. R. 147, *Madho* v. *Umrao*.
(1909) 4 Ind. Cas. 145 (154): 12 Oudh Cas. 323, *Debi Prasad* v. *Amir Ali Khan*.
6 App. Cas. 119 (122), *Caledonian Ry. Co.* v. *N. B. Ry. Co.*
(1925) 1925 Sind 90 (93): 17 S. L. R. 273, *Hyderabad Municipality* v. *Kazi Fakruddin*.
(1926) 1926 All. 617 (622) (F. B.), *Ramsahai* v. *Debi Din*.
(1926) 1926 Cal. 927 (934): 53 Cal. 492, *Ramchunder* v. *Gowri Nath*.
(1894) 18 Bom. 636 (657), *Altar Caufman* v. *Government of Bombay*.
(1881) 3 Mad. 129 (136), *President, etc.* v. *Nelson*.
(1932) 1932 Oudh 210 (211): 7 Luck. 601, *Md. Bquar* v. *Md. Quasim*.
(1918) 46 Ind. Cas. 977 (982): 1918 Pat. 103 (F. B.), *Sheo Narayan Prasad* v. *Emperor*.
(1883) 5 All. 226 (229), In re *Din Muhammad*.
(1918) 45 Ind. Cas. 511 (512): 1918 Bom. 226: 42 Bom. 400, In re *Crawford*.
(1928) 1928 Lah. 609 (625): 9 Lah. 701, *Khan Ghal* v. *Lakhan Singh* (Statute cannot be circumvented by estoppel).
(1933) 1933 Sind 151 (154): 27 S. L. R. 121 (F. B.), *Pahlumal Santdas* v. *Narain Das Dipchand* (Words

(5) Words operating in derogation of the rights of the subject should be strictly construed.[26] **Preamble, Note 5.**

(6) General words must be given the broadest possible effect unless there is some specific reason to the contrary.[27]

(7) A *general* provision must yield to a *special* provision providing for particular cases.[28] But such special provision must be applied only to those cases to which it is confined by the Legislature.[29]

(8) Where there are general words following particular and specific words in a section, the general words must be confined to things of the same kind (*ejusdem generis*) as those specified.[30] The

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nullifying statute—Court can ignore).

(26) (1928) 1928 Rang. 87 (94): 5 Rang. 722, *Suratee Bazaar Co., Ltd.* v. *Rangoon Municipality.*
(1934) 1934 Lah. 264 (267), *Deo Raj* v. *Emperor* (Penal statutes like the Press Act must be construed strictly and in favour of the subject).
(1886) 8 All. 354 (361) (F. B.), *Ajudia Prasad* v. *Balmukund.*
(1887) 14 Cal. 67 (75, 76, 87) (F. B.), *Fahamidannissa* v. *Secretary of State.*
(1890) 14 Bom. 331 (352), *Queen Empress* v. *Chagan Daya Ram* (Law must not be strained against individuals).
(1918) 46 Ind. Cas. 323 (324): 1918 U. B. 3: 3 U. B. R. 79, *Maung Tha* v. *Ma Pyu.*
(1920) 59 Ind. Cas. 960 (960, 961, 962): 1920 U. B. 1: 3 U. B. R. 212, *Burma Oil Co.* v. *Baijnath Singh.*
(1921) 59 Ind. Cas. 823 (827): 1920 L. B. 79: 10 L. B. R. 203, *Rangoon Municipality* v. *The Burma Ry. Co.*
(1916) 34 Ind. Cas. 581 (584): 1916 Lah. 177: 1916 Pun. Re. 48, *Dalipa* v. *Suraj Kuar* (Provisions in bar of suit such as S. 11, C. P. Code).
(1916) 35 Ind. Cas. 421 (422): 1917 Mad. 689, *Lakshmipathaya* v. *Ramachandra* (Plea of *res judicata*).
(1921) 1921 P. C. 224 (227), *Commonwealth* v. *Hazeldell.*
(1924) 1924 Bom. 264 (272), *Nadershaw* v. *Shirin Bai.*
(1924) 1924 Lah. 418 (419), *The Zamindara Bank, Sherpur Kalan* v. *Subadra Deo* v. *Jagadis Chandra Deo.*
(1925) 1925 Bom. 458 (462), *Ali Md.* v. *Bombay Municipality.*
(1925) 1925 Cal. 116 (139), *Protap Chandra Deo* v. *Jagadis Chandra Deo.*
(1925) 1925 Nag. 190 (192), *Mt. Rupi* v. *Sadasheo.*
(1928) 1928 P. C. 287 (290) (P. C.), *Inglewood Pulp & Paper Co., Ltd.* v. *Brunswick Electric Power Commission.*
(1927) 1927 Rang. 306 (308, 310): 5 Rang. 483, *Manjeebai* v. *Jamal Brothers, etc.*
(1927) 1927 All. 599 (600), *Bakhtawar* v. *Balwant.*
(1913) 35 All. 24 (26), *Imani* v. *Emperor.*
(1932) 1932 Mad. 593 (599): 56 Mad. 40, *Iswarananda Bharathiswami* v. *Board of Commissioners for H. R. E. Board.*
(1925) 1925 Cal. 384 (387): 51 Cal. 980, *Emperor* v. *Harendra Chandra* (Statutory enactments for the benefit of a person must be construed favourably to him).
[See also (1935) 1935 All. 121 (123), *Gauri Dayal* v. *Emperor* (In case of doubt as to interpretation, benefit of doubt must go to accused).]

(27) (1886) 8 All. 354 (360, 361) (F. B.), *Ajudia Prasad* v. *Balmukund.*
(1868) 9 Suth. W. R. 402 (406), *Hurro Chunder* v. *Shoorodhonee.*
(1917) 38 Ind. Cas. 964 (966): 1915 Pat. 133, *Manikram* v. *Emperor* (Definition clauses when to be used).
(1911) 35 Bom. 412 (417), *Emperor* v. *Braz* (Do.).
(1893) 17 Bom. 575 (578), *Queen Empress* v. *Balkrishna.*

(28) (1921) 1921 Bom. 374 (374, 375): 45 Bom. 672, *Fernandez* v. *Emperor.*
(1916) 35 Ind. Cas. 515 (517): 43 Cal. 1143 (1149): 1917 Cal. 705, *Akshoy* v. *Rameswar.*
(1921) 1921 Lah. 280 (282), *Sita Singh* v. *Sunder Singh.*
(1922) 1922 Mad. 143 (144): 45 Mad. 31, *Chidambaram Chetty*, In re.
(1924) 1924 Cal. 668 (676): 51 Cal. 504, *Probhatchandra* v. *Emperor.*
(1925) 1925 All. 230 (232): 47 All. 268, *Ramnath* v. *King Emperor.*
(1926) 1926 Lah. 88 (89): 7 Lah. 84, *Rannun* v. *King-Emperor.*
(1928) 1928 All. 536 (537), *Kokha Ram* v. *Saliq.*
(1928) 1928 Rang. 249 (251): 6 Rang. 474, *Ko Maung Gyi* v. *Daw Tok.*
(1915) 28 Ind. Cas. 463 (468): 42 Cal. 85: 1915 Cal. 681, *Madras Steam Navigation Co. Ltd.* v. *Shalimar.*
(1916) 29 Ind. Cas. 331 (333): 1916 Mad. 438: 39 Mad. 576, *Krishnamachari* v. *Shaw Wallace & Co.*
(1910) 8 Ind. Cas. 1158 (1159): 1910 Pun. Re. 103, *Davies* v. *Brock Smith.*
(1933) 1933 All. 241 (243, 244): 55 All. 432 (F. B.), *In the matter of an Advocate of Banares.*
(1933) 1933 Cal. 124 (126): 60 Cal. 571, *Niratan Ganguli* v. *Emperor.*
(1928) 1928 Lah. 609 (613, 614): 9 Lah. 701 (F. B.), *Khan Ghul* v. *Lakha Singh.*
(1929) 1929 Nag. 17 (21): 24 N. L. R. 158, *Gola* v. *Emperor.*

(29) (1920) 1920 L. B. 86 (86) (Rang.), *Emperor* v. *Pyn Zin.*
(1915) 21 Ind. Cas. 532 (534): 38 Mad. 738, *Raja of Venkatagiri* v. *Jayamppa Appayya Reddy.*
(1916) 35 Ind. Cas. 418 (421): 39 Mad. 981: 1917 Mad. 951, *Narha* v. *Ammani.*

(30) (1928) 1928 P. C. 16 (18): 55 Ind. App. 96: 55 Cal. 519 (P. C.), *Abdur Rahim* v. *Abu Md. Barkat Ali.*

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applicability of this rule, however, will not arise if the class of cases intended to be provided for by the section is clear from the language of the section.[31]

(9) The Legislature is presumed to know the construction put by superior Courts on particular sections or statutes;[32] and therefore, where a section which has received judicial interpretation is re-enacted, such re-enactment is a recognition of that construction by the Legislature.[32-a] So also where words, judicially interpreted, are taken from an earlier enactment into a later one *in pari materia* with it[32-b] or, where a particular judicial interpretation of a term is left untouched by an amendment, such judicial interpretation is deemed to have been accepted by the Legislature.[32-c]

(10) Provisions ousting the jurisdiction of Courts[33] and those con-

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[But see (1925) 1925 Cal. 116 (135), *Pratapchendra* v. *Jagdish Chandra* (*Prima facie* to be taken in general sense).]

(1919) 51 Ind. Cas. 15 (18): 1919 Pat. 541 (Pat.), *Kalicharan* v. *Kesho Prasad*.

(1888) 10 All. 150 (153, 155) (F. B.), *Queen-Empress* v. *Imam Ali* (The word 'object' in S. 295, I. P. C. held not to include animate objects).

(1918) 46 Ind. Cas. 265 (267): 41 Mad. 701: 1919 Mad. 1071, *Kannuswami* v. *Jagathambal*.

(1910) 6 Ind. Cas. 313 (317-319): 34 Mad. 29, In re *Second Grade Pleader*.

(1907) 31 Bom. 523 (525), *Emperor* v. *Pascal*.

(1910) 7 Ind. Cas. 963 (964): 35 Bom. 63, *Emperor* v. *Mulshankar*.

(31) (1920) 52 Ind. Cas. 345 (346): 43 Mad. 65 (F. B.), *Hallingal Moosa* v. *Secretary of State*.

(1908) 2 K. B. 385 (401), *Tillmans* v. *Kmtford*.

(1910) 6 Ind. Cas. 313 (319): 34 Mad. 29, In re *Second Grade Pleader*.

(1900) 27 Cal. 1023 (1029), Re *Poorna Chandra Pal*.

[See (1934) 1934 Bom. 212 (213), *Emperor* v. *Jaffar Cassum Moosa*.]

(32) (1909) 1 Ind. Cas. 168 (173): 36 Cal. 543, *Jogendra* v. *Surjan*.

(1925) 1925 Cal. 329 (331): 52 Cal. 463, *Bahadur Mulla* v. *Ismail*.

(1923) 1923 Cal. 507 (511), *Md. Mazaharul* v. *Md. Azimuddin*.

(1884) 6 All. 509 (518), *Queen Empress* v. *Babu Lal*.

[See (1926) 1926 Mad. 906 (908): 49 Mad. 728, *Thiruvengada Mudali* v. *Thripurasundari Ammal* (Earlier case law may throw light in case of rival construction but cannot be allowed to add to the statute).]

(32-a) (1927) 1927 All. 369 (370) (F. B), *Manohar* v. *Sheo Saran*.

(1929) 1929 All. 625 (630), *Kayastha Co.* v. *Sita Ram*.

(1915) 30 Ind. Cas. 420 (421): 43 Cal. 103: 1915 Cal. 339, *Nagendra Mohan* v. *Pyari Mohan*.

(1923) 1923 Cal. 507 (511), *Md. Nazahrul* v. *Md. Azimaddin Bhinnya*.

(1909) 1 Ind. Cas. 168 (178): 36 Cal. 543, *Jogendra Chandra* v. *Shyam*.

(1910) 5 Ind. Cas. 457 (462) (Bom.), *Nand Lal* v. *Bank of Bombay*.

(1910) 8 Ind. Cas. 1061 (1064): 38 Cal. 188, *Radha Prasad* v. *Ram Narain Dasi*.

(1933) 1933 Sind 179 (181, 182): 27 S. L. R. 230, *Wadhumal* v. *Mallik Noor Ahmad*.

(32-b) (1931) 1931 Cal. 560 (562, 563): 58 Cal. 761, In re *Sarah*.

(32-c) (1931) 1931 Pat. 1 (3), *Harnandan Roy* v. *Bali Ram Prasad*.

(1898) 22 Bom. 235 (237), *Queen Empress* v. *Nagla Kala*.

(33) (1928) 1928 Pat. 615 (626): 8 Pat. 122, *Bal Deo Das* v. *Lal Nilmani Nath*.

(1913) 19 Ind. Cas. 68 (75) (Mad.), *Muthammal* v. *Secretary of State*.

(1918) 45 Ind. Cas. 654 (655) (Nag.): 1917 Nag. 25, *Kama* v. *Bhajan Lal*.

(1928) 1928 All. 511 (513), *Bhagwati Prasad* v. *Harihar Prasad*.

(1926) 1926 Nag. 212 (214), *Ganesh Das* v. *Harilal*.

(1912) 8 Nag. L. R. 107 (112), *G. I. P. Ry. Co.* v. *Amraoti Municipality*.

(1919) 50 Ind. Cas. 454 (455): 1919 Pat. 71, *Shaiba Prasad* v. *Golam Manjhi*.

(1913) 19 Ind. Cas. 759 (763): 9 N.L.R. 54, *Ganpat* v. *Trimbak*.

(1905) 29 Bom. 480 (490), *Balwant* v. *Secretary of State*.

(1867) 8 Suth. W. R. 428 (436) (F.B.), *Prosonno Coomar* v. *Koylash Chunder*.

(1927) 1927 Sind 173 (175), *Md. Abdul Majid* v. *Emperor*.

(1875) 1 Bom. 531 (533), *Gurushidgavda Bin* v. *Rudragavdati*.

(1889) 4 Bom. 624 (628), *Tulsidas Dhunjee* v. *Virbasapa*.

(1888) 10 All. 396 (398), *Nagar Mal* v. *Ali Ahmad*.

(1933) 1933 Pat. 52 (56), *Digambar Singh* v. *Lungra Manji*.

(1932) 1932 Mad. 724 (729): 56 Mad. 134, *Ramakrishnayya* v. *Venkataranga Rao*.

[See (1932) 1932 Sind 166 (168): 26 S.L.R. 402, *Emperor* v. *Mulchand Chayitram*.

See (1931) 1931 Mad. 801 (803): 54 Mad. 1011, *Vythilinga* v. *Temple Committee, etc.*]

ferring jurisdiction on special bodies persons or Courts[34] should be strictly construed. **Preamble, Note 5.**

(11) In the absence of any context indicating a contrary intention, the Legislature must be taken to attach the same meaning to the same words used in different parts of the statute[35] or in the subsequent statutes in a similar connection.[36]

(12) All the rules of law are founded on the assumption that the constituted tribunals are fairly competent and have power to carry out the provisions of the Acts.[37] They should therefore be construed so as to *further* and not so as to restrict the purpose of the Act.[38]

(13) Where a statute creates a right and provides a remedy, that remedy and no *other* is available.[39] This rule, however, does

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(34) (1909) 6 Ind. Cas. 857 (857): 3 S. L. R. 221, *Sanday Patrick & Co.* v. *Shival Das* (Provisions conferring jurisdiction on arbitrators).
(1912) 17 Ind. Cas. 342 (343) (Mad.), *Official Assignee* v. *Ramaswami*.
(1923) 1923 Rang. 238 (239), *Chan Pyu* v. *Chan Chor Khine*.
(1906) 28 All. 554 (560), *Salig Ram* v. *Ramji*.
(1931) 1931 Nag. 48 (50), *Kayal* v. *Bhonda*.
(1912) 16 Ind. Cas. 449 (452): 8 N.L.R. 107, *G. I. P. Ry. Co.* v. *Amraoti Municipality*.

(35) (1911) 11 Ind. Cas. 614 (614): 35 Bom. 401, *Baba Yeshwant*, In re.
(1926) 1926 Bom. 497 (500): 50 Bom. 566 (F.B.), *Harkison Das* v. *Bai Dhank*.
(1909) 3 Ind. Cas. 750 (751): 33 Bom. 452, *Bhimacharya* v. *Ramacharya*.
(1910) 5 Ind. Cas. 610 (610): 34 Bom. 239, *Secretary of State* v. *Lal Das*.
(1914) 23 Ind. Cas. 238 (240): 10 N. L. R. 28: 1914 Nag. 58, *Kekra* v. *Sadhu*.
(1910) 7 Ind. Cas. 595 (598): 4 S.L.R. 26, *Utoomal* v. *Hari Das*.
(1931) 1931 Nag. 177 (178): 27 N. L. R. 270, *Rameshwar Prasad* v. *Emperor*.
(1928) 1928 Lah. 609 (625): 9 Lah. 701, *Khan Gul* v. *Lakha Singh*.
(1908) 30 All. 334 (340), *Emperor* v. *Tula Khan*.
(1881) 5 Bom. 333 (346), *Empress* v. *Moorga Chetty*.
(1881) 3 Mad. 271 (276, 277), *Queen* v. *Gopal Dass*.
(1913) 21 Ind. Cas. 83 (83) (All.), *Subedra* v. *Rajaram* (Meaning of attestation in S. 59, T. P. Act, given by Privy Council applies to S. 123 of the same Act).
(1908) 8 Cri. L. Jour. 18 (19): 4 N.L.R. 78, *Emperor* v. *Mukunda*.

(36) (1919) 1919 P. C. 142 (143) (P.C.), *Lennon* v. *Gibson & Howes*.
(1920) 56 Ind. Cas. 235 (238): 1920 Pat. 349, *Jhari Singh* v. *Emperor*.
(1910) 5 Ind. Cas. 862 (863): 34 Bom. 316, Re *Shiv Lal Padma*.
(1928) 1928 Bom. 69 (71), *Omar* v. *Tyab*.
(1932) 1932 Cal. 753 (757): 60 Cal. 364, *Jatindranath Ghose* v. *Chief Secretary to the Bengal Government* (But not in two Acts directed to different objects).
[See (1912) 35 Mad. 397 (446) following (1885) 10 A. C. 364 (367), *Muthukumaraswami* v. *Emperor*, (Entire section from one Act introduced into another—Meaning of section in latter to be same as in former, *viz.*, Ss. 25 and 26, Evidence Act, which originally were Ss. 148 and 149 of Criminal Procedure Code of 1861).]
[See also (1934) 1934 Bom. 176 (177), *Emperor* v. *Bhimabai Sitaram Mana* (Notification framed under section—Same word occurring in both section and notification should be construed similarly).]

(37) (1922) 1922 Cal. 118 (120): 47 Cal. 354, *Yasin Ali* v. *Radha Gobinda*.
(1867) 8 Suth. W. R. 167 (169), *Gopi Nath* v. *Anund Moyee*.
(1907) 31 Bom. 611 (623), *Emperor* v. *Jeevanji* (A *casus omissus* to be avoided, except in cases of irresistible inference).

(38) (1921) 1921 Cal. 85 (86): 48 Cal. 378, *Molla Ataul* v. *Chairman of Maniktolla*.

(39) (1924) 1924 Mad. 521 (522), *Secretary of State* v. *Kuppuswami Chetty*.
(1921) 1921 Nag. 60 (64), *Lakshmichand* v. *Chathurbhuj*.
(1917) 42 Ind. Cas. 799 (801): 13 N.L.R. 210: 1917 Nag. 149, *Basodi* v. *Mahanand Ray*.
(1917) 39 Ind. Cas. 465 (471): 44 Cal. 804: 1918 Cal. 850, *Bhudhu Lal* v. *Chattu Gope* (Case-law discussed).
(1909) 4 Ind. Cas. 795 (795): 5 N.L.R 176, *Jagannath* v. *Khuba*.
(1933) 1933 All. 358 (361): 55 All. 406, *Joti Prasad Upadhya* v. *Amba Prasad*.
(1933) 1933 Nag. 193 (195, 196) (F.B.): 29 N. L. R. 278, *Vithoba Chimnaji* v. *Gobind Rao Vithalrao*.
(1927) 1927 Cal. 149 (150): 53 Cal. 929, *Asutosh* v. *Watson*.
(1925) 1925 All. 380 (381, 382): 47 All. 513 (F.B.), *Abdur Rahman* v. *Abdur Rahman*.
(1911) 12 Ind. Cas. 540 (542): 36 Bom. 47, *Chuni Lal* v. *Ahmedabad Municipality*.
(1895) 22 Cal. 131 (139), *Chandi Pershad* v. *Abdur Rahman*.

Preamble, Notes 5—6.

not apply where the right exists *independently* of the statute.[40]

(14) A change in the language of the present Code from that of the old Code may be presumed to indicate a change of intention on the part of the Legislature.[41] But it is also a recognised presumption that the Legislature does not intend to make any alteration beyond what it *expressly declares*[42] and where the language used is doubtful no change will be deemed to have been made.[43]

(15) Where a question arises as to whether any particular provision is mandatory or directory, the general test is the relation which the provision has to the general *object* intended to be secured by the Act.[44] Another test has also been applied and that is to see whether a party may *waive* the benefit of the particular provision.[45] In deciding the question, the Court should take into account the possibility of justice suffering from a too rigid application of the rule.[46]

(16) Words in singular should be read as including the plural unless there is anything in the context to the contrary.[47]

(17) Forms given in the schedule do not control the clear words of the Code itself.[48]

6. Reference to pre-existing state of the Law.—It follows from the principles set forth in Note 2 above that where the language of a statute is *plain and clear* it cannot be qualified or neutralised by indications of intention gathered from previous legislation.[1] In the leading case of *Bank of England* v. *Vagliano*

[See (1891) 1891 All. 171 (177), *Queen-Empress* v. *Pohpi* (And the party is entitled to be heard).

See (1931) 1931 Bom. 141 (142): 55 Bom. 89, In re *Motilal* (Where statute creates an offence and specifies the prosecutor no other person can prosecute).]

(40) (1917) 40 Ind. Cas. 220 (223): 1917 Pun. Re. 22: 1917 Lah. 75, *Duni Chand* v. *Md. Husain*.

(41) (1915) 28 Ind. Cas. 105 (105): 8 S.L.R. 215, *Farid* v. *Piru*.

(42) (1913) 20 Ind. Cas. 572 (574): 7 S.L.R. 31, *Md. Ali* v. *Karachi Municipality*.

(1918) 45 Ind. Cas. 399 (400): 11 S.L.R. 128: 1914 Sind 11, *Sobaraj Dwarakadas* v. *Emperor*.

(43) (1917) 38 Ind. Cas. 823 (826): 1918 Mad. 1100, *Gadiji Marappa* v. *Firm of Marwadi*.

(1918) 44 Ind. Cas. 262 (264): 1918 Pat. 633, *Narain Singh* v. *Baba* (Language same—Presumption of no change).

(44) (1924) 1924 Cal. 889 (889): 52 Cal. 159, *Hiralal Ghose* v. *Emperor*.

(1926) 1926 Lah. 447 (449): 7 Lah. 507, *Emperor* v. *Borkat*.

(1924) 1924 Cal. 1 (12): 51 Cal. 1, *Government of Assam* v. *Saheballa*.

(1916) 85 Ind. Cas. 305 (312): 43 Cal. 790: 1916 Cal. 136, *Mathura Mohan* v. *Ram*.

[See (1887) 11 Bom. 375, In re *Maha Daji Sadashiva Tilak* (Taking evidence under S. 137, Cri. P. Code, is imperative).

See (1932) 1932 Oudh 210 (212): 7 Luck. 601 (F.B.), *Md. Baquar* v. *Md. Casim*.

See also (1907) 5 Cri. L. Jour. 332 (333), *Emperor* v. *Savalya Atma Pastya*.]

(45) (1910) 5 Ind. Cas. 390 (395) (Cal.), *Mrs. Levina Ashton* v. *Madhabmoni*.

(46) (1916) 29 Ind. Cas. 119 (120): 39 Mad. 485: 1915 Mad. 920, *Vellayappa Chettiar* v. *Subramania Chetty*.

(1916) 35 Ind. Cas. 305 (312, 313): 43 Cal. 790: 1916 Cal. 136, *Mathura* v. *Ram* (Public duties deemed mandatory except in case injustice or inconvenience is to result).

[See (1931) 1931 Rang. 95 (96), *Mulla* v. *Commissioner, Port of Rangoon* (Terms of statute permissive—Power conferred to be exercised in conformity with private rights).]

(47) (1925) 1925 Rang. 94 (95): 2 Rang. 579, *Chokkalingam* v. *Commissioner of Income-tax*.

(48) (1917) 40 Ind. Cas. 816 (818): 1918 Cal. 631, *Munsur Ali* v. *Abhoya Charan Das*.

Note 6.

(1) (1895) 22 Cal. 788 (798): 22 Ind. App. 107: 6 Sar. 603 (P.C.), *The Administrator-General of Bengal* v. *Premlal Mullick* (Reversing 21 Cal. 732).

(1896) 23 Cal. 563 (572): 23 Ind. App. 18: 6 Sar. 667 (P. C.), *Narendranath* v. *Kamalbasini*.

(1901) 28 Cal. 517 (528), *Lala Suraj* v. *Lal Gulabchand*.

(1880) 5 Cal. 300 (303), *Daimoddee Paik* v. *Kaim Taridar*.

(1928) 1928 P. C. 2 (4): 55 Ind. App. 18: 7 Pat. 221 (P.C.), *Mt. Ramanandi* v. *Mt. Kalawati*.

Bros.[2] Lord Herschell observed as follows: "I think the proper course is, in the first instance, to examine the language of the statute uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in confirmity with this view".

Preamble, Note 6.

But where the language is not clear or the statute has made no provision for any particular case, the previous legislation may be referred to for the purpose of ascertaining the object and intention of the legislature.[3]

(1924) 1924 Cal. 424 (425) (F.B.), *Raghumull Khandelwal* v. *Official Assignee of Calcutta*.
(1921) 1921 Cal. 397 (399): 48 Cal. 556 (F.B.), *Nilmani Kar* v. *Raja Sati Prasad*.
(1917) 40 Ind. Cas. 194 (196): 1917 Bom. 268, *Shivlal* v. *Birdichand Jivraj*.
(1910) 6 Ind. Cas. 101 (106) (All.), *Rustam* v. *Emperor* (Judgment of Karamat Hussain, J., *Contra* Knox, J., at p. 104).
(1922) 1922 Nag. 207 (208), *Sakhubai* v. *Hari* (Alteration of provisions in new Act—Reference to old Act cannot be of any help).
(1925) 1925 Mad. 589 (590): 48 Mad. 488, *Kothandarama* v. *Annamalai*.
(1921) 10 L. B. R. 326, *Kyank Sema* v. *Aparna Charan*.
(1917) 39 Ind. Cas. 598 (601): 20 Oudh Cas. 104: 1917 Oudh 316, *Rudra Partap* v. *Sikandar Khan*.
(1891) L. R. App. Cas. 107, *Bank of England* v. *Vagliano*.
(1920) 1920 P. C. 140 (142) (P.C.), *Union Steamship Co.* v. *Mary Robin* (Mere omission in latter statute of negative provision in earlier one cannot by itself effect substantive affirmation).
(1913) 21 Ind. Cas. 32 (33): 38 Mad. 199, *Balasubramanya* v. *Swarnammal*.
(1912) 14 Ind. Cas. 896: 35 Mad. 397, *Muthukumarasami* v. *Emperor*.
(1932) 1932 All. 434 (435): 54 All. 616, *Official Receiver of Moradabad* v. *Haji Martaza Ali*.
(1914) 1914 Lah. 214 (219): 1913 Pun. Re. No. 111, *Barru* v. *Lachman*.
(1903) 7 Cal. W. N. 301, *Sarat Chandra Shah* v. *Emperor*.
(1903) 30 Cal. 155 (190), *Krishna Kamini* v. *Abdul*.
(1925) 1925 P. C. 1 (8): 52 Ind. App. 40: 52 Cal. 197 (P. C.), *Barendra Kumar Ghosh* v. *Emperor*.
(1919) 4 Pat. L. J. 435 (443), *Pheku* v. *Emperor* (Words omitted by the Legislature cannot be added).
[See (1930) 1930 Oudh 148 (159): 5 Luck 552, *Bahadur Singh* v. *Ram Phal*.
See (1905) 28 Mad. 479 (486), *Johnson* v. *Madras Railway*.
See (1932) 1932 All. 188 (190): 54 All. 416, *Ali Husain* v. *Lachmi Narain Mahajan*.]

(2) (1891) 1891 App. Cas. 107 (144, 145).
(1928) 1928 P. C. 16 (18): 55 Ind. App. 96: 55 Cal. 519 (P. C.), *Abdur Rahim* v. *Syed Abu Muhammad*.
(1921) 1921 Cal. 1 (6): 48 Cal. 388 (F. B.), *Satish Chandra* v. *Ram Dayal De* (Case-law referred to).
(1925) 1925 Cal. 34 (41): 52 Cal. 1, *Rodgers Prath Shelloc Co.* v. *Secretary of State*.

(1924) 1924 Cal. 257 (272, 273) (F. B.), *Emperor* v. *Barendra Kumar* (Case-law referred to).
(1924) 1924 All. 328 (335): 46 All. 489 (F. B.), *Mubarak Husain* v. *Ahmad*.
(1897) 20 Mad. 97 (104), *Kondayya* v. *Narasimhulu*.
(1913) 19 Ind. Cas. 227 (228), *Sri Rajah Venkatarangayya Appa Rao* v. *Secretary of State*.
(1917) 38 Ind. Cas. 59 (61): 1916 Pat. 18, *Ram Sahai* v. *Kheman Mahto*.
(1918) 44 Ind. Cas. 262 (263, 264): 1918 Pat. 633, *Narain Singh* v. *Baba*.
(1890) 17 Cal. 590 (599, 602): 17 Ind. App. 40: 5 Sar. 391 (P. C.), *Secretary of State* v. *Fahanidannissa*.
(1907) 29 All. 685 (700), *Emperor* v. *Ganga Prasad*.
(1928) 1928 Bom. 35 (37): 52 Bom. 88, *Ganpat* v. *Sopana*.
(1903) 7 Cal. W. N. 301, *Sarat Chandra* v. *Emperor*.
(1908) 35 Cal. 701 (711, 712), *Baleshwar* v. *Bhagirathi*.
(1908) 35 Cal. 34 (55), *Kripa Sindhu* v. *Annada*.
(1903) 30 Cal. 155 (190), *Krishna Kamini* v. *Abdul*.
(1913) 40 Cal. 433 (439), *Kari* v. *Emperor*.
(1922) 1922 Cal. 59 (62, 70): 49 Cal. 682, *Ram Sagar* v. *Alek*.
(1881) 3 Mad. 271 (276, 282, 283), *Queen* v. *Gopal Das*.
(1912) 35 Mad. 397 (498, 538), *Muthukumaraswami* v. *King Emperor*.
(1932) 1932 Oudh 308 (310), *Bajrang Bahadur Singh* v. *Emperor*.

(3) (1884) 8 Bom. 313 (321) (F. B.), *Prabhakarphal* v. *Bishwambar* (Case not provided for in the consolidating statute).
1 Hyde 100, *Muddoosooden Day* v. *Ramchurn*.
(1903) 26 All. 144 (147), *Maharaj Tewari* v. *Harcharan*.
(1884) 6 All. 509 (530, 531, 540) (F.B.), *Queen Empress* v. *Babulal*.
(1908) 35 Cal. 701 (711, 712), *Baleshwar* v. *Bhagirathi*.
(1922) 1922 Cal. 287 (297): 49 Cal. 280, *Sarbeshwar* v. *Bejoy Chand Mohatap*.
(1869) 6 Bom. H. C. R. 15 (21), *Reg.* v. *Connon*.
(1923) 1923 Mad. 523 (526, 531): 46 Mad. 605, *Gopal Naidu* v. *King Emperor* (No provision in statute).
(1922) 1922 Mad. 512 (513, 514): 45 Mad. 820, Re *Madura Muthu*.
(1919) 49 Ind. Cas. 923 (924): 1919 Cal. 207, *Pyari Mohan* v. *Harish*.
(1901) 28 Cal. 709 (714), *Lalit Mohan* v. *Surja*.
(1910) 6 Ind. Cas. 101 (104, 105) (All.), *Rustam* v. *King Emperor*.

Preamble, Note 7.

7. **Reference to proceedings of the Legislature.**—In the case of *The Administrator-General* v. *Prem Lal Mullick*,[1] their Lordships of the Privy Council have laid down definitely that it is not competent to refer to the proceedings of the Legislature as legitimate *aids* to the construction of the *statute*.[2] This is in consonance with the principle that where the language is *plain* no extraneous matters should be taken into account in the interpretation of the Act.

(1884) 10 Cal. 268 (270), *Nobin Kristo* v. *Russik Lal*.
(1897) 20 Mad. 189 (201), *Queen Empress* v. *Arumugam*.
(1908) 30 Mad. 140 (141, 145), *Rahimadulall* v. *Emperor*.
(1919) 52 Ind. Cas. 193 (200, 202, 205) 1919 Pat. 350, *Lalji Tewari* v. *King-Emperor*.
(1907) 5 Cr. L. Jour. 334 (336) (Bom.), *Bhikaji Manekji* v. *Maneckji Mancherji*.
(1899) 26 Cal. 852 (859), *Nando Lal* v. *Mitter* (Earlier enactment compared to ascertain whether alteration is merely variation in language or effected change in law).
(1906) 29 Mad. 126 (132, 133, 134), *Emperor* v. *Chinna Kaliappa* (Do.).
(1918) 45 Ind. Cas. 261 (265, 266): 40 Mad. 976: 1918 Mad. 231, Re *Dudekula* (Do.).
(1885) 10 A. C. 364 (371), *Mayor of Portsmouth* v. *Smith* (A section of one Act introduced into another—The rest of the former Act may be referred to for its meaning in the latter).
(1912) 35 Mad. 397 (446), *Muthukumaraswami Pillai* v. *Emperor* (Do.).
(1909) 2 Ind. Cas. 343 (343): 32 Mad. 173, *Kullan* v. *Emperor* (To determine the scope of a section).
(1922) 1922 Mad. 512 (513): 45 Mad. 820, Re *Madura Muthu* (Do.).
(1882) 8 Bom. 338 (339), *Queen Empress* v. *Joti Rajnak* (Decision distinguished on the ground of subsequent change of law).
(1887) 10 Bom. 131 (138 to 140), *Queen Empress* v. *Dorabji* (Do.).
(1870) 7 Bom. H. C. R. 6 (8), *Reg* v. *Reay* (When the powers of Government or the Legislature are disputed).
(1924) 1924 Cal. 257 (272), *King Emperor* v. *Barendra Kumar Ghose*.
[See (1918) 44 Ind. Cas. 262 (263, 264): 1918 Pat. 633, *Narain Singh* v. *Baba*.]
[See (1888) 15 Cal. 109 (124), *Md. Jackariah* v. *Ahmad*.]
[See (1928) 1928 All. 682 (683), *Manni Lal Aswathi* v. *Emperor*.]

Note 7.

(1) (1895) 22 Cal. 788 (799): 6 Sar. 603: 22 Ind. App. 107 (P. C.), *The Administrator-General of Bengal* v. *Premlal Mullick*.
(2) The language of the enactment in Premlal's case was plain and clear, see 43 Ind. Cas. 173 (174).
(1913) 22 Ind. Cas. 107 (109): 1914 Mad. 174: 38 Mad. 997, *Kandalam Rajagopalacharulu* v. *Secretary of State*.
(1920) 56 Ind. Cas. 163 (165): 1920 P. C. 56: 43 Mad. 550: 47 Ind. App. 33 (P. C.), *Krishna Ayyangar* v. *Nallaperumal Pillai*.
(1904) 26 All. 144 (147), *Maharaj Tewari* v. *Harcharan Rai*.
(1898) 22 Bom. 112 (126, 127, 128), *Queen Empress* v. *Balagangadhar Tilak* (Following 22 Cal. 788 and distinguishing the view taken in the English cases of *In re* Mew, 31 L. J. 87 and *Queen* v. *Bishop of Oxford*, 4 Q. B. D. 535).
(1895) 22 Cal. 1017 (1022), *Queen Empress* v. *Sri Charan Chungo*.
(1873) 19 Suth. W. R. 48 (53), *Taraknath Sirkar* v. *Prosunno Coomar Ghosh*.
(1922) 1922 Lah. 211 (212), *Rup Kishore* v. *Bhagat Govinddas*.
(1923) 1923 Cal. 74 (77, 79), *Dinanath Pal* v. *Raja Sati Prasad* (Case-law fully discussed. Even in case of ambiguity reference is not permissible).
(1924) 1924 Lah. 374 (376), *Ghulam Mohd.* v. *Panna Ram*.
(1924) 1924 Nag. 162 (163), *Narain Das* v. *Kunji Lal*.
(1926) 1926 Mad. 381 (382, 383), *Kesavalu Naiker* v. *Corporation of Madras*.
(1891) 14 All. 145 (150, 153, 154), *Khadir Baksh* v. *Bhawani Prasad*.
(1920) 52 Ind. Cas. 644 (645): 1919 All. 50: 42 All. 76, *Sudershan* v. *E. I. Ry. Co.*
(1910) 5 Ind. Cas. 805 (806): 13 Oudh Cas. 55, *Ram Bali Singh* v. *Emperor*.
(1894) 21 Cal. 732 (753), *The Administrator-General of Bengal* v. *Prem Lal Mullick* (Approved by P. C. in 22 Cal. 788 (799).
(1920) 58 Ind. Cas. 871 (877): 1920 Mad. 1019: 43 Mad. 675 (F. B.), *Zemindar of Ettiapuram* v. *Chidambaram Chettiar*.
(1914) 25 Ind. Cas. 771 (772): 1914 U. B. 17: 2 U. B. R. 16, *Bhaikhan* v. *Desraj*.
(1919) 52 Ind. Cas. 139 (140): 1919 Sind 80: 13 Sind L. R. 23, *Firm of Ratanchand* v. *Sahi Ram Duni Chand* (But they may be referred to ascertain the object of the statute where there is ambiguity).
[But see (1924) 1924 Nag. 249 (250): 20 Nag. L. R. 103, *Maghraj* v. *Ramgopal* (The case holds contrary to what the Privy Council has held but does not refer to that decision or to any principle—This cannot be considered to lay down correct law).]
(1933) 1933 Bom. 272 (274): 57 Bom. 377, *Shidramappa Nilappa Ujalambe* v. *Neelavalai Chanbasappa and others*.
(1881) 3 All. 283 (285), *Raunak* v. *Harban*.
(1928) 1928 All. 124 (125): 50 All. 343, *Abdul* v. *Shakira*.
(1904) 31 Cal. 628 (640), *Sarat Sundari* v. *Uma Prosad*.
(1927) 1927 Cal. 149 (153): 53 Cal. 929, *Ashutosh* v. *Watson*.
(1927) 1927 Cal. 821 (822), *Mt. Tamajannissa Khatun* v. *Purnachandra Chakravarthi and others*.
(1928) 1928 Lah. 337 (341): 9 Lah. 689, *Gurdial Singh* v. *Central Board and Local Committee Sri Darbar Saheb, Amritsar*.

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Preamble, Note 7.

The undermentioned cases in India, before the date of the Privy Council decision, which had taken the view that such proceedings could be always referred to in aid of the construction of statutes, cannot be considered to be good law after the date of the said decision.[3]

Where the language is doubtful or ambiguous, such proceedings may of course be looked into.[4]

The proceedings of the Legislature will include:—

(1) The Statement of Objects and Reasons,
(2) Report of the Select Committee,
(3) The Draft stages of the Bill, and
(4) The Debates of the Legislature.

(1929) 1929 Lah. 641 (644): 11 Lah. 55, *Thiraj* v. *Emperor*.
(1881) 3 All. 283 (285), *Raunak Husain* v. *Harbans Singh*.
(1894) 18 Bom. 133, *Gopal* v. *Sakoji Rai*-
(1933) 1933 All. 358 (362): 55 All. 406, *Joti Prasad Upadhiya* v. *Amba Prasad*.
(1933) 1933 Bom. 272 (274): 57 Bom. 377, *Shidramappa Nilappa Ujalambe* v. *Neelavalai Chanbasappa*.
(1870) 7 Bom. H. C. R. 56 (57), *Reg.* v. *Vahala Jehtha* (Draft Bills).
(1933) 1933 All. 513 (516): 55 All. 654, *Emperor* v. *Chanbe Dinker Rao* (Draftsman's view).
(1910) 11 Cri. L. Jour. 250 (250): 13 Oudh Cas. 55, *Rambali Singh* v. *Emperor* (Select Committee's report).
(1933) 1933 Bom. 234 (237): 57 Bom. 441, *Emperor* v. *Gopal Shinde Patel* (Government resolution cannot override the law).
(1928) 1928 Lah. 35 (38): 9 Lah. 260, *Rajmal* v. *Harnam Singh* (Objects and reasons).
(1933) 1933 Mad. 120 (121), *Katam Reddi Rami Reddi* v. *Sreeramulu Reddi* (Objects and Reasons and notes on clauses).
(1904) 31 Cal. 628 (640), *Sundari* v. *Uma Prasad* (Do.).
(1927) 1927 Bom. 278 (296): 51 Bom. 516, *Halimbhai* v. *Framroz* (Do.).
(1931) 1931 Bom. 70 (72): 55 Bom. 220, *Emperor* v. *Sakina Bai* (Do.).
(1892) 14 All. 145 (150), *Kadir Baksh* v. *Bhavani Prasad* (Do.).
(1930) 1930 All. 225 (238, 239): 52 All. 619, *Shanthanand Gir Chela* v. *Basudevanand* (Objects and Reasons is no part of the statute).
(1929) 1929 Bom. 274 (276): 53 Bom. 627, *Ratansi Hirji* v. *Emperor* (Do.).
(1931) 1931 Cal. 633 (634), *Jugal Kishore Dhar* v. *Emperor* (Do.).
(8) (1887) 14 Cal. 721 (728) (F.B.), *Queen-Empress* v. *Kartick Chunder Das*.
(1883) 7 Bom. 310 (315), *Chunnilal* v. *Bomanji Mancherji* (Reference to debates in Council).
(1891) 15 Bom. 583 (585), *Balakrishna* v. *Lakshman* (Report of Special Committee).
(1894) 18 Bom. 616 (625), *Chunilal* v. *Mani Shankar* (Recommendation of the Law Commissioners).
(1893) 16 Mad. 207 (210), *Ramachandra Joshi* v. *Hazi Kasim* (Statement of Select Committee).
(1899) 22 Mad. 494 (504), *Assan* v. *Pathumma* (The High Court referred to such proceedings but the Privy Council decision was not referred to and there was no decision on the point).
(1890) 17 Cal. 852 (860), *Romesh Chandra* v. *Haro Mandal*.
(1884) 10 Cal. 167 (192, 193) (F.B.), *Moothora Kant Shaw* v. *The India General Steam Co.*
(1888) 15 Cal. 109 (137), *Mahomed* v. *Ahmed*.
(1895) 22 Cal. 669 (672-675), *Prosonna Kumar* v. *Udey*.
(1868) 9 Suth. W. R. 6 (8, 10), *Queen* v. *Boodhoo*.
(1868) 5 Bom. H. C. R. 69 (77, 80), *Reg.* v. *Krishna Parashram*.
(1879) 2 All. 533 (541), *Emperor* v. *Sabsukh*.
(1880) 2 All. 723 (728), *Emperor* v. *Ram Kuar*.
(1883) 5 All. 253 (256), *Emperor* v. *Yakub*.
(1891) 1891 Rat. 556, *Queen* v. *Bhilya* (Lord Maucaulay's Report).
(1891) 1891 Rat. 564 (569, 570), *Queen* v. *Bali* (Do.).
(1890) 14 Bom. 115 (133), *Queen* v. *Maganlal* (Do.).
(1885) 7 All. 44 (51), *Queen* v. *Ghulab*.
[See also (1897) 20 Mad. 189 (201), *Queen* v. *Arumugam* (*Per* Subramaniya Iyer, J.).]
(4) (1884) 8 Bom. 241 (246, 247), *Shaik Moosa* v. *Shaik Essa*.
(1892) 19 Cal. 544 (567, 569) (F.B.), *Fadu Jhala* v. *Gour Mohan Jhala*.
(1911) 12 Ind. Cas. 799 (800): 7 Nag. L. R. 165, *Sheocharan* v. *Piarelal*.
(1918) 43 Ind. Cas. 173 (174): 1918 Mad. 381, *Parameswara Iyer* v. *Kittuni Vatia Mannadiar*.
(1925) 1925 Cal. 361 (364): 52 Cal. 522, *Emperor* v. *Alimuddin* (Language being too wide speech and Select Committee report referred to).
(1918) 44 Ind. Cas. 205 (207): 1919 Mad. 889: 41 Mad. 644, *Appaji* v. *Emperor* (Do.—Draft bill and Select Committee Report considered).
(1919) 1919 Cal. 207 (208), *Pyari Mohan Saha* v. *Harish Chandra Saha* (Language difficult of construction).
(1908) 30 All. 66 (68, 69), Re *Anant Ram*.
(1915) 30 Ind. Cas. 752 (752): 39 Mad. 886: 1916 Mad. 474, *Crown Prosecutor* v. *Govindarajulu* (Objects and Reasons of certain bye-laws referred to for ascertaining whether public had *in fact* access to a harbour premises).

Preamble, Notes 8—9.

8. **Reference to Preamble and Headings.**—Where the language of the enactment itself is clear, then under the general principles set forth in Note 2 above, its construction cannot be affected in any way by a consideration of the preamble or the headings prefixed to the sections.[1] In cases of ambiguity of the language of the enactment however, they may be usefully referred to for the purposes of finding out the object and intention of the enactment.[2] *See also* Note 1, above.

9. **Marginal Notes to Sections.**—It is now settled that marginal notes to sections *do not form part of the statute* itself and cannot be referred to for explaining or construing the section.[1] In *Bulraj Kunwar* v. *Jagatpal*

[See (1924) 1924 Rang. 1 (2): 1 Rang. 142 (F.B.), Re *First Grade Advocates*.]

Note 8.

(1) (1926) 1926 Cal. 638 (639), *Altap Ali* v. *Jamsur Ali* (Also schedules).
(1926) 1926 Mad. 381 (382), *Kesavalu* v. *Corporation of Madras*.
(1910) 6 Ind. Cas. 259 (261), *Gopalkrishna* v. *Rajkrishna*.
(1918) 44 Ind. Cas. 770 (779): 1919 Cal. 551: 45 Cal. 343 (F.B.), *Manilall Singh* v. *The Trustees for the Improvement of Calcutta*.
(1917) 42 Ind. Cas. 694 (699): 1916 Nag. 67: 13 Nag. L. R. 181, *Janu* v. *Fakira*.
(1913) 21 Ind. Cas. 538 (540), *Keshalpanda* v. *Bhobanipanda*.
(1927) 1927 Cal. 763 (765): 55 Cal. 67, *Nepra* v. *Sajer Pramanik* (Preamble cannot control if meaning is clear).
(1918) 44 Ind. Cas. 94 (105): 1918 Pat. 398 (F.B.), *Janki Singh* v. *Jagannath*.
(1925) 1925 Mad. 609 (612): 48 Mad. 395, *Kalyanji* v. *Ram Deen Lala* (Headings to be ignored if section is clear).
(1918) 45 Ind. Cas. 534 (534): 1918 All. 264, *Ajudsi Kuar* v. *Payag Singh*.
(1925) 1925 All. 787 (789): 47 All. 756, *Chunilal* v. *Sheocharanlal* (Headings to be ignored).
(1926) 1926 All. 312 (316), *Baldeokurmi* v. *Kashi Chamar* (Quære—Whether the headings themselves have any operative effect?).
(1920) 54 Ind. Cas. 154 (157): 1919 P. C. 52: 46 Ind. App. 302: 43 Mad. 529 (P.C.), *Secretary of State* v. *Maharaja of Bobbili* (Section beyond preamble governs preamble).
(1933) 1933 Mad. 120 (122), *Katamreddi Ramireddi* v. *Sreeramulu Reddi* (Preamble).
(1933) 1933 Bom. 51 (57): 57 Bom. 346, *Official Assignee of Bombay* v. *Chimniram Motilal* (Do.).
(1918) 1918 P. C. 20 (22): 42 Bom. 462: 45 Ind. App. 125 (P.C.), *Abdul Rahim* v. *Municipal Corporation of Bombay* (Heading).
(1931) 1931 All. 597 (599), *Durga* v. *Narain* (Do.).
(1898) 20 All. 501 (505), *Queen-Empress* v. *Jasoda Nand* (Do.).
(1932) 1932 Cal. 346 (348): 59 Cal. 528, In re *Anandalal* (Do.).
(1895) 22 Cal. 898 (901, 902), *Satish Chandra* v. *Rajendra*.
(1907) 30 Mad. 220 (221), *Emperor* v. *Mayandi* (General words in heading to a chapter—Cannot control specific words of section).
(2) (1910) 5 Ind. Cas. 862 (862): 34 Bom. 316, In re *Shiv Lal* (Heading).
(1933) 1933 Bom. 417 (420), *Emperor* v. *Ismail Sayad Saheb Mujawar*.
(1916) 34 Ind. Cas. 450 (455): 1917 Cal. 681, *Sitalchundra* v. *Mrs. Allen J. Delanney*.
(1918) 44 Ind. Cas. 770 (779): 1919 Cal. 551: 45 Cal. 343 (F.B.), *Mani Lal Singh* v. *The Trustees for the Improvement of Calcutta* (Preamble).
(1927) 1927 All. 593 (596): 49 All. 903, *Debi Das* v. *Maharaja Rupchand* (Headings and preamble are but marginal headings, not useful for interpreting).
(1917) 42 Ind. Cas. 177 (187): 1917 Pat. 305 (315) (F.B.), *Janki Singh* v. *Jaganath Dass* (Headings).
(1917) 43 Ind. Cas. 173 (174): 1918 Mad. 381, *Parameswarier* v. *Kittunni Valia Mannadiar*.
(1918) 44 Ind. Cas. 94 (105): 1918 Pat. 398 (F.B.), *Janki Singh* v. *Jaganath Das*.
(1910) 6 Ind. Cas. 259 (261), *Gobikrishna* v. *Rajakrishna*.
(1860) 9 H. L. C. 32 (41), *Eastern Counties Co.* v. *Marriage*.
(1917) 39 Ind. Cas. 64 (65): 1917 Cal. 715: 44 Cal. 267, *Dwarakanath* v. *Tafazar Ruhman*.
(1876) 1 All. 151 (155), *Queen* v. *Thakur Purshad* (Heading).
(1910) 5 Ind. Cas. 862 (862): 34 Bom. 316, Re *Shivlal Padma* (Do.).
(1868) 5 Bom. H. C. R. 69 (71, 72), *Reg.* v. *Krishna Prashram* (Do.).
(1881) 5 Bom. 338 (346, 349), *Empress* v. *Moorga Chetty* (Do.).
(1915) 31 Ind. Cas. 653 (655): 1915 Mad. 1033: 40 Mad. 100, Re *K. Ramalingam* (Do.).
(1895) 1895 Rat. 830 (831), *Empress* v. *Dayaram*.
[See (1933) 1933 Bom. 51 (57, 58): 57 Bom. 346, *Official Assignee of Bombay* v. *Chimniram Motilal*.
See (1894) A. C. 508 (529, 530), *Arrow* v. *Tyne*.]

Note 9.

(1) (1920) 54 Ind. Cas. 623 (623): 1920 Pat. 526: 2 U. P. L. R. (Pat.) 24, *Sheikh Chamman* v. *Emperor*.
(1882) L. R. 22 Ch. D. 511, *Sutton* v. *Sutton*.

Singh[2] their Lordships of the Privy Council observed as follows:—"It is well settled that the marginal notes to the sections of an Act of Parliament cannot be referred to for the purposes of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament."

In the undermentioned cases,[3] however, a view has been expressed that where there is *ambiguity* in the section the marginal note can be referred to for solving the ambiguity. There was no reference in those cases to the said Privy Council decision or to the subsequent decisions in India following it. Those cases therefore cannot be considered to be good law.

10. Illustration.—Illustrations, unlike marginal notes, are to be considered as part of the statute itself.[1] They are to be accepted, if that can be

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(1898) 25 Cal. 858 (860), *Punardeo Narain* v. *Ram Sarup*.
(1927) 1927 Mad. 156 (157): 50 Mad. 733, In re *P. Natesa Mudaliar*.
(1927) 1927 Bom. 424 (425), *Jamnadas* v. *Damodar Das*.
(1919) 51 Ind. Cas. 46 (47): 1919 Pat. 521, *Mangar Singh* v. *Bharat Prasad*.
(1921) 1921 Mad. 510 (511), *G. I. P. Ry. Co., Ltd.* v. *Ohella Ram*.
(1915) 31 Ind. Cas. 746 (747): 1915 Lah. 271: 1916 Pun. Re. 36, *Lahore Bank, Ltd.* v. *Kidar Nath* (Even in cases of ambiguity).
(1928) 1928 Oudh 15 (17): 3 Luck. 244, *Ram Lal* v. *Emperor*.
(1926) 1926 Bom. 382 (383), *Madhav Raghavendra Kulkarni* v. *Emperor*.
(1917) 42 Ind. Cas. 200 (211): 1917 Nag. 215: 13 N.L.R. 130 (F.B.), *Salu Bai* v. *Bajat Khan*.
(1895) 23 Cal. 55 (59), *Dukhimullah* v. *Halway*.
(1933) 1933 Bom. 338 (339): 57 Bom. 699, *Dhunjibhoy Bomanji* v. *Gunpa Khandu Koli*.
(1900) 2 Bom. L. R. 918 (923), *Empress* v. *Mahomed Ayoob*.
(1904) 28 Bom. 129 (142), *Emperor* v. *Allomiya*.
(1922) 1922 Bom. 161 (165): 46 Bom. 360, *Padamsi* v. *Collector of Thana*.
(1870) 13 Suth. W. R. 1 (11), *Queen* v. *Purna Chandra Banerjee*.
(1877) 3 Cal. 63 (128), *Empress* v. *Burah*.
(1903) 7 Cal. W. N. 883 (886), *Bijoyendra Lall* v. *Emperor*.
(1917) 37 Ind. Cas. 465 (466): 1917 Cal. 256, *Sarat Chandra* v. *Mubarak*.
(1920) 1920 Cal. 535 (536): 47 Cal. 809, *Banerjee* v. *Manager, etc.*
(1920) 1920 Pat. 526 (527), *Sheikh Chamma* v. *King-Emperor*.
(1927) 1927 Nag. 203 (203), *Bhagia* v. *King-Emperor*.
(1932) 1932 Mad. 391 (394): 55 Mad. 903, *Syamo* v. *Emperor*.
(1910) 6 Ind. Cas. 313 (321): 34 Mad. 29, Re *Second Grade Pleaders*.
(1919) 51 Ind. Cas. 46: 1919 Mad. 514: 42 Mad. 451, *Kesava* v. *Secretary of State*.
(1863) 1863 Weir, 3rd Edn., 888.
(1893) 6 C. P. L. R. 31 Cr. (32), *Empress* v. *Sheolal Singh*.
(2) (1904) 26 All. 393 (406): 31 Ind. App. 182: 7 Oudh Cas. 248: 8 Sar. 639 (P.C.), *Balraj Kunwar* v. *Jagatpal Singh*.
(3) (1924) 1924 Mad. 389 (390), In re *A. E. Smith*.
(1933) 1933 Bom. 417 (421), *Emperor* v. *Ismail Sayad Saheb Mujawar*.
(1925) 1925 All. 503 (515): 47 All. 637 (F.B.), *Gajendra Singh* v. *Durga Kumari* (The view was expressed obiter—There was no ambiguity in that case).
(1927) 1927 Sind 39 (43): 21 S.L.R. 107, *Emperor* v. *Lakman* (20 Cal. 609 and 21 Cal. 752 were relied on. The principle of 20 Cal. was dissented from in the Privy Council decision in 26 All. 393 and the decision in 21 Cal. 732 was reversed by the Privy Council in 22 Cal. 788).
(1926) 1926 Mad. 749 (751): 49 Mad. 716, *Narayanaswami* v. *Rangasami*.
(1911) 6 Ind. Cas. 392 (395), *Murshidabad* v. *Gopinath Mandal* (Quære—Whether the marginal note can be considered in construing the section: Case-law discussed but not 26 All. 393 (P. C.).
(1925) 1925 Cal. 329 (330): 52 Cal. 463, *Bahadur Molla* v. *Ismail*.
[See however (1929) 1929 All. 53 (56, 58): 51 All. 411 (F.B.), *Ram Saran Das* v. *Bhagwant Prasad* (The view of King, J., is that it is ascertained that marginal notes were inserted under legislative authority in any particular Indian Act, the marginal notes may be considered—This view cannot be considered to be sound or safe —Grounds for distinguishing 26 All. 393 (P. C.) not sound).]
[See however (1932) 1932 Nag. 174 (176): 28 Nag. L. R. 302, *Ganpat* v. *Emperor* (Following *King, J.*, in 1929 All. 53).]
[See (1905) 29 Bom. 193 (197), *Wallace* v. *Flour Mill*.
(1925) 1925 Cal. 329: 52 Cal. 463, *Bahadur Molla* v. *Ismail*.]

Note 10.

(1) (1918) 48 Ind. Cas. 1 (3): 1918 P. C. 249: 1918 P. R. 124 (P. C.), *Bailamal* v. *Ahmadshah*.
(1928) 1928 Oudh 15 (17): 3 Luck. 244, *Ramlal* v. *Emperor*.
[See (1875) 1 All. 34 (36) (F. B.), *Dabey* v. *Ganesh* (Illustration is a mere illustration and not binding as law—Per *Stuart, C. J.*).

Preamble, Notes 10—11.

done, as being both of relevance and of value, in the construction of the section.[2] The rule, however, is subject to two limitations:—

(1) Any illustration only exemplifies the section and cannot be taken to *restrict* the sense of the section.[3]

(2) Where the illustration is in *conflict* with the main section, the illustration must give way to the section.[4] But it would require a very special case to warrant its rejection on the ground of its assumed repugnancy to the section itself.[5]

11. Punctuation Marks.—Before the year 1849, the English Acts of Parliament were not punctuated by any stops and the then accepted rule of interpretation was that such marks could not be relied upon in construing Acts of Parliament.[1] In *Maharani of Burdwan* v. *Krishna Kaminee Dasi*,[2] which was a case under the old Bengal Regulation of 1819, their Lordships of the Privy Council, held presumably, applying the English rule that, "it is an error to rely on punctuation in construing Acts of the Legislature."

See (1915) 28 Ind. Cas. 738 (774): 1915 Lah. 16: 1915 Pun. Re. 17, Re *Balmokand* (Illustrations not to be taken as express provisions of law or as binding on Court).

See (1877) 1 All. 487 (495), *Nanak* v. *Mehin* (Not strictly legally part of the Act and not absolutely binding—Per *Stuart, C.J.*).]

(2) (1917) 39 Ind. Cas. 401 (404): 1916 P. C. 242: 43 Ind. App. 256 (P.C.), *Md. Syedol* v. *Yeoh Ooi Gark*.

(1922) 1922 Bom. 415 (416): 46 Bom. 843, *Hallappa* v. *Irappa*.

(1925) 1925 Oudh 24 (27), *Mrs. David* v. *Murray & Co*.

(1918) 46 Ind. Cas. 497 (499): 1918 L. B. 97 (Rang.), *Janoo & Co.* v. *Joseph Heap and Sons*.

(1917) 39 Ind. Cas. 405 (408): 1918 Mad. 1012, *Kunchithapadam Pillai* v. *Palamalai Pillai*.

(1928) 1928 Cal. 204 (205, 206): 55 Cal. 154, *Durga Prasad* v. *Durga Pada*.

(1915) 30 Ind. Cas. 465 (478): 1916 Cal. 693, *Ramsubhag* v. *Emperor* (Illustrations have no force of law but are useful to explain intention of Legislature).

(1916) 32 Ind. Cas. 641 (642): 1916 L. B. 114: 8 L. B. R. 306 (F. B.), *Nga Mya* v. *Emperor* (Do.)

(1921) 1921 Cal. 1 (4): 48 Cal. 388 (F. B.), *Satish Chandra Chakravarthy* v. *Ram Dayal De*.

(1908) 5 All. L. J. 357 (358), *Janaki Das* v. *King-Emperor* (Illustrations not to be pushed further than its words).

(1874) 21 Suth. W. R. 66 (67), *Peerun* v. *Field* (Do.).

(1891) 15 Bom. 491 (496), *Queen-Empress* v. *Fakirappa* (Illustrations indicate intention of Legislature—They are not exhaustive).

(1881) 2 Mad. 169 (170, 171), *Anantachari* v. *Anantachari* (Illustrations not exhaustive).

(1928) 1928 Bom. 145 (145), *Emperor* v. *Hanna* (Repeal of illustration in later Act—Considered in construing).

(3) (1925) 1925 All. 220 (221), *Chhotay Lal* v. *Emperor*.

(1917) 40 Ind. Cas. 194 (196): 1917 Bom. (268), *Shiv Lal Motilal* v. *Birdichand Jivraj*.

(1881) 7 Cal. 132 (135), *Kaylash* v. *Sonatan*.

(1905) 20 Mad. 481 (483), *Kamalammal* v. *Peera*.

(1921) 1921 Bom. 3 (13): 45 Bom. 834 (F. B.), *Purushottam Ishwar* v. *Emperor*.

(1905) 28 Mad. 57 (61), *Govinda* v. *Thayammal*.

(1928) 1928 Bom. 78 (79), *Emperor* v. *Spratt*.

(1928) 1928 Bom. 143 (144): 52 Bom. 257, *Emperor* v. *Ambaji*.

(1912) 16 Ind. Cas. 753 (754): 6 S. L. R. 76, *Crown* v. *Rino*.

(1910) 5 Ind. Cas. 110 (113) (Cal.), *Satya Priya* v. *Gobinda*.

(1881) 7 Cal. 132 (135), *Koylash Chunder Ghose* v. *Sonatan Ehung Barooie*.

(1885) 7 All. 757 (761), *Queen-Empress* v. *Ram Sarup* (Illustrations are furnished from ordinary and not extraordinary cases).

(1903) 26 Mad. 55 (62), Re *Palani Palagan*.

(4) (1924) 1924 All. 748 (749), *Mt. Sajidunnissa* v. *Syed Hidayathusain*.

(1915) 28 Ind. Cas. 738 (774): 1915 Pun. Re. 17: 1915 Lah. 16 (Cr.), *Balmoocand* v. *Emperor* (The illustration in the case was contrary to the section).

(1933) 1933 Bom. 313 (314), *Maruti Gangaram Satpute* v. *Bankat Lal Shivabakas Marwadi*.

(1875-77) 1 Bom. 147 (155, 156) (F. B.), *Reg.* v. *Rahimal* (Sometimes illustrations create difficulties in construction).

[See (1873) 7 Mad. H. C. R. 375 (375), Re *Noujan*.]

(5) (1916) 1916 P. C. 242 (244): 43 Ind. App. 256, *Mahomed Syedol Arifin* v. *Yeoh Ooi Gark*.

Note 11.

(1) (1915) 27 Ind. Cas. 494 (496): 1915 Bom. 50: 39 Bom. 182, *Blanche Somerset Taylor* v. *Charles George Bleach*.

(2) (1887) 14 Cal. 365 (372): 4 Sar. 772: 14 Ind. App. 13 (P.C.), *Maharani of Burdwan* v. *Krishna Kamini Dasi*.

Preamble. Notes 11—12.

Since the constitution of the regular Legislatures in India, however, the practice has been to insert stops in Bills before the Legislature and to retain them in the authentic copies of the Acts signed by the Governor-General and published in the *Gazette of India*.[3] There has, however, been a conflict of view. The Madras and Bombay High Courts have held that the punctuation marks must be taken as part of the statute itself and construed accordingly,[4] while the Allahabad and Calcutta High Courts have held the contrary view[5] following the English rule.[6] This conflict would now appear to have been set at rest by the Privy Council in *Lewis Pugh* v. *Asutosh Sen*[7] where their Lordships, in interpreting Arts. 48 and 49 of the Limitation Act, observed that a Court is bound to read those articles without the commas inserted in the print. *See also* the following cases.[8]

12. Proviso.—A proviso is subordinate to the main enactment[1] to which it is appended either to allay unfounded fears,[2] or as a condition precedent to the enforcement of the operative clause,[3] or for explaining what particular matters are not within the meaning of the enactment, or for providing exceptions and qualifications to the enactment.[4]

A proviso should be taken together with the language of the previous portion of the enactment[5] and construed in the ordinary manner.[6] As a general rule it must be taken to govern the main proposition of law which *immediately precedes* such proviso, unless the language of the statute shows a different intention.[7]

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(3) (1915) 27 Ind. Cas. 494 (496): 1915 Bom. 50: 39 Bom. 182, *Taylor* v. *Bleach*.

(4) (1915) 27 Ind. Cas. 494 (496): 1915 Bom. 50: 39 Bom. 182, *Taylor, B. S.* v. *Bleach, C. G.*

(1924) 1924 Mad. 455 (456), *Secretary, Board of Revenue, Madras* v. *Ramanathan Chettiar*.

(1912) 16 Ind. Cas. 947 (948): 37 Mad. 113, *Secretary of State* v. *Kalekhan*.

(1910) 7 Ind. Cas. 743 (745): 34 Mad. 130, *Veeraraghavalu* v. *President, etc.*

(5) (1900) 22 All. 270 (277) (F.B.), *Edward Caston* v. *L. H. Caston*.

(1918) 44 Ind. Cas. 770 (783): 1919 Cal. 551: 45 Cal. 343 (F.B.), *Manilall* v. *Trustees for the Improvement of Calcutta*.

(1923) 1923 Rang. 185 (186): 1 Rang. 226, *Jupiter General Insurance Co., Ltd.* v. *Abdul Aziz* (It is not always safe to rely on punctuation as a deciding factor in construction).

(6) (1915) 27 Ind. Cas. 494 (496): 1915 Bom. 50: 39 Bom. 182, (*Miss*) *Taylor* v. *Bleach* (*Charles*) (In England punctuation was inserted after 1849. Still the old rule against punctuation would appear to survive in England).

(7) (1929) 1929 P. C. 69 (71): 56 Ind. App. 93: 8 Pat. 516 (P.C.), *Lewis Pugh* v. *Ashutosh Sen*.

(8) (1931) 1931 All. 154 (156, 157): 53 All. 374, *Niaz Ahmed* v. *Purshottam*.

(1933) 1933 All. 521 (522): 55 All. 700, *Mansa* v. *Ancho*.

Note 12.

(1) (1916) 37 Ind. Cas. 525 (578): 1918 Mad. 1210: 39 Mad. 1085, *Mrs. Annie Besant* v. *Government of Madras*.

(2) (1910) 6 Ind. Cas. 410 (412): 37 Cal. 697, *Mahadev* v. *Chairman, Howrah Municipality*.

(1897) 1897 App. Cas. 647, *West Derby Union* v. *Metropolitan Life Assurance Society*.

(3) (1916) 37 Ind. Cas. 607 (637): 1918 Mad. 1266: 39 Mad. 1164, *Annie Besant* v. *Emperor*.

(4) (1916) 37 Ind. Cas. 525 (578): 1918 Mad. 1210: 39 Mad. 1085, *Mrs. Annie Besant* v. *Government of Madras*.

(1897) 1897 A. C. 647 (651, 652), *West Derby* v. *Metropolitan*.

(1864) 2 Bom. H. C. R. 106 (114), *Reg.* v. *Vyankatasami*.

(1882) 8 Cal. 637 (641, 642), *Alangamonjori Dabee* v. *Sonamoni Dabee*.

(5) (1914) 1914 P. C. 140 (144): 42 Cal. 116: 41 Ind. App. 197 (P.C.), *Mata Prasad* v. *Ramanimohun*.

(1912) 17 Ind. Cas. 25 (29) (All.), *Collector of Ghazipur* v. *Balbhaddar* (It will not apply to subsequent sections).

(6) (1919) 1919 P. C. 31 (33): 43 Mad. 146: 46 Ind. App. 176 (P.C.), *Annie Besant* v. *Advocate-General of Madras*.

(1932) 1932 Mad. 46 (52), *Perichiappa Chettiar* v. *Nachiappan* (Proviso to be strictly construed on its wording —No words to be added).

(1930) 1930 Mad. 124 (125): 53 Mad. 702, *Commissioner of Income-tax, Madras* v. *A. Suppan Chettiar* (Proviso cannot be construed to cut down from the section by mere implication).

(7) (1884) 6 All. 509 (531, 540) (F.B.), *Queen-Empress* v. *Babulall*.

Preamble, Notes 12—13.

But in no case can a proviso *extend* or *enlarge* the operative effect of the substantive portion, unless there is an ambiguity therein.[8]

13. Judicial Precedents.—Judicial precedents constitute an important guide to the proper interpretation of statutes. It is a general principle of construction of statutes that the Courts should follow existing rulings so as not to upset or disturb existing and *settled* practice[1] unless such practice is *clearly* contrary to an express enactment or is *inconsistent* with it.[2] This rule is based, in the case of statutes enacting substantive law, on the ground that otherwise it would embarrass trade and commerce, affect the status of persons and unsettle

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(1910) 6 Ind. Cas. 410 (412): 37 Cal. 697, *Mahadeo* v. *Chairman, Howrah Municipality* (Two constructions possible. Proviso may be taken as a guide to choose one of the two).
(1907) 12 Cal. W. N. 140 (144), In re *Deputy Legal Remembrancer*.

(8) (1926) 1926 Cal. 927 (932): 53 Cal. 492, *Ramchunder Serowjee* v. *Gowrinath Dutt*.
(1918) 47 Ind. Cas. 301 (305): 1919 Mad. 590: 41 Mad. 691, *Sankaran* v. *Ramaswami*.
[See (1918) 43 Ind. Cas. 31 (36, 37): 1919 Mad. 972: 40 Mad. 1040, *Mulla Vittil* v. *Kunha Pathumma* (*Per* Walker, J.).
See (1864) 2 Bom. H. C. R. 106 (114), *Reg.* v. *Vyankatsami*.
See (1921) 62 Ind. Cas. 188 (189): 1920 L. B. 86, *Emperor* v. *Pyasin* (Exceptions must be applied to those cases to which it is confined by Legislature).]

Note 13.

(1) (1903) 31 Cal. 511 (513), *Ful Kumari* v. *Ghanshyam*.
(1894) 18 Bom. 136 (140), *Devshankar* v. *Motiram*.
(1924) 1924 Cal. 473 (475): 51 Cal. 331, *Habibar Rahman* v. *Saidanessa*.
(1927) 1927 Lah. 635 (636), *Moti Singh* v. *Harbajan Singh*.
(1903) 30 Cal. 999 (1003), *Kusum Kumari* v. *Satya Ranjan*.
(1880) 13 Cal. 189 (191), *Beni Ram* v. *Ram Lal*.
(1910) 5 Ind. Cas. 309 (310) (Cal.), *Kedarnath* v. *Manindra Chandra*.
(1896) 18 All. 403 (409), *Sheo Prasad* v. *Lalit Kuar*.
L. R. 4 Q. B. 406, *Lawson* v. *Queen*.
(1916) 1916 P. C. 182 (184): 44 Cal. 759: 44 Ind. App. 65 (P.C.), *Tricomdas* v. *Gopinath*.
(1911) 12 Ind. Cas. 1007 (1008): 36 Mad. 380, *Achuta Menon* v. *Sankaran Nair* (Madras Sudder Courts' rulings are good authority).
(1924) 1924 P. C. 50 (55): 51 Ind. App. 129: 46 All. 95 (P.C.), *Raja Brij Narain* v. *Mangla Prasad* (Particular plea being not raised in a series of cases—Presumption is that the plea is bad).
(1906) 28 All. 62 (71, 72), *Emperor* v. *Devi*.
(1917) 41 Ind. Cas. 313 (321, 332): 1917 Cal. 527, *Budhu* v. *Ohhotu*.
(1914) 1914 All. 395 (396): 36 All. 469, *Baran* v. *Mata*.
(1921) 1921 Cal. 40 (43): 48 Cal. 161, *Kilting* v. *Secretary of State*.
(1933) 1933 Bom. 120 (120), *Trimbak Y. Nene* v. *Ramchandra B. Tilak*.
[See also (1921) 1921 Cal. 15 (29, 30): 48 Cal. 184, *Chandra Gobinde* v. *Ala Bux* (But final Courts of law cannot ordinarily refuse to examine the foundation upon which prior decisions rest).
See also (1919) 1919 Lah. 382 (384): 1919 Pun. Re. No. 3, *Samanand Singh* v. *Emperor* (Previous decisions in criminal cases, proceeding as they do on their own set of facts, seldom afford any very great assistance in deciding the nature of an offence).
See however (1932) 1932 P. C. 36 (40), *Attorney-General of Canada* v. *Attorney-General of Ontario* (Process of judicial interpretation may unduly extend statute).
See (1929) 1929 Cal. 617 (631), *Padam Prasad* v. *Emperor* (Judicial interpretation contemporaneous with the enactment of a statute is best and strongest in law).
See (1884) 10 Cal. 166 (184), *Mathoorakant* v. *India General Steam Navigation Company*.
See (1901) 28 Cal. 171 (176), *Sourindra* v. *Siromani* (Report of a case may be referred to as *precedent*. But if an order is relied on to be operative in this case, a proper *copy* must be filed).
See (1926) 1926 Mad. 906 (908): 49 Mad. 728, *Thiruvengada Mudali* v. *Tripura Sundari Ammal*.
See (1933) 1933 Lah. 256 (256), *Ramphul Singh* v. *Emperor* (Quoting overruled cases should be discouraged).]
(2) (1916) 1916 P. C. 182 (184): 44 Cal. 759: 44 Ind. App. 65 (P.C.), *Bhoja* v. *Thakur*.
(1915) 1915 P. C. 127 (130) (P.C.), *Arthur John Pate* v. *Pate*.
(1909) 4 Ind. Cas. 289 (291): 3 L.B.R. 94 (F.B.), *Perichiappa* v. *Po Kin*.
(1922) 1922 All. 467 (469): 45 All. 115, *Lalbu Singh* v. *Gur Narain*.
(1925) 1925 Rang. 340 (344): 3 Rang. 549, *Ma Nyein* v. *Maung Maung*.
(1910) 5 Ind. Cas. 727 (728), *Official Assignee* v. *Arbuthnot & Co*.
(1927) 1927 Mad. 1043 (1051): 51 Mad. 46 (F.B.), *Narayanan* v. *Theva Amma*.
(1884) 8 Bom. 313 (316, 317), *Prabhakerbhat* v. *Vishwambar*.
(1920) 53 Ind. Cas. 627 (630): 44 Bom. 555: 1920 Bom. 419, *Muradally Shanji* v. *Lang*.
(1928) 1928 Bom. 123 (125, 126): 52 Bom. 459, *Vrajlal Jivandas* v. *Venkataswami Lingayya*.
(1917) 41 Ind. Cas. 761 (765): 1916 Bom. 254: 41 Bom. 588 (F.B.), *Isak Ahmed* v. *Abhramji*.
(1932) 1932 Bom. 180 (181): 56 Bom. 200, *P. X. D'Souze* v. *Emperor*.

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many titles.[3] Though that particular ground does not apply in the case of statutes of procedure which cannot be considered to affect any rights in property or titles,[4] it is, nevertheless, of great practical importance that on questions of procedure the law should be *certain* rather than that it should be logical[5] and that there should be *uniformity* of decisions.[6]

But it is necessary that the Courts should ascertain the *facts* with accuracy before turning their attention to the authorities.[7] They should also bear in mind the rule that a decision is applicable only to the facts of that case[8] and is only an authority for what it *actually* decides and not for every proposition that may seem to follow logically from it.[9] The only use of the authorities or

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(1917) 41 Ind. Cas. 313 (321, 322): 1917 Cal. 527, *Budhu* v. *Chhotu*.

(3) (1921) 1921 Cal. 15 (29): 48 Cal. 184 (S.B.), *Chandra* v. *Ali Bux*.

(1917) 31 Ind. Cas. 106 (148): 41 Bom. 181: 1915 Bom. 151, *Advocate-General* v. *Jimba Bai*.

(1927) 1927 Mad. 636 (639): 50 Mad. 687 (F.B.), *Narasimhaswami* v. *Venkatalingam*.

(1922) 1922 Cal. 331 (333), *Ishan Chandra* v. *Safatulla*.

(1925) 1925 Bom. 12 (18): 49 Bom. 99, *Secretary of State* v. *Shantaram Narayan*.

(4) (1928) 1928 All. 629 (630), *Joti Prasad* v. *Srichand*.

(1929) 1929 Rang. 41 (43): 6 Rang. 703 (F.B.), *Chidambaram* v. *Chettiar Firm* (Principle of *stare decisis* has far less applicability to law of procedure).

(1905) 29 Bom. 621 (627, 628), *Manilal* v. *Vanmalidas*.

(1903) 27 Bom. 1 (12), *Kashiram* v. *Pandu*.

(5) (1917) 1917 P. C. 156 (159): 45 Cal. 94: 44 Ind. App. 218: 1917 Pun. Re. 104 (P.C.), *Brij Indar Singh* v. *Kanshi Ram*.

(1903) 31 Cal. 511 (513), *Fulkumari* v. *Ghanshyam*.

(6) (1925) 1925 Cal. 966 (969), *Girindranath* v. *Kedar Nath*.

(1914) 1914 P. C. 87 (89): 37 Mad. 443: 41 Ind. App. 258 (P. C.), *Veeraraghavalu* v. *Venkatanarasimha*.

(1917) 1917 P. C. 156 (159): 45 Cal. 94: 44 Ind. App. 218: 1917 Pun. Re. 104 (P.C.), *Brij Indar Singh* v. *Kanshi Ram*.

(1875) 24 Suth. W. R. 193 (195): 21 Ind. App. 219: 3 Sar. 519 (P.C.), *Sadasiva Pillai* v. *Ramalinga*.

(1876) 3 Ch. D. 515, *Dymond* v. *Croft*.

(1916) 32 Ind. Cas. 622 (624): 38 All. 280: 1916 All. 286, *Pallia* v. *Mathura Prasad*.

(1921) 1921 Mad. 612 (615), *Rukmani* v. *Narasimha Ayyar*.

(1928) 1928 Mad. 440 (441), *Abdul Kharim* v. *Pulavarti Lakshmanaswami*.

(7) (1900) 24 Bom. 407 (410), *Kashinath* v. *Anant Sitaramboa*.

(1926) 1926 Mad. 101 (104), *Krishnaswami* v. *Tirumalai*.

(1925) 1925 Mad. 1032 (1034), *Venkatasubbiah* v. *Venkatasubbamma*.

(1925) 1925 Cal. 845 (848): 52 Cal. 894, *Becharam* v. *Purnachandra*.

(1924) 1924 P. C. 126 (132): 5 Lah. 92: 51 Ind. App. 163 (P.C.), *Hari Baksh* v. *Babulal*.

(8) (1917) 41 Ind. Cas. 353 (357): 45 Cal. 294: 1917 Cal. 2, *Syedunnissa* v. *Amiruddi*.

(1890) 14 Bom. 331 (346), *Queen-Empress* v. *Chagan Dayaram*.

(1887) 9 All. 528 (555) (F.B.), *Queen-Empress* v. *Gobardhan*.

(1916) 32 Ind. Cas. 641 (650): 8 L. B. R. 306 (F. B.), *Nya Mya* v. *Emperor*.

(1920) 56 Ind. Cas. 44 (45): 1920 Nag. 150: 16 N. L. R. 131, *Kisanlal* v. *Nathu*.

(1910) 5 Ind. Cas. 4 (8): 33 Mad. 265 (F.B.), *Kailasam* v. *Nataraja Thambiran*.

(1917) 41 Ind. Cas. 525 (527): 1918 Cal. 521, *Manindranath* v. *Asutosh Ghose*.

(1912) 12 Ind. Cas. 737 (738): 36 Bom. 146, *Bagasumayad* v. *Nathabhai*.

(1927) 42 Ind. Cas. 965 (966): 1916 Nag. 116, *Begmal* v. *Firm of Jamnadas*.

(1929) 1929 Lah. 161 (162), *Abdur Rahim* v. *Ragbhirchand*.

(1927) 1927 All. 292 (295): 49 All. 464, *Firm Sheo Prasad* v. *Gobind Prasad* (Cases merely illustrating the application of the language of a statute are not binding).

(1926) 1926 Mad. 218 (222), *Gangadhara* v. *Swaminatha*.

(1926) 1926 Lah. 65 (69): 7 Lah. 179, *Punjab Akhbarat Press* v. *Ogilvie*.

(1924) 1924 Cal. 257 (275) (F. B.), *Emperor* v. *Barendra Kumar*.

(1921) 1921 P. C. 59 (61): 48 Cal. 30: 47 Ind. App. 213: 16 Nag. L. R. 187 (P. C.), *Balwant Rao* v. *Baji Rao* (Decision must be treated only as merely declaratory of the law as it has existed).

(1926) 1926 Mad. 1038 (1039): 49 Mad. 903 (F. B.), *Board of Revenue* v. *Mootanna Somaraya* (Case under repealed Act is no authority on construction of new Act but may be a useful guide).

(1924) 1924 All. 851 (853): 46 All. 884, *Abdul Rahim* v. *Abdul Rahmin* (A case distinguished is not treated as authority or otherwise).

(1903) 6 Bom. L. R. 131: 27 Bom. 189, *Jahangir* v. *Secretary of State*.

(1924) 1924 All. 884 (890): 47 All. 17, *Behari Lal* v. *Shiv Narain*.

(9) (1926) 1926 Cal. 913 (914), *Raja Manindra* v. *Executors to the Estate*.

(1926) 1926 Oudh 316 (317), *Abdul Ghani* v. *Mustapa Husain*.

(1927) 1927 Cal. 657 (658), *Satyendranath* v. *Charu Chandra*.

(1927) 1927 Oudh 138 (139, 140), *Raj Bahadur* v. *Kanbaya Baksh*.

(1915) 32 Ind. Cas. 291 (310): 1916 Oudh 30, *Baksh* v. *Sukh Dei*.

(1932) 1932 Bom. 654 (671): 56 Bom. 619, *Baikesarba* v. *Shiv Sangji Bhini Sangji Thakore*.

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decided cases is the establishment of some *principle* of law which the Judge can follow in deciding the case before him.[10] There can be no precedent on questions of *fact* and matters of discretion.[11] Nor can the *dicta* of Judges, however eminent, be cited as establishing authoritatively propositions of law unless such *dicta* form the integral part of the train of reasoning directed to the real questions decided.[12]

Subject to the principles mentioned above, the following rules may be remembered—

(1) All Courts in India are bound by the decisions of the Privy Council.[13] A considered conclusion of the Privy Council cannot be ignored as being *obiter*.[14]

In the case of different views among the High Courts on any point of law, the view of the Privy Council, even if *obiter*, is to be adopted.[15]

(2) A single Judge of the High Court is bound by the decisions of a Bench of two or more Judges[16] and a Bench of two or more

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(1924) 1924 Cal. 257 (275), *Emperor* v. *Barendra Kumar*.
(1931) 1931 All. 277 (291): 53 All. 334, *Nannumal* v. *Ram Chunder*.
(1931) 1931 All. 162 (172): 53 All. 239, *Anand Proshad* v. *Narain Das*.
(1929) 1929 All. 625 (630), *Kayasthe Co.* v. *Sita Ram*.
(1932) 1932 All. 293 (307): 54 All. 646 (F. B.), *Mt. Siraj Fatama* v. *Md. Ali* (Judicial decision or provisions of another statute not in part material not to be considered).

(10) (1915) 30 Ind. Cas. 657 (660, 662): 1915 All. 360: 37 All. 496, *Risal Singh* v. *Balwant Singh*.
(1925) 1925 All. 658 (660), In re *Jaunpur Sugar Factory* (Authorities are not safe guides on question of facts).
(1924) 1924 Cal. 508 (509): 51 Cal. 124, *Sabur Bibi* v. *Ismail Shaikh*.
(1915) 1915 P. C. 139 (142), *The Romanium* (The plainer the proposition the more difficult it is to find a decision actually in point).
(1928) 1928 Pat. 304 (310): 7 Pat. 520, *Elizabeth* v. *Bupendra Nath*.
(1919) 53 Ind. Cas. 805 (807): 1919 Bom. 40, *Gobind Laxman* v. *Hirachand* (Decision arising from the application of a rule to a set of facts is no authority for its application to another set of facts).

(11) (1926) 1926 Rang. 109 (110): 4 Rang. 18, *Maung Saw* v. *Ma Bwin Byu*.
(1928) 1928 Pat. 316 (317): 7 Pat. 275, *Hiralal* v. *Matukdhari*.
(1928) 1928 Oudh 430 (435), *Khilawan* v. *Emperor*.

(12) (1922) 1922 Nag. 1 (7): 19 Nag. L. R. 81 (F. B.), *Sheonarain* v. *Nathu*.
(1925) 1925 All. 230 (232): 47 All. 268, *Ramnath* v. *Emperor*.
(1913) 20 Ind. Cas. 280 (281) (Lah.), *Gugni Gokhul* v. *Samandar Khan*.
(1931) 1931 All. 162 (172): 53 All. 239, *Anand Pershad* v. *Narain Das*.
[See (1932) 1932 Mad. 502 (505), *Lakshminarayana* v. *Suryanarayana*.]
[See (1933) 1933 Pat. 81 (83): 12 Pat. 188, *Dhanukdhari Prasad Pandey* v. *Ramadhikari Missar* (*Obiter dictum* of Division Bench must be treated with respect).]
[See (1933) 1933 Lah. 159 (160), *Emperor* v. *Kalu* (*Obiter* has great value if reasoning is cogent and convincing).
(1933) 1933 Bom. 132 (135): 57 Bom. 278, *Saunditti Yellamma Municipality* v. *Shri Pad Bhit Seshbat Joshi* (Opinion of Legal Remembrancer irrelevant).]

(13) (1925) 1925 P. C. 272 (279): 28 Oudh Cas. 352: 52 Ind. App. 398: 47 All. 883 (883) (P. C.), *Mata Prasad* v. *Nageshar Sahai*.
(1927) 1927 Bom. 157 (158): 51 Bom. 231, *Ningappa Marbasappa* v. *Gyanji*.
(1926) 1926 Nag. 49 (50), *Choturam* v. *Narayan* (Privy Council in laying down a principle only declares what has always been the Law).
(1928) 1928 Bom. 130 (133): 52 Bom. 385, *Emperor* v. *Ismail Khadirshah*.
(1915) 30 Ind. Cas. 657 (662): 37 All. 496: 1915 All. 360, *Risal Singh* v. *Balwant Singh*.
(1915) 20 Ind. Cas. 546 (549): 38 Mad. 941, *Kariadon* v. *B. I. S. N. Co., Ltd.* (Even if the decision is not given in an appeal from an Indian tribunal).
(1927) 1927 Mad. 261 (263), *Koragalwa* v. *Jakri Beary* (Holds that it is not binding).

(14) (1925) 1925 Oudh 94 (95): 27 Oudh Cas. 161, *Jokhu Pande* v. *Mata Parshad* (Considered propositions laid down by Privy Council cannot be treated as *Obiter*).
(1921) 1921 L. B. 37 (41): 11 L. B. R. 163, *S. C. Das* v. *The Burmah Railway Co., Ltd.* (Considered dictum of Privy Council though *Obiter* must be allowed great weight).
(1915) 30 Ind. Cas. 465 (469): 1916 Cal. 693, *Ramsubhag* v. *Emperor* (Even general remarks are binding).
(1914) 12 Ind. Cas. 389 (390): 37 Mad. 22, *Alagaya Goundar* v. *Minakshi* (Decision on mixed question of law and fact carries great weight).

(15) (1926) 1926 Nag. 154 (155), *Atmaram* v. *Pandu* (Different views possible on point of Law. That view expressed by the Privy Council even as Obiter should be accepted).

(16) (1925) 1925 Mad. 441 (442), *Mayan Kutti* v. *Kathiri*.

Judges is, itself, bound by the decisions of the Full Bench of the same Court until they are expressly dissented from by the Privy Council or reversed by another Fuller Bench.[17] **Preamble, Note 13.**

(3) The Subordinate Courts[18] are bound to follow the rulings of the High Court to which they are subordinate, and, in the absence of such rulings, they should follow the rulings, if any, of the other High Courts.[19]

(4) Where there are conflicting rulings both binding on the Court and they cannot be reconciled, the authority which is at once the more recent and more consistent with general principles and equity should prevail.[20]

(5) In a matter which is open to divergence of view among various High Courts the Court should follow its own *cursus curiae* unless it

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(1891) 14 Mad. 186 (191) (F. B.), *Subbayya* v. *Krishna.*

(1924) 1924 Cal. 733 (738): 51 Cal. 588, *Nandalal* v. *Gurupada* (Judge on original side not bound by Division Bench on appellate side).

(1883) 9 Cal. 604 (607), *Oriental Bank* v. *Gobind Lall* (Decision of appellate Bench should receive respectful consideration by a single Judge on original side).

(1921) 1921 Cal. 169 (171): 48 Cal. 69, *Virjiban Dass* v. *Biseswar Lal* (But a decision of a single Judge is not binding on another single Judge though entitled to respectful consideration).

(1915) 30 Ind. Cas. 681 (683): 1916 Cal. 689: 42 Cal. 1140, *Chaitram* v. *Bridichand* (Original side is binding on another single Judge on the same side, but is not binding on judges in appeals from the original side).

(1932) 1932 All. 188 (189): 54 All. 416, *Ali Hussain* v. *Lachminarain Mahajan.*

(1933) 1933 Pat. 38 (39): 11 Pat. 697, *Kuldib Das* v. *Emperor.*

(17) (1907) 34 Cal. 735 (741), *Kishun Prasad* v. *Tippan Pershad.*

(1927) 1927 All. 244 (244), *Anantram* v. *Khushal Singh.*

(1867) 7 Suth. W. R. 277 (278), *Chandar Kant* v. *Bindaben Chunder* (Full Bench Case is binding on single Judge).

(1921) 1921 Oudh 217 (219): 24 Oudh Cas. 361, *Sripal* v. *Jagadish Narain* (Considered dictum of Full Bench should not be ignored as being obiter).

(1918) 41 Ind. Cas. 561 (565): 1918 Cal. 952: 45 Cal. 259, *Bejoy Singh* v. *Krishna Behari* (Even obiter dicta of Full Bench decision should not be usually departed from if they are acted on for any length of time).

(1928) 1928 Bom. 130 (133): 52 Bom. 385, *Emperor* v. *Ismail* (Practice of Bombay High Court is that no Bench has power to bind all other Benches as to the practice to be adopted in cases coming before them).

(1913) 21 Ind. Cas. 650 (651, 652) (Mad.), *Venkatanarayan* v. *Venkatanarasimha* (Power of Division Benches).

(18) [See S. 3, C. P. Code, for definition of Subordinate Courts.

(1906) 28 All. 62 (71, 72), *Emperor* v. *Devi.*]

(19) (1915) 1915 P. C. 15 (17): 37 All. 359: 42 Ind. App. 155 (P. C.), *Pathilal* v. *Parbati.*

(1890) 15 Bom. 419 (422), *Swamirao* v. *Kashinath Krishna.*

(1892) 17 Bom. 555 (558), *Balajee Ghanesh* v. *Sakharam.*

(1911) 12 Ind. Cas. 442 (443): 1911 Pun. Re. 3, *Chailu* v. *Man Singh* (Revenue Courts must follow rulings of Financial Commissioners).

(1911) 11 Ind. Cas. 792 (793): (1911) 1 U. B. R. 87, *Nga Than Kin* v. *Emperor.*

(1898) 25 Cal. 488 (491), *Md. Hady* v. *Swee Cheang.*

(1919) 51 Ind. Cas. 496 (499): 1919 Pat. 293, *Kamala Prasad* v. *Pandeh Ram.*

(1921) 59 Ind. Cas. 414 (415): 1920 Mad. 652, *Adepu Reddi* v. *Ramayya.*

(1915) 30 Ind. Cas. 927 (929): 1916 Mad. 747, *Bangarayudu* v. *Perayya* (Opinion of the majority of the Full Bench and not of the dissenting Judge to be followed).

(1915) 26 Ind. Cas. 475 (476): 1915 Mad. 613, *Narayanasami* v. *Kamuri Ramayya.*

(1884) 10 Cal. 82 (84), *Korban Ally Mirdha* v. *Sharoda Prosad Aich.*

(1877-78) 3 Cal. 696 (701), *Prosunno Coomaree* v. *Sheikh Rutton.*

(1918) 46 Ind. Cas. 902 (903): 1918 Nag. 237, *Mt. Puhpi* v. *Mt. Ansuya.*

(1926) 1926 All. 346 (349, 350): 48 All. 432, *Ram Sahai* v. *Madan Lal.*

(1915) 29 Ind. Cas. 709 (709): 1915 L. B. 94, *Ma Thin Hton* v. *Ma Hnin Thet.*

(1923) 1923 All. 392 (393): 45 All. 425 (F. B.), *Yad Ram* v. *Sonder Singh.*

(1915) 28 Ind. Cas. 982 (982): 1916 Mad. 421, *Parasu Pattar* v. *Venkatachala Pattar* (Subordinate Court bound by finding in a case of a higher Court in that case).

(1925) 1925 Mad. 261 (262): 48 Mad. 695, *Ramaswami* v. *Chandra Kottayya.*

(1923) 1923 All. 231 (231), *Badri Prasad* v. *Mohar Singh.*

(20) 5 App. Cas. 787 (798), *Campbell* v. *Campbell.*

(1911) 9 Ind. Cas. 173 (176) (Mad.) (F. B.), *Suryanarayana* v. *Subraya* (But as far as possible the authority of former decisions ought to be supported and later decisions must,

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is of opinion that the former decisions of the Court are clearly wrong.[21]

14. **English and American Decisions.**—English and American decisions are not precedents and are not binding as authority upon Courts in India not administering English Law.[1] They may, however, be referred to with advantage as affording analogies in the following cases:—

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whenever possible, be treated as interpreting and limiting the application of earlier cases).

(1897) 24 Cal. 30 (34), *Esoof Hussain* v. *Fatima Bibi* (Later inconsistent statute to be followed).

(1932) 1932 Cal. 550 (551), *Charles Jones* v. *Emperor* (Judgments of Division Benches reported in unauthorised reports were preferred to one by single Judge in authorised reports).

(21) (1926) 1926 Mad. 530 (531): 49 Mad. 302, *Satyanarayana* v. *China Venkata Rao*.

(1927) 1927 Mad. 288 (289): 50 Mad. 403, *Mathonkandi Kannan* v. *Thayyil Pakkutti*.

(1927) 1927 Rang. 4 (14): 4 Rang. 313 (F. B.), In re, *Ma Mya* v. *Ma Thein* (Rangoon High Court not bound to follow the decisions of the Lower Burmah Chief Courts, but Subordinate Courts are bound by the authorised reports of Chief Courts).

(1928) 1928 Pat. 410 (419): 7 Pat. 690, *Umeshwardhari* v. *Neman Singh* (Patna High Court will not depart from *curses curiae* established in Calcutta).

(1928) 1928 Pat. 641 (649): 7 Pat. 613, *Rani Bhubaneshwari* v. *Manikham* (Do.).

(1917) 40 Ind. Cas. 517 (518): 1917 Pat. 575, *Mahamayya* v. *Mst. Sukhdiya* (Do.).

(1920) 54 Ind. Cas. 673 (674): 1920 Pat. 419, *Padarath* v. *Ratan Singh* (Do.).

(1918) 44 Ind. Cas. 146 (148): 1918 Pat. 91, *Krishnalal* v. *Nandeshwar* (Do.).

(1918) 46 Ind. Cas. 137 (138): 1918 Pat. 377, *Mahabir Prasad* v. *Nub Narain* (Do.).

(1918) 45 Ind. Cas. 203 (203): 1918 Pat. 457, *Khodda Buksh* v. *Bahadur Ali* (Do.).

(1929) 1929 Lah. 174 (175), *Lachman* v. *Naman* (Exact decision of Chief Court should be preferred to that of the High Court if it is not direct).

(1927) 1927 Sind 225 (226), *Shevakram* v. *Ghulam Singh* (Sind Suther Court Judgments are not binding on Judicial Commissioner's Courts).

(1927) 1927 Oudh 1 (2), *Mahabir Prasad* v. *Secretary of State* (Oudh Judicial Commissioner's Court decisions are not binding on the Chief Courts).

(1926) 1926 Oudh 367 (367), *Sheo Balak* v. *Emperor* (Oudh Judicial Commissioner's Court decision is not binding on the Chief Court).

(1926) 1926 Oudh 544 (544), *Dinia Din* v. *Farzand Hussain* (Do.).

(1928) 1928 Sind 166 (167), *Gobind Ram* v. *Emperor* (Bombay decisions are considered by the Sind Courts as of more authority than those of other High Courts).

(1924) 1924 Sind 75 (83): 17 S. L. R. 133, *Gunvis & Co.* v. *Amanmal* (Sind Judicial Commissioner's Courts have great deference to the decisions of the Bombay High Court).

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(1) (1918) 1918 P. C. 11 (20): 45 Cal. 878: 42 Ind. App. 73 (P.C.), *Imambandi* v. *Mutsaddi*.

(1883) 7 Bom. 341 (359) (F.B.), *Shivanathaji* v. *Joma Kashinath* (English decisions are not precedents but afford useful analogies).

(1919) 53 Ind. Cas. 213 (221): 1920 Mad. 427: 42 Mad. 871 (F.B.), *Seeni Nadan* v. *Muthuswami*.

(1912) 16 Ind. Cas. 601 (606) (Mad.), *Muthukrishnier* v. *Viraraghava Iyer* (Great care to be taken in applying to India English rules with regard to equitable rights).

(1917) 40 Ind. Cas. 126 (127): 1918 Mad. 700, *Naganatha* v. *Subramania* (English Law to be followed only if in conformity with justice, equity and good conscience).

(1923) 1923 Bom. 321 (350): 47 Bom. 843 (F.B.), *Wilkinson* v. *Wilkinson* (English judgments are in no better position than the opinion of eminent jurists).

(1924) 1924 Cal. 405 (408): 51 Cal. 62, *Chand Mull* v. *Debi Chand*.

(1924) 1924 Cal. 864 (867): 51 Cal. 745, *Brojolal* v. *Sharaju Bala Debi*.

(1924) 1924 Lah. 513 (522, 524): 5 Lah. 147 (F.B.), *Lee* v. *Lee* (Law of the land to be obeyed in preference to laws of other countries).

(1924) 1924 P. C. 40 (41): 51 Ind. App. 28: 51 Cal. 304 (P.C.), *India General Navigation & Ry. Co.* v. *Dhekari Tea Co.* (Reference to English cases unnecessary on points under Indian Law).

(1927) 1927 All. 246 (251): 49 All. 353, *Secretary of State* v. *Md. Ismail Khan* (Indian statute—Reference to English cases is likely to lead to misunderstanding).

(1927) 1927 Mad. 988 (990): 50 Mad. 961, *Sannidhiraju* v. *Secretary of State* (American decisions).

(1927) 1927 Rang. 183 (186): 5 Rang. 212, *Rangoon Municipality* v. *Sorathee Barabazaar Co.* (American decisions).

(1927) 1927 Sind 130 (131) (F.B.), *Firm of Gokul Doss* v. *Lachmandas*.

(1900) 28 Cal. 171 (175), *Sourendra Mohun* v. *Siromani*.

(1930) 19 Ind. Cas. 12 (16): 36 Mad. 544 (F.B.), *Annapurnamma* v. *Akkayya* (English cases are no precedents but may be referred to as explanatory of Indian statutes which are usually based on those decisions).

(1895) 18 Mad. 88 (91), *Damodara Mudaliar* v. *Secretary of State* (English law referred to).

(1897) 20 Mad. 97 (103), *Kondayya* v. v. *Narasimhalu* (English cases can be referred to if law is same).

(1926) 1926 Mad. 357 (358), *Ramachandra*

(1) Where an Indian Statute has been passed in the *same terms* and on the *same lines* as those of an English Statute and the latter has been authoritatively construed by English decisions.[2]

(2) Where an English or American decision is based upon *general legal principles* recognised by the laws of all civilised countries.[3]

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v. *Sankara Iyer* (Indian statute clear—Reference to English cases is of no use).
(1915) 28 Ind. Cas. 946 (947): 1915 Bom. 22: 39 Bom. 472, *Timan Gowda* v. *Benep Gowda* (Express words of Indian statute cannot be overridden by English rules).
(1909) 1 Ind. Cas. 829 (831): 36 Cal. 354, *Burn & Co.* v. *Colin McDonald* (English authorities not useful in dealing with codified law in India).
(1870) 7 Bom. H. C. R. 39 (41, 42), *Reg.* v. *Showdar*.
(1885) 8 Mad. 175 (178), *Parvathi* v. *Mannar*.
(1892) 15 Mad. 414 (415), *Hayes* v. *Christian*.
(1904) 27 Mad. 531 (534), *Venkatappayya* v. *Madula*.
(1910) 34 Mad. 29 (38), In re *Second Grade Pleaders*.
(1903) 30 Cal. 36 (76), *Ezra* v. *Secretary of State*.
(1909) 1 Ind. Cas. 738 (733): 36 Cal. 166, *Narendra Lal* v. *Emperor*.
(1922) 1922 Cal. 59 (62): 49 Cal. 682, *Ram Sagar* v. *Alek*.
(1918) 46 Ind. Cas. 513 (514): 46 Cal. 207: 1919 Cal. 512, *Beni Madhab* v. *Emperor*.
(1872) 9 Bom. H. C. R. 358 (368), *Reg.* v. *Navroji*.
(1899) 26 Cal. 653 (665, 666), *Girish Chander* v. *Jatadhan*.
(1896) 25 Cal. 512 (522), *Queen-Empress* v. *Abbas Ali*.
(1894) 21 Cal. 262 (264), *Griffiths* v. *Tezia*.
(1881) 6 Cal. 491 (495, 496), *Empress* v. *Nobo Gopal*.
(1871) 15 Suth. W. R. 69 (79, 80), In re *Ameer Khan*.
(1877) 1 Bom. 610 (619), *Reg.* v. *Hanmanta*.
(1933) 1933 P. C. 145 (147): 60 Ind. App. 196: 60 Cal. 1029 (P.C.), *Bejoy Singh Dudhuria* v. *Commissioner of Income-tax, Calcutta*.
[See (1904) 27 Mad. 551, *Anna Kumaru Pillai* v. *Muthupayal*.
(1910) 7 Ind. Cas. 629 (630): 38 Cal. 75, *Emperor* v. *Surendra Nath*.
(1910) 8 Ind. Cas. 119 (122): 38 Cal. 96, *Emperor* v. *Chaturbhuj*.
(1911) 39 Cal. 164, In re *Stallman*.
(1874) 21 Suth. W. R. 66 (67), *Peerun* v. *Field*.
(1866) 5 Suth. W. R. 80 (86), *Queen* v. *Elahee Bux*.
(1866) 6 Suth. W. R. 21 (30), *Queen* v. *Khyroollah*.
(1881) 5 Bom. 338 (359 to 362), *Queen* v. *Moorga Chetty*.]
(2) (1885) 7 All. 44 (50, 51), *Queen-Empress* v. *Ghulet*.
(1873-74) 2 Ind. App. 169: 3 Sar. 456 (P.C.), *Kathama Nachiar* v. *Dorasinga Thevar*.
(1879) 5 App. Cas. 342, *Trimble* v. *Hill*.
(1918) 44 Ind. Cas. 283 (286): 45 Cal. 188: 1918 Cal. 467, *Premsuk Das* v. *Udai Ram*.
(1915) 28 Ind. Cas. 53 (53): 1915 Pun. Re. 54: 1915 Lah. 405, *Piari*

Singh v. *Peshawar Bank* (Companies Act).
(1913) 18 Ind. Cas. 997 (1001) (Mad.), *Lovelock* v. *The Malabar Timber and Saw Mills, Ltd.*
(1921) 1921 Lah. 134 (135): 2 Lah. 239, *Joti Prasad* v. *Emperor*.
(1921) 1921 Mad. 524 (527): 44 Mad. 718, *Chief Commissioner, Income-tax* v. *North Anantapur Gold Mines, Ltd.*
(1916) 35 Ind. Cas. 942 (948): 39 Mad. 250: 1917 Mad. 525, *Mercantile Bank* v. *Official Assignee*.
(1933) 1933 Pat. 196 (199): 12 Pat. 216, *Pattison* v. *Bindhya Debi* (The Interest Act of India and Lord Tenderden's Act).
(1896) 20 Bom. 617 (622), *Municipality of Bombay* v. *Shapurji*.
(1892) 16 Bom. 414 (433), *Queen-Empress* v. *Vajivan*.
(1892) 16 Bom. 269 (272), In re *Gulabdas*.
(1870) 7 Bom. H. C. R. 64 (66), *Hamabai* v. *Bamanji*.
(1928) 1928 Lah. 609 (625, 626): 9 Lah. 701, *Khan Ghul* v. *Lakhan Singh*.
(1917) 41 Ind. Cas. 944 (946, 949): 1918 Cal. 858: 45 Cal. 111, *Ramendro Nath* v. *Brojendra* (English decisions of high authority are, in practice, though not in theory, binding on Indian Judges in such cases).
(1932) 1932 Bom. 344 (350), *Bhimaji* v. *Chuni Lal* (Do.).
(1883) 9 Cal. 371 (374), *Manu Miya* v. *Emperor* (English decisions in support of view taken of the Code—May be referred to).
(1898) 25 Cal. 512 (522), *Queen-Empress* v. *Abbas Ali* (Do.).
(1901) 28 Cal. 211 (217), *Queen-Empress* v. *Dole Gobind* (Do.).
(1925) 1925 Cal. 613 (615), *Cunanda* v. *Lala* (Do.).
(1914) 1914 Mad. 139 (140): 38 Mad. 797, *Venkatarama* v. *Swaminatha* (Do.).
(3) (1922) 1922 Pat. 104 (106): 1 Pat. 371, *Jagat Mohan* v. *Kalipado Ghosh* (Principles of justice, equity and good conscience, for instance).
(1874) 22 Suth. W. R. 279 (281): 1 Ind. App. 364: 3 Sar. 391 (P.C.), *Madras Railway* v. *Zamindar, Carveti nagaram*.
(1888) 16 Cal. 677 (682): 16 Ind. App. 44: 5 Sar. 309 (P.C.), *Nandi Singh* v. *Sitaram*.
(1880) 5 C. P. D. 295, *Scaramanga* v. *Stamp*.
(1848) 1848 Teg Rep. 283 (283), *Malcolm* v. *Smith*.
(1883) 7 Bom. 341 (359) (F.B.), *Shiva Nathaji* v. *Joma Kashinath*.
(1920) 56 Ind. Cas. 344 (346): 1920 Pat. 705, *Brahmanand* v. *Dand Bahadur* (Except as rules of justice, equity and good conscience rules of common law in England do not apply to India).
(1920) 55 Ind. Cas. 152 (153): 1920 Nag. 144, *Keshrimal* v. *Kadhai* (*e.g.*, rules of justice, equity and good conscience).

Preamble, Notes 14—15.

But it must be applied with reference to Indian conditions.[4]

(3) Where the point is a novel one and there is no precedent in India dealing with it.[5]

15. Reference to English Law.—Where the law is codified the Courts must construe the Code according to the wording of the statute. It is not open to the Courts to ignore the enacted law and apply a rule or principle derived from the English Law.[1] But as the Indian system of the criminal law is largely drawn from the English Law[2] the Court may, where no positive solution of a

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(1886) 5 Suth. W. R. 80 (92), *Queen* v. *Elahee Buksh*.
(1911) 11 Ind. Cas. 311 (312): 38 Cal. 880, *Golap Jan* v. *Bholanath*.
(1918) 46 Ind. Cas. 513 (514): 46 Cal. 207: 1919 Cal. 512, *Beni Madhab* v. *Emperor*.
(1900) 24 Bom. 423 (426), *Queen-Empress* v. *Tyabali* (Rules of interpretation —English decisions a good guide).
(1876) 1 Bom. 82 (85), In re *Jagjivan Nanabhan* (Do.).
(1890) 14 Bom. 180, *Queen-Empress* v. *Harilal* (Do.).
(1890) 14 Bom. 260, *Queen-Empress* v. *Nana* (Do.).
(1891) 15 Bom. 505 (510), *Queen-Empress* v. *Sarya* (Do.).
(1871) 15 Suth. W. R. Cri. Note 78, *Queen* v. *Nobodeep* (Do.).
(1871) 16 Suth. W. R. 28 (30, 32, 33, 35), *Emperor* v. *Bholonath* (Do.).
(1893) 21 Cal. 392 (399), *Moher Sheikh* v. *Queen-Empress* (Do.).
(1901) 24 Cal. 881 (883), *Tulsi* v. *Sweeny* (Do.).
(1898) 25 Cal. 333 (338), *Deputy Legal Remembrancer* v. *Ahmad Ali* (Do.).
(1870) 7 Bom. H. C. R. 39 (44), *Reg.* *Showdar* (Do.).
(1896) 20 Bom. 617, *Municipal Corporation* v. *Shapurji* (Do.).
(1903) 7 Cal. W. N. 883, *Brojendra Lal* v. v. *Emperor* (Do.).
(1903) 7 Cal. W. N. 853, *Nani Lal* v. *Corporation of Calcutta* (Do.).
(1893) 3 Mad. H. C. R. App. xi (xii) (Do.).
(1870) 5 Mad. H. C. R. 277, *Reg.* v. *Donoghue* (Do.).
(1879) 2 Mad. 362, *Bramson* v. *Municipal Corporation* (Do.).
(1881) 3 Mad. 129, *Vice-President, etc.* v. *Nelson* (Do.).
(1882) 6 Mad. 32, *Sithapathi* v. *Queen* (Do.).
(1888) 11 Mad. 250, *Queen-Empress* v. *Bellara* (Do.).
(1908) 35 Cal. 34 (48), *Kripa* v. *Annada*.
(1916) 33 Ind. Cas. 724 (725): 41 Bom. 390: 1916 Bom. 193, *Padgett* v. *Jamshetji*.
(4) (1928) 1928 Mad. 23 (23), *Munisami* v. *Vedachala*.
(1924) 1924 Cal. 240 (242): 50 Cal. 667, *Sunder Mull* v. *Ladhu Ram*.
(1881) 5 Bom. 338 (362, 363), *Empress* v. *Moorga Chetty*.
(5) 42 Ch. D. 321, In re *Missouri Steamship*.
(1933) 1933 All. 70 (71): 54 All. 1041, *Mt. Sabratan* v. *Dhanbat Gadariya*.

Note 15.

(1) (1925) 1925 P. C. 1 (8): 52 Cal. 197: 52 Ind. App. 40 (P.C.), *Barendra Kumar* v. *Emperor*.
(1932) 1932 All. 18 (22): 53 All. 642, *Emperor* v. *Joti Prasad Gupta*.
(1931) 1931 All. 183 (185): 53 All. 114, *Nazir Khan* v. *Ram Mohan Lal*.
(1907) 29 All. 685 (696, 704), *Emperor* v. *Ganga Prasad*.
(1872) 4 N.-W. P. 46 (48), *Queen* v. *Ramsarun Chowbey*.
(1891) 15 Bom. 452 (481), *Queen-Empress* v. *Dada Ana*.
(1877) 1 Bom. 610 (619), *Reg.* v. *Hanmanta*.
(1924) 1924 Cal. 1 (3, 13): 51 Cal. 1, *Government of Assam* v. *Sahebulla*.
(1922) 1922 Cal. 59 (66): 49 Cal. 682, *Ram Sagar* v. *Alak*.
(1918) 46 Ind. Cas. 513 (514): 46 Cal. 207: 1919 Cal. 512, *Beni Madhab* v. *Emperor*.
(1914) 1914 Cal. 901 (904): 41 Cal. 1072, *Beni Madhab* v. *Emperor*.
(1913) 18 Ind. Cas. 660 (661): 40 Cal. 433, *Kari* v. *Emperor*.
(1911) 11 Ind. Cas. 311 (312): 38 Cal. 880, *Golap Jan* v. *Bholanath*.
(1900) 27 Cal. 839 (847), Re *Abdur Rahim*.
(1897) 24 Cal. 881 (882, 883), In re *Tulsi Bewa*.
(1870) 14 Suth. W. R. 27 (27), *Green* v. *Dalaney*.
(1869) 11 Suth. W. R. 29 (30), Re *Gorachand Ghose*.
(1932) 1932 Mad. 21 (21), *Venkatachala* v. *Emperor*.
(1930) 1930 Mad. 441 (442): 53 Mad. 439, *Veerappa* v. *Emperor*.
(1921) 1921 Mad. 323 (323): 44 Mad. 640, *Sabapathi* v. *Perumal*.
(1909) 2 Ind. Cas. 33 (53): 32 Mad. 384, *Mylapore Krishnaswami* v. *King-Emperor*.
(1932) 1932 Oudh 145 (147): 6 Luck. 435, *Shiam Sunder* v. *Emperor*.
(1931) 1931 Rang. 235 (243, 244): 9 Rang. 404, *Aung Hla* v. *Emperor*.
(1924) 84 Ind. Cas. 58 (58, 60): 16 S. L. R. 150, *Hoondraj Mithomal* v. *Emperor*.
[See (1866) 5 Suth. W. R. 80 (92), *Queen* v. *Elahee Buksh*.
See (1912) 14 Ind. Cas. 896 (945): 35 Mad. 397, *Muthukumaraswami* v. *King-Emperor*.
See (1916) 36 Ind. Cas. 833 (833): 1917 Mad. 748, *Secretary of State* v. *Sengammal*.]
(2) (1923) 1923 All. 322 (323): 45 All. 323, *Mahadeo Prasad* v. *King-Emperor* (Subject to several differences).
(1921) 1921 All. 76 (76), *Pahalwan* v. *Sahib* (Do.).
(1895) 9 Bom. 40 (44), Re *Shaik Fakruddin*.
(1901) 28 Cal. 211 (217), *Queen-Empress* v. *Dolegobind*.
(1933) 1933 Sind 179 (181): 27 Sind L. R. 230, *Seth Wadhumal* v. *Mallik Noor Ahmad*.
[See (1872) 9 Bom. H. C. R. 358 (368), *Reg.* v. *Navroji*.

particular matter is found in the Indian Act,[3] or where a particular section of the Act requires elucidation,[4] adopt the principles of English Law in so far as they are founded on justice and are in accord with the general tenor of the Indian Act. In doing so it should be borne in mind that the state of society and system of laws in the two countries are in several matters very different.[5] In particular, the special technicalities of English Law should be avoided.[6]

Preamble, Note 15.

The Madras High Court, overruling prior decisions to the contrary[7] has held[8] that the English Law does not become applicable to India merely by its

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(1868) 5 Bom. H. C. R. 85 (89), *Reg.* v. *Fattechand.*]

(3) (1879) 4 Cal. 483 (491, 492), *Emperor* v. *Asutosh.*

(1904) 28 Bom. 479 (498), *Emperor* v. *Bal Gangadhar.*

(1925) 1925 Cal. 501 (507), *Singleton* v. *King-Emperor* (Where there is no repugnancy in application of English law).

[See (1897) 1 Cal. W. N. 465 (474), *Empress* v. *Kali Prassonna.*

(1914) 1914 P. C. 155 (157) (P.C.), *Ibrahim* v. *King* (Case dealing with Corea and China Statute).]

(4) (1887) 14 Bom. 260 (265, 266), *Queen-Empress* v. *Nana.*

(1919) 50 Ind. Cas. 660 (666): 1919 Cal. 514: 46 Cal. 895, *Ramesh Chandra* v. *Emperor* (When the provisions of the Code strongly resemble the English Law on the point).

(1918) 45 Ind. Cas. 261 (265): 1918 Mad. 231: 40 Mad. 976, Re *Dudekula* (Conflict in Indian statute—Indian statute based on English—English rule may be examined).

[See (1891) 15 Bom. 351 (360), *Queen-Empress* v. *Slater.*

(1909) 1 Ind. Cas. 910 (911): 36 Cal. 174, *Jamini Mullick* v. *Emperor* (Same principles guiding both English and Indian Law—Former may be considered).]

(1908) 31 Mad. 140 (142, 145) (F. B.), *Rahimadulla* v. *Emperor.*

[See (1909) 2 Ind. Cas. 193 (195): 32 Mad. 338, *Godicherla Harisarvothama Rao* v. *King-Emperor.*

(1883) 9 Cal. 371 (374, 376), *Manu Miya* v. *Emperor.*

(5) (1851) 5 Moo. Ind. App. 271 (291): 1 Sar. 434 (P.C.), *Dougler* v. *The Collector of Benares.*

(1881) 5 Bom. 338 (363), *Emperor* v. *Moorga Chetty.*

(1866) 5 Suth. W. R. 80 (92), *Queen* v. *Elahee Buksh.*

(1867) 8 Suth. W. R. 21 (28), *Queen* v. *Khyroollah.*

(1866) 6 Suth. W. R. 21 (28), *Queen* v. *Khyroollah.*

(1902) 25 Mad. 61 (80), *Subramania Iyer* v. *King-Emperor.*

(1888) 15 Cal. 109 (135, 141), *Md. Jackariah* v. *Ahmed.*

(1909) 1 Ind. Cas. 738 (738, 739): 36 Cal. 166, *Narendra Lal* v. *Emperor.*

(1925) 1925 Oudh 337 (346): 28 Oudh Cas. 8, *Md. Hasan* v. *Ali Haider.*

(1933) 1933 Mad. 293 (296): 56 Mad. 546, *Ponnu Chettiar* v. *Sambasiva Ayyar.*

[*For example, see the following*:—

(1870) 14 Suth. W. R. 59 (61, 62), *Queen* v. *Hurry Prosad* (Jury system).

(1895) 19 Bom. 749 (762), *Queen-Empress* v. *Ramchandra* (Do.).

(1879) 1879 Pun. Re. No. 35, page 97, *Shera* v. *Empress.*

(1888) 15 Cal. 109 (138, 139), *Md. Jackariah* v. *Ahmad* (Law of discovery).

(1908) 35 Cal. 141 (150), *Apurba Krishna* v. *Emperor* (English Newspaper—Libel Act).

(1862) 1 Mad. H. C. R. 38 (43), *Queen* v. *Aidrus Sahib* (Law of Property).

(1868) 4 Mad. H. C. R. 51 (52), Re *Palani Chetty* (Do.).

(1903) 26 Mad. 55 (59, 61, 62), Re *Palani Palagan* (Do.).

(1933) 1933 Oudh 269 (271), *Chhotelal Lal* v. *Emperor* (It is generally unsafe to apply the doctrine *Falsus in uno falsus in omnibus* to evidence of witnesses in India).

(1933) 1933 Oudh 226 (228, 229): 8 Luck. 397, *Har Dayal Singh* v. *Emperor* (*Falsus in uno, falsus in omnibus*—Applicability).

(1885) 7 All. 174 (176), *Queen-Empress* v. *Jwala Prasad* (English practice in re; objection of joint trials).

(1891) 15 Bom. 491 (496), *Queen-Empress* v. *Fakirappa* (Joinder of charges).

(1898) 2 Cal. W. N. 341 (346), *Ekram Ally* v. *Emperor* (Do.).

(1909) 2 Ind. Cas. 33 (53): 32 Mad. 384, *Mylapore Krishnaswami* v. *Emperor* (Charge).

(1877) 1 Bom. 610 (619), *Reg.* v. *Hanmanta* (Approver's evidence).

(1895) 22 Cal. 596 (603, 604), *Dharam Chand* v. *Queen-Empress* (Power of delegation by sheriff).

(1897) 20 Mad. 189 (195, 198, 199), *Queen-Empress* v. *Arumugham* (Power and duties of the Magistrates and Police).

(1917) 37 Ind. Cas. 465 (466): 1917 Cal. 456, *Sarat Chandra* v. *Mobarak* (Words used in restricted sense in English Law—No presumption of similar use in Indian Law).

(1866) 6 Suth. W. R. 21 (22), *Queen* v. *Khyroollah* (Evidence by husband and wife against each other).]

(6) (1914) 1914 Cal. 456 (469): 41 Cal. 350, *Romesh Chandra Banerjee* v. *Emperor.*

(1914) 1914 Cal. 886 (887): 41 Cal. 754, *Manindra* v. *Emperor.*

(1924) 1924 Cal. 1031 (1032, 1033): 52 Cal. 112, *Umadasi* v. *Emperor.*

[See (1909) 2 Ind. Cas. 285 (286): 36 Cal. 405, *Girija Sunder* v. *Emperor* (Definitions in English or foreign statutes cannot be taken).

See (1915) 30 Ind. Cas. 465 (472): 1916 Cal. 693, Re *Ramsubhag Singh* (*Per* Fletcher, J.).

See (1914) 1914 Cal. 456 (469): 41 Cal. 350, *Romesh Chandra Banerjee* v. *Emperor.*]

(7) (1921) 1921 Mad. 458 (459): 44 Mad. 913, Re *Ramaswami Aiyar.*

[See (1897) 20 Mad. 189 (199) (F.B.), *Queen* v. *Arumugham.*]

(8) (1926) 1926 Mad. 906 (908): 49 Mad. 728 (F.B.), *Tiruvengada Mudaly*

Preamble, Notes 15—18.

being not expressly excluded by the Indian statute.

16. Conflict with other Laws.—Where the language of an Indian statute is clear, the statute is to be administered as it stands, even though it might conflict with international law.[1] An Indian Law is not invalid because it conflicts with the English Law, or any other system of law; and it is not open to the Courts to vary the effect of plain and unambiguous words to avoid such a conflict.[2] Without prejudice to the foregoing rules it may be stated that the legislature is presumed not to enact anything contrary to international or common law.[3]

17. Scheme and arrangement.—Where the language is *ambiguous* it is permissible to construe the provisions of a particular section with reference to the scheme and arrangement of the Act.[1] It has been held that the division into chapters is an organic feature of the Criminal Procedure Code[2] and that all the sections falling under one chapter must be interpreted as having reference exclusively to matters within the purview of that chapter.[3] In fact, the separation of chapters is of such importance that it was considered necessary to re-enact for purposes of one chapter the provisions already laid down in another.[4] But, since all the provisions of an Act must be construed harmoniously, it is permissible to interpret a doubtful point occurring in one part by a consistant reference to the express provisions on similar points in other parts of the Act.[5]

18. Interpretation Clause.—It has been seen already[1] that, as a general rule of construction, words in a statute should receive their ordinary and plain meaning unless a contrary intention is apparent from the statute. Where, therefore, a statute provides a definition or an interpretation clause the question arises as to how far the plain or primary meaning of words is superceded by the statutory definition. It cannot, certainly, be that the legislature intended, by a definition clause, to prevent the operation of a word in its primary or obvious sense under all circumstances.[2] The real object of the definition

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v. *Tirupurasundari Ammal* (Overruling 36 Mad. 216 (F.B.)].
(1923) 1923 Mad. 523 (525, 530, 531): 46 Mad. 605 (F.B.), *Gopal Naidu* v. *King-Emperor* (Overruling 44 Mad. 913).

Note 16.

(1) (1927) 1927 Bom. 278 (333, 337): 51 Mad. 516, *Hatimbhai* v. *Framroz* (Construction of Letters Patent).
(1925) 1925 Cal. 34 (41, 45): 52 Cal. 1, *Rogers Pratt* v. *Secretary of State*.
(1924) 1924 Lah. 513 (522): 5 Lah. 147, *Lee* v. *Lee*.
(2) (1924) 1924 Lah. 513 (514, 518): 5 Lah. 147, *Lee* v. *Lee*.
(3) (1927) 1927 Bom. 278 (333, 337): 51 Bom. 516, *Hatimbhai* v. *Framroz*.
[See (1921) P. D. 204 (217), *Keyes* v. *Keyes*.]

Note 17.

(1) (1868) 5 Bom. H. C. R. Cri. 69 (73, 74, *Reg.* v. *Krishna*.
(1907) 31 Bom. 480 (487), *Emperor* v. *Atmaram*.
(1920) 1920 Mad. 337 (337, 338, 343): 43 Mad. 511, *Elachuri* v. *King-Emperor*.
(1881) 5 Bom. 338 (347, 349), *Emperor* v. *Moorga Chetty*.
(1907) 34 Cal. 913 (915), *Bepin Behari* v. *Corporation of Calcutta*.
(1907) 31 Bom. 480 (487), *Emperor* v. *Atmaram*.
(1910) 7 Ind. Cas. 963 (964, 965): 35 Bom. 63, *Emperor* v. *Mulshankar*.
(2) (1906) 33 Cal. 292 (294), *Budhai Sheik* v. *Emperor*.
(1868) 5 Bom. H. C. R. 69 (73, 74), *Reg.* v. *Krishna Parashram*.
(3) (1868) 5 Bom. H. C. R. 69 (74), *Reg.* v. *Krishna*.
(4) (1868) 5 Bom. H. C. R. 69 (73, 74), *Reg.* v. *Krishna*.
(5) (1871) 16 Suth. W. R. Cri. 28 (30), *Queen* v. *Bholanath*.

Note 18.

(1) [See note 1 and F.-N. (2), thereto.]
(2) (1881) 7 Q. B.D. 502 (503, 504), *London School Board* v. *Jackson*.
(1880) 5 Q. B. D. 386 (389), *R.* v. *Pearce*.
(1878-1880) 2 All. 74 (86), *Uda Begum* v. *Imamuddin*.
(1917) 18 Cr. L. J. 404 (406) (Pat.) *Manik Ram* v. *Emperor* (An interpretation clause which sets out what a word "Denotes" and not what it means is not strictly a definition clause).

clause, on the other hand, is to include in the connotation of a word certain things which the legislature, under certain circumstances, intends to include but which may not fall within the ordinary acceptation of the term.[3] If, therefore, the subject or context renders the special meaning given by the definition clause less applicable than the ordinary meaning, the definition clause cannot preclude the ordinary construction. The definition clause will thus be applicable unless a different intention appears from the subject or context.[4] Though the definition clause is always controlled or limited by any specific provisions in the same Act[5] a definition given in another statute not *in pari materia*[6] or the incidents attached to the word by another statute[7] cannot be made applicable except so far as provided by the Act itself.[8] *See also* Notes to Section 4.

19. "Means and includes".—The word "includes" used in a definition clause is not intended to be exhaustive of the things denoted by the word defined. It is a word of extension. By 'including' certain things in the definition others are not thereby excluded.[1] But when a definition exhaustive of the signification of the word is intended, the expression 'means'[2] or 'means and includes'[3] is used.

20. "May".—*Prima Facie* the word 'may' is an enabling word; but under certain circumstances enabling words may have a compulsory force.[1] The question in each case must be solved *aliunde* and in general, from the context, the particular provisions or the general scope and object of the enactment.[2]

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(3) (1883) 8 App. Cas. 798 (801), *Robinson* v. *Barton Eccles*.
(1838) 7 A. & E. 480, *R.* v. *Cambridgeshire*.
(1865) L. R. 1 Q. B. 84 (86), *Wakefield* v. *West Riding, etc., Rail Co.*
(1926) 1926 Sind 58 (61), *Brooks* v. *Barwick*.
(1911) 11 Ind. Cas. 610 (612): 35 Bom. 412, *Emperor* v. *De Souza* (This is specially so in a clause which defines by "including" something).
[See (1879) 4 Q. B. D. 375 (384, 385), *Nutter* v. *Accrington*.]
(4) (1913) 17 Ind. Cas. 570 (571): 40 Cal. 360, *Dilan Singh* v. *Emperor* ("Complaint" in S. 195, Cr. P. Code, by subject and context includes report of Police-officer though S. 4 (*h*) excludes it).
(1905) 32 Cal. 379 (384, 385), *Kali* v. *Dinbandhu* ("High Court" in S. 195, Cr. P. Code, used with "different intention" than what is found in the definition in S. 4 (*j*)].
(1897) 20 Mad. 470 (472, 474) (F.B.), *Gantapalli* v. *Gantapalli*.
(1928) 1928 Lah. 325 (328): 9 Lah. 649, *Dial Singh* v. *Gurudwala Sri Akali Tokhat*.
(1879) 2 All. 218 (225), *Emperor* v. *Sarmukh* (Definition of 'Native States' in Foreign Jurisdiction and Extradition Act XI of 1872).
[See (1904) 30 Cal. 910 (915, 916), *Tara Prasad Laha* v. *Emperor*.]
(5) (1879) 2 All. 205 (208), In re *Gurdayal*.
(6) (1908) 31 Mad. 408 (412), *Mylapore Corporation of* v. *Krishnaswami Madras*.
(1932) 1932 Pat. 281 (283), *Abdul Rauf* v. *Banarsi Lal*.
(7) (1886) 12 Cal. 430 (433), *Umachurn* v. *Ajadannissa*.
(1926) 1926 Sind 58 (61), *Brooks* v. *Barwick* (*e.g.*, cannot confer jurisdiction).
(8) (1893) 15 All. 141 (143), *Queen-Empress* v. *Ramlal* ('Court' in S. 195, Cr. P. Code—Definition in I. P. Code to apply as per S. 4 (2) of Cr. P. Code—Definition in Evidence Act not to apply).

Note 19.

(1) (1879) 4 Q. B. D. 284 (288), *Queen* v. *Hermann*.
(1878) 2 Mad. 5 (7), *Emperor* v. *Ramanjiyya*.
(1925) 1925 All. 737 (739, 741): 47 All. 934, *Bilas Singh* v. *King-Emperor*.
(1906) 30 Bom. 558 (566), *Municipal Commissioner* v. *Mathurabai*.
(1879) 4 Cal. 483 (493), *Emperor* v. *Ashutosh*.
[See (1898) 22 Bom. 235 (237), *Queen-Empress* v. *Nagalakalu*.
See however (1899) 1899 A. C. 99 (105, 106), *Dilworth* v. *Commissioner, etc.* (But context may make 'includes' equivalent to "means and includes").]
(2) (1901) 1901 All. W. N. 10, *Queen-Empress* v. *Narpat Singh*.
(1877) 2 Mad. 5 (7), *Queen-Empress* v. *Ramanjiyya*.
(3) (1879) 4 Cal. 483 (493), *Empress* v. *Ashutosh*.
[See (1898) 22 Bom. 235 (237), *Queen-Empress* v. *Naglakalu*.]

Note 20.

(1) (1931) 1931 Pat. 1 (1), *Harnandan* v. *Baliram*.
[See also (1841-1846) 8 Moo. I. A. 488 (492, 493), In re *Alloo Paroo*.
(2) (1880) 5 App. Cas. 214 (235), *Julius* v. *Lord Bishop of Oxford*.

Preamble, Notes 21—22

21. Amendments.—Where there is an amendment to a statute the question is whether it affects the determination of a particular matter and not whether such matter is *excluded* from its operation.[1] Where, therefore, the provisions of the old statute are not referred to in the amending statute, they must be considered irrespective of the amendment.[2] But where new provisions are substituted for old ones the former alone should be looked to for construing the matter dealt with by them.[3]

22. Construction of a Penal Statute.—A penal statute must be construed strictly;[1] that is to say, nothing is to be regarded as within the meaning of the statute which is not within the letter or which is not expressly and intelligibly described in the very words of the statute itself.[2] As a penal statute affects the liberty of a subject, it must be construed, in case of doubt or ambiguity in the language, in *favour* of the subject.[3] No liability should be held to

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(1933) 1933 Sind 9 (11, 12): 26 S. L. R. 416, *Emperor* v. *Dharamdas* (In S. 35, Cr. P. Code, 'may' means 'shall').

Note 21.

(1) (1924) 1924 Cal. 881 (884), *Nandlal* v. *Jogendra*.
[See (1922) 1922 Mad. 512 (514): 45 Mad. 820, In re *Madura Muthu*.
(1913) 18 Ind. Cas. 939 (943): 40 Cal. 123, *Secretary of State* v. *Purnendu* (An amendment may have the effect of classifying the law and not necessarily changing it).]
(2) (1924) 1924 Cal. 881 (882), *Nandlal* v. *Jogendra*.
(3) (1932) 1932 All. 188 (190): 54 All. 416, *Ali Hussain* v. *Lachmi Narain Singh*.

Note 22.

(1) (1932) 1932 Pat. 281 (284), *Abdul Rauf* v. *Banarsi Lal*.
(1925) 1925 Mad. 239 (240), In re *Puvanur Athamu*.
(1905) 2 Cri. L. Jour. 19 (20) (All.), *Patandin* v. *King-Emperor*.
(1900) 5 Cal. W. N. 108, *Bissumbhar Singh* v. *Queen-Empress*.
(1887) Rat. 349, *Keshav* v. *Ramchandra*.
(1904) 1 Cri. L. Jour. 205 ((Cal.), *Ohedi Mala* v. *King-Emperor*.
(1912) 13 Ind. Cas. 279 (281) (Cal.), *Kader Sunder* v. *Emperor*.
(1916) 33 Ind. Cas. 289 (297): 42 Cal. 1094: 1916 Cal. 431, *Indar Chand* v. *Emperor*.
(1912) 13 Cri. L. Jour. 853 (854) (Bom.), *Emperor* v. *Nga Thima*.
(1915) 30 Ind. Cas. 731 (735): 1915 Lah. 409: 1915 Pun. Re. No. 23, *Umar Din* v. *Crown* (Construed in natural sense).
(1898) 3 Cal. W. N. 307 (308), *Kalinarain Roy* v. *Shaikh Bajoo* (Rule applicable to penal provisions of other statutes).
(1914) 1914 All. 101 (102), *Sat Narain Prasad* v. *Emperor* [S. 46 (*a*), Agra and Oudh Water Works Act I of 1891].
[See (1932) 1932 All. 441 (441): 54 All. 411, *Emperor* v. *Sikhdar* (Criminal law should not be interpreted with canons of civil law).
See (1912) 17 Ind. Cas. 25 (29) (All.), *Collector of Ghazipur* v. *Balbhader Singh*.]
(2) (1881) 8 Cal. 214 (216, 218), *Emperor* v. *Kola Halong*.
(1901) 5 Cal. W. N. 108 (109), *Bisumbhur* v. *Queen-Empress*.
(1912) 13 Ind. Cas. 390 (391) (Rang.), *Ngo Po Chein* v. *Emperor*.
(1901) 1901 Pun. Re. No. 24, *Lakhmi Chand* v. *The Emperor of India*.
(1915) 29 Ind. Cas. 325 (328): 1915 Nag. 2: 11 Nag. L. R. 76, *Sayyid Rahim* v. *Emperor*.
(3) (1923) 1923 Mad. 523 (524): 46 Mad. 605, *Gopal Naidu* v. *King-Emperor*.
(1928) 1928 Sind 1 (6, 7), *Emperor* v. *Noor Mahomed*.
(1921) 1921 Bom. 322: 45 Bom. 220, *Vrijvallubedas-Jekisondas* v. *Emperor*.
(1927) 1927 Lah. 338 (340): 8 Lah. 320, *Misri Lal* v. *Emperor*.
(1927) 1927 All. 536 (537): 49 All. 864, *Said* v. *King-Emperor*.
(1929) 1929 All. 210 (211): 51 All. 506, *Radhey Shiyam* v. *Mewa Lal*.
(1929) 1929 Bom. 81 (84): 53 Bom. 149, In re *Bai Aisha*.
(1933) 1933 Pesh. 3 (6), *Public Prosecutor, Peshawar Division* v. *Sh. Muqarrab*.
(1928) 1928 Nag. 219 (220), *Seth Balkishen* v. *Emperor*.
(1928) 1928 Sind 1 (7): 22 S.L.R. 157, *Emperor* v. *Noor Mahomed*.
(1927) 1927 Bom. 483 (487): 51 Bom. 896, *Emperor* v. *Khudar bin Usuealli Bohri*.
(1912) 14 Ind. Cas. 974 (975, 976): 36 Bom. 504, *Emperor* v. *Dattatraya*.
(1871) 7 Beng. L. R. 564 (581), *Queen* v. *Bholanath Mookerjee*.
(1870) 7 Bom. H. C. R. Cr. 39 (40, 49) (F.B.), *Reg.* v. *Shawdar Chenar*.
(1889) 13 Bom. 600 (621), In re *Ganesh Narayan*.
(1887) 10 All. 150 (154), *Queen-Empress* v. *Imam Ali*.
(1888) 10 All. 115 (117), *Queen-Empress* v. *Sheodin*.
(1910) 32 All. 198 (200), *Emperor* v. *Brij Pal Saran* [S. 62 (1) (*b*) of Indian Stamp Act II of 1899].
(1869) 6 Bom. H. C. R. Cri. 15 (29), *Reg.* v. *Connon*.
(1901) 25 Bom. 680 (693), *King-Emperor* v. *Prabhu Shankar*.

attach and no penalty imposed by mere implication;[4] and Courts should not extend or narrow down the scope or meaning of a penal provision by loose or strained construction.[5] **Preamble, Note 22.**

But when a matter is both within the letter and the spirit of the enactment, then a penal statute is to be construed like any other instrument and the Court is not to find or make any doubt or ambiguity in its language.[6] These rules apply also to the penal provisions of other statutes.[7]

(1916) 36 Ind. Cas. 145 (146): 38 All. 354: 1916 All. 64, *Husain* v. *Emperor*.
(1884) 10 Cal. 1024 (1025), *Queen-Empress* v. *Grees Chunder*.
(1922) 1922 Bom. 138 (141): 46 Bom. 61, *Emperor* v. *Motilal*.
(1919) 4 Pat. L. J. 435 (445), *Pekhu* v. *King-Emperor*.
(1932) 1932 Nag. 174 (176): 28 N. L. R. 302, *Ganpat Rao* v. *Emperor*.
(1909) 1 Ind. Cas. 378 (378): 33 Bom. 22, *Emperor* v. *Dhondhu*.
(1909) 1 Ind. Cas. 387 (388): 33 Bom. 25, *Emperor* v. *Balu Saluji*.
(1876) 1 Bom. 308 (312), *Reg.* v. *Bhista*.
(1924) 1924 Lah. 440 (443): 5 Lah. 1, *Crown* v. *Mihan Singh*.
(1894) 19 Bom. 247 (249), *Queen-Empress* v. *Vasta Chela*.
(1886) 10 Bom. 263 (270, 271), *Queen-Empress* v. *Mangal Tekchand*.
(1905) 28 Mad. 37 (39), Re *Anusoori*.
(1900) 24 Mad. 271 (274), *Rattigadu* v. *Konda Reddi*.
(1888) 10 All. 115 (117), *Emperor* v. *Sheodin* (S. 518 of the Code of 1882 (S. 144 of the present Code): though it did not prescribe the time limit of two months could not be construed to give the Magistrate powers to pass an order, in effect, for perpetual injunction).
(1931) 1931 Mad. 177 (179): 54 Mad. 75, *Periyasami Moopan*, In re.
[See (1901) 28 Cal. 594 (595), *Sheoprakash Singh* v. *Rawlins*.
(1897-1901) 1 U. B. R., p. 291 (291), *Awe* v. *Queen-Empress*.
(1920) 1920 Mad. 336 (343, 344): 43 Mad. 511, *Yeluchuri* v. *King-Emperor*.]
(4) (1879) 2 All. 301 (306), *Emperor* v. *Lalai*.
(1887) 10 All. 150 (154), *Queen-Empress* v. *Imam Ali*.
(1891) 14 All. 38 (41), *Queen-Empress* v. *Niddha* (The maxim "Expressio unius exclusus alterius" applies).
(1901) 28 Cal. 504 (508), *Kazi* v. *Queen-Empress*.
(1916) 35 Ind. Cas. 668 (669): 10 S. L. R. 9: 1916 Sind 8, *Sitho* v. *Emperor*.
(5) (1923) 1923 Mad. 523 (531): 46 Mad. 605, *Gopal* v. *King-Emperor* (No common law to be invoked in face of statute).
(1913) 19 Ind. Cas. 204 (206): 37 Bom. 402, *Emperor* v. *Jafar* (Words not to be added to statute for supposed consistency).
(1888) 10 All. 150 (154), *Queen-Empress* v. *Imam Ali* (Words not to be added to section).
(1887) 1887 Rat. 349, Re *Kishav Ramchandra* (Do.).
(1919) 49 Ind. Cas. 481 (486): 1919 Pat. 27, *Musst. Kesar* v. *King-Emperor* (Do.).
(1910) 8 Ind. Cas. 123 (124) (Cal.), *Gobind* v. *Apkar*.
(1931) 1931 Nag. 177 (178): 27 N.L.R. 270, *Rameshwar* v. *Emperor*.
(1892) 15 Mad. 323 (330), *Srinivasa* v. *Annasami* (Language should not be strained against an accused).
(1910) 5 Ind. Cas. 847 (849): 33 Mad. 502, *Choragudi* v. *Emperor* (Do.).
(1910) 7 Ind. Cas. 604 (605): 4 S. L. R. 44, *Dhanji Desmany* v. *Taylor*.
(1909) 2 Ind. Cas. 233 (236): 5 N. L. R. 59, *Prithwigar* v. *Emperor*.
(1893-1900) L. B. R. 284 (284), *Empress* v. *Nga Shwe Ton*.
(1883-1900) L. B. R. 121 (122), *Empress* v. *Kya Ban*.
(1909) 10 Cri. L. Jour. 395 (400): 3 S. L. R. 66, *Emperor* v. *Deumal*.
(6) (1899) 23 Mad. 164 (166), *Perumal* v. *Municipal Commissioners for Madras* (Per *Subramaniya Iyer, J.* (quoting from the "Gauntlet" L. R. 4 P.C. 184 (191)].
(1870) 7 Bom. H. C. R. 39 (40), *Reg.* *Shavdar* (Courts must give effect to plain meaning and not narrow down).
(1931) 1931 Cal. 288 (292): 58 Cal. 180, *Satyendra Kumar Das* v. *Chairman, Municipal Commissioners of Dacca*.
(1857-60) 7 Moo. Ind. App. 72 (103): 1 Sar. 598, *Nga Hoong* v. *Queen* (We are not in any way to alter or construe differently the rules of criminal law in consequence of the supposed justice of a particular case).
[See (1922) 1922 P. C. 257 (261): 45 Mad. 475: 49 Ind. App. 211 (P.C.), *Radhakrishna* v. *Sundara* (Even in regard to penal provisions with a strict construction no construction is open to a Court of law which is in violation of what the Court considers to be the true meaning of the provision).]
[See (1933) 1933 Cal. 280 (281, 282): 60 Cal. 742, *Jogendra Chandra Roy* v. *Superintendent of the Dum Dum Special Jail*.
(1896) 21 Bom. 517 (522), *Imperatrix* v. *Appaji Bin Yadavrao*.
(1915) 30 Ind. Cas. 456 (457): 9 S. L. R. 43: 1915 Sind 43, *Harumal Parmanand* v. *Emperor*.]
(7) (1869) 1 N.-W. P. 302 (303).
(1876) 1 Bom. 82 (85), *Jagjivan* v. *Nanabhai*.
(1931) 1931 All. 421 (423): 53 All. 445, *Gurucharan Prasad* v. *Newspaper, Benares City*.
(1917) 38 Ind. Cas. 308 (309): 39 All. 309: 1917 All. 181, *Emperor* v. *Piari*.
(1914) 1914 All. 101 (102), *Sat Narain* v. *King-Emperor*.
(1916) 36 Ind. Cas. 877 (877): 1917 All. 444, *Banerjee* v. *Emperor*.
(1909) 2 Ind. Cas. 408 (409) (All.),

Preamble, Notes 23—24.

23. Rules and bye-laws.—Rules and bye-laws framed under a statutory power for carrying out the objects of the statute are a part of it provided the rules and bye-laws are *intra vires*.[1] But if they are in excess of the statutory power, unreasonable or repugnant to the statute they are *ultra vires*.[2] Rules and bye-laws cannot extend the scope[3] or affect the construction[4] of the Act. They must be strictly construed.[5]

24. Recognised construction.—A construction placed by a competent legislature in a latter statute upon the provisions of an earlier statute is binding even though erroneous; because though such an erroneous opinion does not make the law, it may be so declared as to operate in future.[1] But the interpretation long put upon an enactment by persons whose duty it is to construe, execute and apply the law while having no binding force on Courts may, in case of ambiguity, be given due weight and not simply disregarded.[2]

Dassu v. *King-Emperor*.
(1887) 11 Mad. 253 (256), *Queen-Empress* v. *Bellara*.
(1912) 17 Ind. Cas. 25 (29) (All.), *Collector of Ghazipur* v. *Balbhadar*.
(1892) 16 Bom. 414 (429), *Queen-Empress* v. *Vajivan*.
(1889) 14 Bom. 180 (187), *Queen-Empress* v. *Harilall*.
(1877) 3 Bom. 150 (151), *Emperor* v. *Miyali*.
(1910) 8 Ind. Cas. 493 (494): 34 Mad. 255, *Muthu* v. *Emperor*.
(1908) 31 Mad. 408 (413), *Mylapore Krishnasami* v. *Corporation of Madras*.
(1891) 19 Cal. 35 (46), *Queen-Empress* v. *Jogendra Chunder Bose*.
(1897) 1 Cal. W. N. 465, *Emperor* v. *Kali Prasanna*.
(1888) 10 All. 115 (117), *Queen-Empress* v. *Sheodin*.
(1922) 1922 Bom. 97 (98, 99): 46 Bom. 657, *Matubhai* v. *Emperor*.
(1931) 14 Nag. L. J. 37 (38), *Godra Lungrya* v. *Namdeo*.
(1927) 1927 Rang. 193 (199): 5 Rang. 244, *Chettyar* v. *Official Assignee*.
(1932) 1932 Pat. 281 (284), *Abdul* v. *Banarsi*.
(1919) 49 Ind. Cas. 481 (486): 1919 Pat. 27, *Msst. Kesar* v. *King-Emperor*.
(1881) 8 Cal. 259 (262), *Emperor* v. *Soddanung* [Stamp Act].

Note 23.

(1) (1910) 5 Ind. Cas. 738 (738): 33 Mad. 511, *Crown Prosecutor* v. *Kothandaramiah*.
[See (1923) 1923 Pat. 1 (6, 7): 2 Pat. 134, *Emperor* v. *Abdul Hamid* (Distinction drawn between rules declared as law by the Act itself and rules not so declared—The latter alone held open to attack by Court).]
(1925) 1925 Nag. 393 (394), *Emperor* v. *Shribullabh* (Rules are *intra vires* if authorised under some law or other).
(2) (1931) 1931 Lah. 476 (480): 12 Lah. 635, In re *Khairati Ram*.
(1912) 13 Cri. L. Jour. 482 (483): 40 Cal. 41, *Maniruddin* v. *Abdul* (Government circular cannot authorise an infringement of law).
(1932) 1932 All. 110 (111): 54 All. 1, *Muhammadi* v. *Emperor*.
(1932) 1932 All. 70 (71), *Chanchal* v. *Emperor*.
(1932) 1932 All. 537 (539): 54 All. 611, *Mt. Naziran* v. *Emperor*.
(1921) 1921 Lah. 134 (135): 2 Lah. 239, *Joti Pershad* v. *Emperor*.
(1933) 1933 Cal. 243 (245): 60 Cal. 689, *S. R. Varma* v. *Emperor* (Unreasonableness).
(1933) 1933 All. 148 (150), *Satyanarayana* v. *Yorke* (Do.).
(1921) 59 Ind. Cas. 545 (546): 1920 L. B. 69, *Pillai* v. *Moulmein Municipal Committee* (Distinction between bye-laws of public bodies and those of corporate bodies for profit—Former to be given benevolent construction).
[See (1907) 5 Cri. L. Jour. 281 (282), *Debi Saran Misser* v. *Emperor*.
See also (1924) 1924 Lah. 78 (78): 4 Lah. 10, *Crown* v. *Puran Singh*.]
(3) (1917) 40 Ind. Cas. 322 (327) (Cal.), *Amrit Lal* v. *Corporation of Calcutta*.
(4) (1926) 1926 Cal. 856 (858): 53 Cal. 615, *S. K. Imtaz* v. *Dina Nath*.
(5) (1866) 1 Ind. Jour. N. S. 102 (105), *Justices of the Peace for the Town of Calcutta* v. *Maharanee of Burdwan*.
(1931) 1931 Cal. 688: 58 Cal. 510, *Ashutosh* v. *Sudhanjhu Bhusan*.
(1933) 1933 Rang. 68 (69): 11 Rang. 182, *Mudaliar* v. *Maymyo Municipal Committee*.

Note 24.

(1) (1889) 11 All. 490 (503, 504) (F.B.), *Abdullah* v. *Mohan*.
(2) (1910) 7 Ind. Cas. 890 (892) (Cal.), *Corporation of Calcutta* v. *Benoy* (Interpretation by Municipal bodies of Municipal Acts).
(1921) 1921 Cal. 40 (43): 48 Cal. 161, *Killing Valley Tea Co.* v. *Secretary of State* (View of the Income-tax Department).
(1933) 1933 Mad. 489 (490): 56 Mad. 837, *Madras Provincial Co-operative Bank, Ltd.* v. *Commissioner of Income-tax, Madras* (Continuous *practice* in the Income-tax Department and in decided cases).
(1931) 1931 Lah. 320 (323, 324), *Chunna Mal* v. *Commissioner of Income-tax, Lahore* (Do.).
(1932) 1932 Sind 107 (110), *Jethmal Parsram* v. *Emperor* (Construction of an Ordinance by Executive Government.

25. Repeal.—An earlier statute will be considered to have been repealed by a later one only if there are express words to that effect.[1] Repeal by *implication* cannot be assumed unless the two Acts are so plainly repugnant to each other that effect cannot be given to both of them at the same time.[2] This rule holds good even in cases where the earlier is a special Act and the later one general Act.[3] Where a *subordinate* Legislature, authorised to rescind, vary or modify the legislation of a superior legislature, intends to do so it must be done only *expressly*.[4]

Where the provisions of a statute are, by reference, incorporated into another, the subsequent repeal or amendment of the provisions in the former statute will not have the same effect in the latter statute unless expressly stated.[5]

A proceeding taken against a person under a temporary Act, like an ordinance, will *ipso facto* terminate on the expiry of the Act.[6] Penalties, however, that have been incurred while a statute is in force, are not, in the absence of an express provision to the contrary, affected by the mere fact that the statute has ceased to be in force.[7]

See also notes to section 2.

26. "Judicial discretion".—The law in many instances leaves certain matters to the *discretion* of the Court. The discretion, in such cases must not be exercised in an arbitrary, vague or fanciful manner, but on *judicial principles*.[1] Again where there is no indication in the Act or rules of the grounds

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[See also (1884) 10 Cal. 166 (184), *Mathoora Kant* v. *India General Steam Navigation Co.* (View long held by Courts of law and the public persons affected by the Act is worthy of consideration).]

Note 25.

(1) (1909) 4 Ind. Cas. 281 (283): 34 Bom. 252, *Municipal Commissioner* v. *G. I. P. Ry. Co.*
(1925) 1925 Mad. 385 (392): 48 Mad. 331, *Krishnaswami Ayyar* v. *Swaminatha* (General words not sufficient).
(1872) 7 Mad. H. C. R. App. VI (Do.).
(1922) 1922 Pat. 269 (271): 1 Pat. 104, Re *Hazra*.
(1931) 1931 All. 817: 53 All. 524, *Ajmad Ali* v. *Sadat Begum*.
[See (1919) 50 Ind. Cas. 824 (827): 42 Mad. 540: 1919 Mad. 7, *Govinda Iyer* v. *Rex*.]
(2) (1925) 1925 Mad. 385 (392, 393, 396, 397): 48 Mad. 331, *Krishnaswami* v. *Swaminatha*.
(1883) 6 Mad. 32 (36), *Sitapathi Nayudu* v. *Queen*.
(1909) 4 Ind. Cas. 281 (283): 34 Bom. 252, *Municipal Commissioner* v. *G. I. P. Ry.*
(1910) 7 Ind. Cas. 963 (965): 35 Bom. 68, *Emperor* v. *Mulshankar*.
(1931) 1931 All. 567 (568), *Shakir* v. *Chandor* (Rules).
(1933) 1933 All. 241 (244): 55 All. 432 (F.B.), *An Advocate of Benares* v. *Judges of the High Court, Allahabad*.
[See (1906) 4 Cri. L. Jour. 489 (Cal.), *Kuleda Prasad* v. *Emperor*.
(1924) 1924 Cal. 980 (980), *Abdul Jabbar* v. *Mafizuddin* (Earlier Act with certain penalties—Later Act with different penalties—Former repealed though no express words (*obiter*).]
(3) (1925) 1925 Mad. 385 (392, 393, 396, 397): 48 Mad. 331, *Krishnaswami* v. *Swaminatha*.
(1927) 1927 Cal. 432 (443), *King-Emperor* v. *Rajah Probhatchandra* (When subsequent Act makes no reference to earlier Act, the two should be construed together).
[See (1931) 1931 P. C. 149 (153): 58 Ind. App. 259: 59 Cal. 55 (P.C.), *Secretary of State* v. *Hindustan Co-operative Insurance Co., Ltd.*]
(4) (1925) 1925 Mad. 385 (396, 397): 48 Mad. 331, *Krishnaswami* v. *Swaminatha*.
(5) (1931) 1931 P. C. 149 (152): 58 Ind. App. 259: 59 Cal. 55 (P.C.), *Secretary of State* v. *Hindustan Co-operative Insurance Co., Ltd.*
(1903) 26 Mad. 394 (401), *Sivakulandai* v. *Ammayyan*.
(6) (1933) 1933 All. 669 (670), *Bansgopal* v. v. *Emperor*.
(7) (1933) 1933 Cal. 280 (281), *Jogendra Chandra Roy* v. *Superintendent of the Dum Dum Special Jail*.

Note 26.

(1) (1879) 5 Cal. 259 (265), *Harbans* v. *Bhairo Prasad*.
(1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji* (Discretion not to depend upon resolutions of the Executive Government).
[See also (1915) 16 Cri. L. Jour. 629 (630): 38 Mad. 489 (490), *Govinda* v. *Perumal* (Subordinate Magistrates are not legally bound by District Magistrates General instructions in particular cases).]
(1924) 1924 Bom. 1 (18): 48 Bom. 87, *Bhagachand* v. *Secretary of State*.

Preamble, Note 26. upon which the discretion is to be exercised it is a mistake for the Courts to lay down any hard and fast rules or grounds in that regard.[2]

PART I.
PRELIMINARY.

CHAPTER I.

Sec. 1.

Short title: Commencement.

1.* (1) This Act may be called the CODE OF CRIMINAL PROCEDURE, 1898; and it shall come into force on the first day of July, 1898.

Extent.

(2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) heads of villages in the Presidency of Fort St. George; or

(*c*) village police-officers in the Presidency of Bombay:

Provided that the Local Government may, if it thinks fit, * * * by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

Synopsis.

	Note No.
CRIMINAL PROCEDURE	1
EXTENT—BRITISH INDIA	2
SPECIAL LAW	3
LOCAL LAW	4

***(CODE OF 1898—S. 1.)**

The words "with the sanction of the Governor-General in Council" have been deleted by Act XXXVIII of 1920.

(2) (1914) 1914 Cal. 597 (599): 41 Cal. 446, *Hume* v. *Poresh Chunder Ghose.*

SPECIAL JURISDICTION .. .. 5 Sec. 1, Note 1.
SPECIAL POWERS 6
POLICE AT CALCUTTA, MADRAS AND BOMBAY .. 7
VILLAGE HEADMAN IN MADRAS 8
VILLAGE POLICE OFFICER IN THE PRESIDENCY OF BOMBAY 9
ANY SPECIAL FORM OF PROCEDURE 10
RETROSPECTIVE EFFECT OF THE CODE—*See* Note 3 of the Preamble 11

Other Topics.

Native States. See Note 2, Pts. 13-16.
Object of the Code. Note 1.
Other places where the Code does not apply. See Note 2, Pt. 12.
Specific provisions to the contrary. Note 7 Pt. 3.
Transfer of Territory from British India. Note 2, Pts. 20, 21-a.

1. Criminal Procedure.—As has been seen in Note 2 to the Preamble, the Code of Criminal Procedure provides for the punishment and prevention of offences under the substantive Criminal Law.[1] Accordingly the Criminal Courts

(CODE OF 1882—S. 1.)

The following clauses in the Act of 1882 were repealed:

(*b*) any officer duly authorised to try petty offences in military bazars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay, respectively;

[Repealed by the Cantonments Act (13 of 1889)].

(*e*) and nothing in Sections 174, 175 and 176 shall apply to the Police in the town of Madras.

[Repealed by Act V of 1889 (an Act to abolish the office of Coroner of Madras)].

The proviso was newly added in the Act of 1898.

(CODE OF 1872—Ss. 1, 540 and 541.)

Short title. 1. This Act may be called "The Code of Criminal Procedure".

Local extent. It extends to the whole of British India, but shall not, except as hereinafter provided, affect the procedure of the High Courts or Police Magistrates in Presidency towns;

Commencement. And it shall come into force on the first day of September 1872.

Saving of Jurisdiction of Presidency Police Magistrates. 540. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police, or the Police in the Presidency towns, except so far as this Act expressly provides for the same.

Section 1—Note 1.
(1) (1922) 1922 Mad. 448 (444), In re *Ramaswami*.
(1888) 10 All. 58 (61, 63), *Queen-Empress* v. *Wazir Zan*.

Sec. 1, Note 1.

are not to entertain matters which are properly within the jurisdiction of Civil Courts.[2] But the existence of a civil remedy is no reason for a Criminal Court

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Saving of jurisdiction and procedure of landholders, Heads of villages. Village police officers. Cantonment Magistrates.

541. Nothing in this Act shall be held to alter or affect—

(*a*) the jurisdiction or procedure of landholders specially empowered according to law in the Presidency of Bombay,

(*b*) the jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,

(*c*) the jurisdiction or procedure of village police officers in the Presidency of Bombay,

(*d*) the jurisdiction or procedure of any officer duly authorised and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay, respectively, for the trial of petty offences in Military Bazars at cantonments and stations occupied by the troops of those Presidencies respectively.

(CODE OF 1861—Ss. 1, 441 and 442.)

Short title.

1. This Act shall be called the Code of Criminal Procedure.

Act not to take effect in Presidency Towns or Strait Settlement.

441. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Chief Commissioner of Police, the Police Magistrates or the Police of the Towns of Calcutta, Madras, and Bombay and the Settlement of Prince of Wales Island, Singapore, and Malacca, except so far as this Act expressly provides for the same.

Saving of jurisdiction and procedure of Heads of Villages, Village Police Officers, etc.

Officers exercising jurisdiction over petty offences in Military Cantonments.

442. Nothing in this Act shall be held to alter or affect the jurisdiction, duties, or procedure of landholders specially empowered according to law in the Presidency of Bombay, nor to alter or affect the jurisdiction or procedure of the Heads of Villages in the Presidency of Fort Saint George, nor to alter or affect the jurisdiction, duties or procedure of Village Police Officers in the Presidency of Bombay nor to alter or affect the jurisdiction or procedure of any Officer duly authorised and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay, respectively, for the trial of petty offences in Military Bazars at Cantonments and stations occupied by the troops of those Presidencies respectively.

(1869) 12 Suth. W. R. 36 (37) (F.B.), *Queen* v. *Ameeruddeen* (Object of Code is to simplify procedure of Criminal Courts).

(1891) 1891 Rat. 577 (579), *Queen-Empress* v. *Abdul*.

(1895) 1895 Rat. 776 (778), *Queen-Empress* v. *Ramachandra*.

[See also (1921) 1921 Sind 8 (8): 19 S. L. R. 59, *Pitumal* v. *The Crown* (Jurisdiction is a branch of adjective law).

See (1871) 15 Suth. W. R. 71, Notes (72-N), *Queen* v. *Nabadwip* (The object of the law of procedure is the protection of the innocent and the punishment of the guilty).]

(2) (1923) 1923 All. 544 (544), *Hukumchand* v. *Emperor* (Removal of earth from land without owner's consent—Defence being a customary right—Held civil nature).

(1924) 1924 All. 1 (7): 45 All. 656, *Abdul Wahid* v. *Abdullah Khan* (S. 133, Cr. P. Code—Public way disputed—Question to be referred to Civil Court).

(1914) 1914 Sind 17 (17): 7 S. L. R.

to refuse trial of an *offence* where one has been committed.[3] In criminal trials the duty of the Court is more onerous than in civil cases. While in civil cases the Court will decide on the evidence that the parties choose to produce, it is the duty of a Judge, in a criminal case to see that all relevant evidence is brought before it.[4]

Sec. 1, Notes 1—2.

2. Extent—British India.—Crime being in its essential nature local[1] the British Indian Courts have jurisdiction to try any person for an offence committed within their respective jurisdictions in British India.[1-a] In exceptional cases, however provision has been made for dealing with offences committed outside British India.[1-b] Whenever, in either case, the criminal law is set in motion in British India the law of procedure applicable is the Code of Criminal Procedure, subject to any special or local law or special jurisdiction as mentioned in this section.

The expression British India has been defined in S. 15 of the Indian Penal Code as the territories which are or may become vested in His Majesty by the statute 21 and 22, Vic. Ch. 106 entitled 'An Act for the better Government of India'. This is the definition applicable to the Code of Criminal Procedure by virtue of Sub-section 2 of section 4 of this Code. *See also* the definition in the General Clauses Act, 1897.[2]

The following places have been held to be within British India:—

The Khasi and Jaintia Hills,[3] the Laccadive Islands and Aden,[4] the

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100, *Ramzan* v. *Noor Mahomed Yacob*.

(1900) 27 Cal. 131 (132), *Averam Das* v. *Abdul Rahim*.

(1923) 1923 Lah. 329 (2) (330), *Karam Chand* v. *Mathura Das*.

(1925) 1925 Lah. 289 (290), *Ladha Shah* v. *Zaman Ali*.

(1913) 14 Cri. L. Jour. 128 (128) (Lah.), *Anant Singh* v. *Emperor*.

(1911) 12 Cri. L. Jour. 50 (55): 1910 Pun. Re. No. 33, *Emperor* v. *Bishen*.

(1905) 1905 Pun. Re. No. 13, p. 33, *Hemraj* v. *Khuda Baksh*.

(1923) 71 Ind. Cas. 789 (791) (Pesh.), *Kemchand* v. *Emperor*.

[See also (1932) 1932 Pat. 215 (217): 11 Pat. 523, *Ghyasuddin Ahmed* v. *Emperor* (Criminal Courts ought to be cautious in their opinions on questions of title).

See also (1932) 1932 Pat. 189 (191), *Matte Mandal* v. *Emperor* (Do.).

See (1906) 1906 Pun. Re. No. 12, p. 55, *Atar Singh* v. *Prem Singh*.]

(3) (1933) 1933 All. 42 (42), *Lal Bahadur* v. *Emperor* (Fact of encumbrance suppressed in a sale deed—Offence of cheating to be tried though sale deed contains covenant for damages).

[See also (1921) 60 Ind. Cas. 430 (431): 1920 Pat. 810, *Manindra Kishore Jha* v. *Clairsmith* (S. 145, Criminal Procedure Code—Actual possession may be found by Criminal Court to be not in accordance with Civil Court process records).]

(4) (1921) 1921 All. 202 (204): 43 All. 283, *Emperor* v. *Janaki Prasad*.

Note 2.

(1) (1898) 25 Cal. 20 (30) (P. C.), *Muhammad* v. *Queen-Empress*.

(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu* (There must be jurisdiction over the place of *delict*. This rule may be modified by statute).

(1893) 16 Mad. 463 (463), *Queen-Empress* v. *Paranga*.

(1914) 1914 Cal. 725 (725), *Moheshwari* v. *King-Emperor*.

(1932) 1932 Cal. 753 (755), *Jitendranath Ghose* v. *Chief Secretary to the Government of Bengal* (Foreign subject liable if offence within British India).

(1867) 4 Bom. H.C.R. Cr. 38 (39), *Reg.* v. *Bechar Mava* (Subject of a Foreign state, offence not committed within British territory—No jurisdiction).

(1928) 1928 Sind 161 (164), *Wheeler* v. *Emperor* (Foreigner—Offence completed in British India—Accused is subject to British Indian jurisdiction though illegally brought into British India).

[See (1906) 28 All. 372 (374), *Emperor* v. *Baldewa*.

See (1918) 1918 Lah. 49 (50): 1918 Pun. Re. No. 23, *Raj Bahadur* v. *Emperor* (Abetment by foreigner outside British India).

(1873) 10 Bom. H.C.R. 356 (357), *Reg.* v. *Pirtal* (Do.).

See (1868) 9 Suth. W. R. Cr. 29 (29, 30), *Motee Chand* v. *Mohendranath Haldar* (Where doubt if a place is British India Court should inquire).

(1-a) See S. 2 of the Penal Code.

(1-b) See Ss. 3 and 4 of the Penal Code and Ss. 54, 186 and 188, *infra*.

(2) The General Clauses Act X of 1897, S. 2 (7).

(3) [See (1877) 3 Cal. 63 (74, 75), *Emperor* v. *Burah*.]

(4) (1890) 13 Mad. 353 (356, 358), *Queen-Empress* v. *Cheria Koya*.

Sec. 1, Note 2.

Palk's Bay (on the Indian side)[5], Coorg,[6] the non-feudatory Zamindaris in Central Provinces,[7] the Island of Perim,[8] the Andaman and Nicobar Islands,[9] the cantonment of Wadhevan,[10] and the Town and Fort of Jhansi.[11]

In the case of certain special tracts, though they are British territory, the ordinary jurisdiction under the Criminal Procedure Code has been taken away; they are governed by special regulations.[12]

The tributory Mahals of Mahurbhuaj[13] and Orissa[14] the Civil Station of Wadhevan[14-a] and the Nahir[15] and Foreign[16] states are not British India.

In the case of certain areas outside British India the Criminal Procedure Code is, however, in force by virtue of the exercise of special powers vested in the Governor-General in Council[17] or by treaty[18] or under orders in Council of

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[See (1905) 2 Cri. L. Jour. 75 (76): 29 Bom. 575, *Emperor* v. *Comlay* (Aden).
See (1933) 1933 Bom. 194 (196), *Hirachand* v. *Venidas* (Do.).
See (1906) 30 Bom. 246 (249), *Municipal Officer, Aden* v. *Ismail* (Do.).
See (1895) 1895 Rat. 825 (825), *Queen* v. *Naradin* (Do.).]

(5) (1904) 27 Mad. 551 (572), *Anna Kumaru* v. *Muthu Payal*.

(6) (1865) 2 Mad. H. C. R. 448-n, *Reg.* v. *Bain*.

(7) (1912) 13 Ind. Cas. 965 (972, 973): 39 Cal. 615: 39 Ind. App. 31 (P.C.), *Bir Bikram* v. *Secretary of State*.

(8) (1886) 10 Bom. 258 (261), *Queen-Empress* v. *Mangal Tekchand*.

(9) [See (1885) 9 Bom. 244 (249), *Triccam Chand* v. *B. B. and C. I. Ry.*]

(10) (1885) 9 Bom. 244 (248), *Triccamchand* v. *B. B. and C. I. Railway*.

(11) (1889) 11 All. 490 (499, 504) (F. B.), *Abdulla* v. *Mohan* (Town and Fort of Jhansi).

(12) (1900) 27 Cal. 654 (654), *Queen-Empress* v. *Sonai Mugh* (Chittagong Hill Tracts).
(1899) 26 Cal. 874 (878), *Soonderji Nanjee* v. *Maylon* (North Cachar Hills).
(1911) 12 Cri. L. Jour. 10 (11) (Cal.), *Darsingh* v. *King-Emperor* (Garo Hills).
(1887) 16 Cal. 667 (675), In the matter of *Bichitranund* v. *Bhugbut Perai* (The tributory Mahal of Kherenjar).
(1916) 36 Ind. Cas. 581 (582): 1916 Bom. 313, *Emperor* v. *Khalpa* (Mewar Estates in West Khandesh).

(13) (1882) 8 Cal. 985 (990-992) (F. B.), *Empress* v. *Keshur Mohajan*.
(1882) 9 Cal. 288 (288), *Emperor* v. *Hurrokole*.
(1916) 33 Ind. Cas. 304 (304): 1917 Cal. 612, *Bhuta* v. *Doma*.
(1902) 6 Cal. W. N. 573 (574): 29 Cal. 400, *Khatoo* v. *Ratan*.
[But see (1881) 7 Cal. 523 (532), *Hurscr Mahapatro* v. *Dinobundo Patro* (Impliedly overruled by 8 Cal. 985 (F. B.).]

(14) (1902) 29 Cal. 400 (401, 402), *Ratan Mahanti* v. *Khatoo Sehoo*.

(14-a) (1912) 13 Cri. L. J. 790 (792): 37 Bom. 152, *Emperor* v. *Chimanlal*.

(15) (1900) 2 Bom. L R. 337 (337), *Queen-Empress* v. *Ranchhod Daya*.
(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu* (Mysore).
(1884) 7 Mad. 354 (355), *Siddha* v. *Pilgiri* (Do.).
(1870) 6 Mad. H. C. R. App. iii (iv) (Do.).
(1889) 1 Weir 40 (40), In re *Venkatai Shetty* (Do.).
(1893) 16 Mad. 463 (463), *Queen* v. *Paranga* (Cochin).
[See (1908) 35 Cal. 478 (493) (P. C.), *Pestonji* v. *Shahpurjee* (Secunderabad—Assigned only for Military occupation).]
(1894) 21 Cal. 177 (179), *Hossain Ali Mirza* v. *Abid Ali Mirza* (Do.).
(1906) 33 Cal. 219 (253) (P. C.), *Hemchand Devchand* v. *Azam Sakarlal* (Kathiawar).
(1912) 34 All. 118 (120, 121), *Emperor* v. *Ram Naresh Singh* (Benares State).
(1911) 11 Ind. Cas. 1006 (1007) (All.), *Emperor* v. *Saheb Din* (Do.).
(1907) 34 Cal. 576 (580), *Prabu* v. *Saligram* (The family domains of the Maharajah of Benares were British territory before 1911).
(1886) 10 Bom. 186 (188), *Queen-Empress* v. *Abdul Latif* (Civil station at Rajkot).
(1910) 6 Ind. Cas. 640 (641): 1910 Pun. Re. No. 14, *Bishen Das* v. *Emperor* (Bashahr State).
[See (1861) 1 Bom. H. C. R. App. lxxvi (lxxxiv), *Ramachandra Dada* v. *Dada Mahadev* (Sangli is an independent State).]
[See (1887) 10 Mad. 21 (21), *Gregory* v. *Vadakasy* (Travancore).]

(16) (1882) 5 Mad. 23 (24), *Bapu Datch* v. *Queen-Empress* (Goa).
(1923) 1928 All. 64 (65): 45 All. 18, *Fakhorulla* v. *Ram* (Basra British occupation only for Military purposes).

(17) (1915) 31 Ind. Cas. 373 (374): 1916 Mad. 589: 39 Mad. 942, In re *G. G. Jerimiah* (Civil and Military Station at Bangalore).
(1911) 12 Cri.L.Jour. 42 (42): 34 Mad. 346, *Public Prosecutor* v. *Marchant* (Do.).
(1889) 12 Mad. 39 (41), In re *Hayes* (Do.).
(1911) 12 Cri. L. Jour. 535 (535): 34 Mad. 343, *E. R. Logan* v. *Romer* (Do.).
[See (1886) 9 Mad. 356 (357), *Scott* v. *Ricketts* (Do.).]

(18) (1867) 3 Mad. H. C. 354 (360, 362), *Queen* v. *Venkanna* (Sundoor State—Jurisdiction over Europeans and

His Majesty.[18-a]

As to the applicability of the Code to the Scheduled Districts, *see* the Scheduled Districts Act, 1874 and the connected notifications and also the undermentioned cases.[19]

The transfer of a part of the British Territory in which an offence was committed, to a Native State will not affect the jurisdiction of a British Indian Court to proceed with an appeal[20] or with the trial[21] in a case validly pending before it on the date of such transfer. Nor does the transfer of one district from one Presidency to another in British India prevent the Criminal Procedure Code from operating therein or deprive the accused of his rights under the Code.[21-a]

Territorial Waters.—This expression denotes that part of the sea extending from the seashore to a distance of a marine league (three miles). This area is within the territorial limits of the state on which it abuts and is part of it for purposes of jurisdiction.[22]

The High Seas.—The High Seas are those parts of the seas which are beyond the limits of the territorial waters. It is a recognised principle of International Law that a ship on the High Seas is a floating island belonging to the state whose flag it is flying. By virtue of British Parliamentary Statutes extended to operate in British India[23] the British Indian Courts have jurisdiction to try

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their servants and other residents not being Native subjects of the Raja).
(1898) 25 Cal. 20 (31): 24 Ind. App. 137: 1897 Pun. Re. No. 6 (P. C.), *Mohd. Yusuf-ud-din* v. *The Queen-Empress* (Lands occupied by Hyderabad State Railways).
[See (1903) 30 Cal. 872 (878): 30 Ind. App. 154 (P. C.), *Mohd. Yusuffudin* v. *Secretary of State* (Do.).]
(1920) 1920 Lah. 235 (236): 1 Lah. 406 *Radha Krishn* v. *Emperor* (Lands occupied by Gwalior State Railway).
(1903) 5 Bom. L. R. 873 (875), *Emperor* v. *Raghunatha Rao* (Railway Station in the Native State of Kalol).
[See (1900) 24 Bom. 471 (472), In re *Rattansee Purushotam* (Muscat).]

(18-a) (1896) 1896 Rat. 852 (852), *Queen-Empress* v. *Abdur Rahman* (Uganda).
(1898) 1898 Rat. 971 (971), *Queen-Empress* v. *Yakobo* (Do.).
(1894) 1894 Rat. 710 (711), *Queen-Empress* v. *Abdul Razak* (Mambossa).

(19) (1917) 41 Ind. Cas. 641 (643): 1917 Bom. 224: 41 Bom. 657, *Emperor* v. *Nazar*, (Khandeah).
(1890) 13 Mad. 353, *Queen-Empress* v. *Cheria Koya* (Lacadive Islands).
(1891) 14 Mad. 121 (122, 125), *Queen-Empress* v. *Budari Jani* (Agency Tracts of Ganjam and Vizagapatam).
(1900) 23 Mad. 329 (343, 353), *Maharaja, Jeypore* v. *Papayyamma* (Do.).
(1912) 13 Cri. L. Jour. 850 (851) (Mad.), *Queen-Empress* v. *Mangal Tekchand* (Do.).
(1914) 1914 P. C. 140 (143): 42 Cal. 116: 41 Ind. App. 197 (P. C.), *Maha Prasad* v. *Ramani* (Sonthal Parganas).
(1914) 1914 Cal. 452 (454): 41 Cal. 915, *Darbari* v. *Bhoti* (Do.).
(1914) 23 Ind. Cas. 876 (b) (Cal.), *Golan Nazab* v. *Panchanam* (Do.).
(1917) 40 Ind. Cas. 174 (175): 1917 Pat. 367, *Kumar Satya* v. *Dwarka* (Do.).
[See (1886) 12 Cal. 536 (538, 539), *Dular Datt Rai* v. *Nijabat Hosein* (Do.).
See (1891) 18 Cal. 247 (250), Re. *Wilson* (Do.).]
(1914) 1914 Cal. 607 (608): 41 Cal. 876, *Sardhari* v. *Hukum* (Do.).
(1921) 1921 Pat. 45 (46), *Tekait Dey* v. *Bhuk* (Do.).
[See (1872) 17 Suth. W. R. 11 (11), *Queen* v. *Boydonath* (Do.).]

(20) (1911) 33 All. 578 (579), *Mahabir* v. *King-Emperor*.
(1911) 11 Ind. Cas. 1006 (1007) (All.), *King-Emperor* v. *Saheb Din*.

(21) (1912) 34 All. 451 (454), *Emperor* v. *Ganga*.
(1912) 34 All. 118 (120), *King-Emperor* v. *Ram Naresh Singh*.
[But see (1876) 1 Bom. 367 (461): 3 Ind. App. 102 (P.C.), *Damodar* v. *Devram* (Civil suits).]

(21-a) (1864) 2 Bom. H. C. R. 106 (111, 116, 117), *Reg.* v. *Venkataswami*.

(22) [See (1894) 18 Bom. 636 (661, 667), *Alter Caufman* v. *Bombay Government*.
See (1916) 35 Ind. Cas. 902 (906, 907): 1916 P. C. 21: 39 Mad. 617: 43 Ind. App. 192 (P.C.), *Secretary of State* v. *Chellikani*.]

(23) (1901) 25 Bom. 636 (638), *King-Emperor* v. *The Chief Officer of Mustri* (Those statutes are set out in the judgment).
[See (1875) 1 Weir 898, In re *William John Reardon*.
See (1871) 8 Bom. H. C. R. Cri. 68 (67, 68, 76), *Reg.* v. *Kastya Rama*.]

Sec. 1, Notes 2—3.

offences committed on the High Seas by a British subject on a British ship the procedure applicable being that of the Criminal Procedure Code.[24]

3. **Special Law.**—A special Law is a law applicable to a particular subject.[1] It does not include local family law[2] or the English Common Law.[3] For instances of special laws, *see* the undermentioned cases.[4] This section enacts that nothing in the Code shall *affect* any special law in force. The mere existence of a special law, therefore, does not exclude the operation of the Criminal Procedure Code unless the special law expressly or impliedly provides in that behalf[5] where, however, there is a special enactment on a specific subject

(24) (1927) 1927 Mad. 688 (688), *Sengodai Vannan*, In re.
(1901) 25 Bom. 636 (638), *King-Emperor* v. *The Chief Officer of Mustri* (Substantive law also to be I. P. C.).
(1890) 14 Bom. 227 (230), *Queen-Empress* v. *Sheik Abdool Rahiman* (Do.).
(1911) 10 Ind. Cas. 705 (711, 712): 5 L. B. R. 221, *Po Thaung* v. *Emperor* (Do.).
(1912) 13 Cri. L. Jour. 246 (246, 247): 39 Cal. 487, *Emperor* v. *Dwarka Poonja* (But substantive law to be English Law).
(1894) 21 Cal. 782 (784), *Queen-Empress* v. *Gunning* (Do.).
(1889) 16 Cal. 238 (244), *Queen-Empress* v. *Barton* (Do.).
[See (1918) 1918 Bom. 249 (250): 42 Bom. 234, *Punja Guni* v. *Emperor* (No jurisdiction if the ship is not British).
See (1870) 5 Mad. H. C. R. App. xiii (xiv).
See (1868) 1 Beng. L. R. Cr. Cas. 1 (9, 10).
But see (1870) 7 Bom. H. C. R. 89 (107, 110), *Framji Hormasji* v. *The Commissioner and Deputy Commissioner, Customs, Salts and Opium* (This case no longer law—See 14 Bom. 227).]

Note 3.

(1) See definition in S. 41, I. P. Code.
[See (1914) 1914 Low. Bur. 145 (146): 7 L. B. R. 63, *King-Emperor* v. *Po Han* (Special Law under S. 41, I. P. Code construed. Whipping Act not such law).]
(2) (1899) 22 Mad. 247-N, *Ayya Pattar* v. *Kaliani Ammal*.
(1899) 22 Mad. 246 (247), *Venkata Krishna Pattar* v. *Chinna Kutti*.
(1919) 1919 Mad. 193 (194), *Parapatti Chinna* v. *Shankunni*.
(3) (1925) 1925 Rang. 345 (347): 3 Rang. 524, *T. F. R. Mcdonnell* v. *King-Emperor*.
(4) (1892) 16 Bom. 159 (159), *Queen-Empress* v. *Mohd. Rajudin* (The Coroners' Act).
(1886) 10 Bom. 181 (182), *Queen-Empress* v. *Gustadji Barjorji* (Bombay Act V of 1878, Ss. 3 and 56).
(1918) 1918 Bom. 70 (71): 43 Bom. 310, In re *Murlidar* (Indian Extradition Act, Ss. 8 and 8-A override S. 496, Cr. P. Code).
(1923) 1923 Mad. 339 (339), *Kuppuswami*, In re (Abkari Act, offence under —Cr. P. Code not applicable).
(1929) 1929 Mad. 604 (605): 52 Mad. 613, *Fernando* v. *Fernando* (Do.) —So also Opium Act).
[See also (1915) 28 Ind. Cas. 156 (157): 1915 Mad. 1159, *Mohd. Kasim* v. *King-Emperor* (Do.).
(1872) 1872 Rat. 62 (62, 63), *Reg.* v. *Aba* (Special jurisdiction of the District Magistrate under the (repealed) Bombay Regulation XXI of 1827, S. 7 was not affected by the Code).]
(1911) 12 Cri. L. Jour. 568 (568): 5 S.L. R. 105, *Imperator* v. *Ghulam Khader* (S. 11, Sind Frontier Regulation, III of 1892).
[See (1920) 1920 Cal. 321 (322): 47 Cal. 547, *Probodh Chandra Bose* v. *Corporation of Calcutta* (Calcutta Municipal Act III of 1899).]
(1927) 1927 Cal. 509 (510): 54 Cal. 532, *Krishen Doyal Jalan* v. *The Corporation of Calcutta* (Proceedings under S. 363, Calcutta Municipal Act—Not governed by S. 342, Cr. P. Code).
(1930) 1930 Oudh 497 (500), *Mohan Lal Saksena* v. *Emperor* (Salt Act).
(1914) 1914 Cal. 603 (605): 41 Cal. 694, *U. N. Biswas* v. *Emperor* (Bengal Excise Act V of 1909).
(1932) 1932 All. 159 (161): 54 All. 359, *Lalman* v. *Bishambarnath*.
(5) (1904) 1 Cri. L. Jour. 13 (19): 31 Cal. 1, *Emperor* v. *Jogeshwar Passi* (Inquisition by Coroner under Coroners' Act does not of itself oust Magistrate of jurisdiction for inquiry under Criminal Procedure Code).
(1898) 22 Bom. 596 (601), *Imperator* v. *Jijibhai* (S. 162, Criminal Procedure Code and S. 157, Indian Evidence Act—When former to prevail).
(1910) 11 Cri. L. Jour. 117 (117): 13 Oudh Cas. 7, *Bhulai* v. *Emperor* (Do.).
[See (1898) 2 Cal. W. N. 702 (708), *Queen-Empress* v. *Bhairab* (S. 21 of Evidence Act when subject to Ss. 164 and 364, Cr. P. Code).]
(1926) 1926 Cal. 786 (788): 53 Cal. 631, *Sisher Kumar Mitter* v. *Corporation of Calcutta* (S. 248, Criminal Procedure Code not abrogated by S. 537, Calcutta Municipal Act, III of 1923).]
(1932) 1932 Lah. 436 (437): 13 Lah. 585, *Mt. Sabhai* v. *Emperor* (Frontier Crimes Regulation III of 1901; Ss. 48 and 49 apply only to special tribunals under the Regulation; and not the High Court).
(1932) 1932 Sind 166 (167): 26 S. L. R. 402, *Emperor* v. *Mulchand Choithram* (Emergency power Ordinance 2 of 1932. S. 52 restricts operation of Criminal Procedure Code in certain respects).
(1922) 1922 Mad. 215 (216, 218): 45 Mad. 14, In re *Kochunni Elaya Nair* (Introduction of Martial Law does not abrogate Criminal Procedure Code

such as the law of evidence[6] the special Act must be taken to govern the subject and not the Code, in the absence of a provision to the contrary.

4. Local Law.—A local law is a law applicable only to a particular part of British India.[1] For instances of local law, *see* the undermentioned cases.[2] A local law does not necessarily include all the rules and bye-laws made thereunder.[3]

5. Special Jurisdiction.—A law dealing with a specific subject matter and giving jurisdiction over it cannot be repealed by a general provision.[1] The special jurisdiction created in the undermentioned instances is not to that extent affected by the provisions of the Criminal Procedure Code:—

(1) The special jurisdiction conferred on the second class Magistrates over offences under the Bombay Abkari Act, V of 1878.[2]

(2) The jurisdiction of Magistrates under sections 20 to 23 of the Cattle Trespass Act before the Code of 1898.[3]

(3) The special jurisdiction of the English Consular Court at Zanzibar over foreigners under the British protection[4] as also the jurisdiction of the Bombay High Court to try a Native Indian subject for murder at Zanzibar[5] and the jurisdiction of British

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outside Martial Law area).

(1931) 1931 Bom. 57 (60, 70): 55 Bom. 263, *Chanappa Shantirappa* v. *Emperor* (S. 11, Martial Law Ordinance IV of 1930—Sentences under Ordinance not open to appeal or revision).

(6) (1909) 3 Ind. Cas. 975 (976): 31 All. 592, *Emperor* v. *Misri* (Law of Evidence to be taken from Indian Evidence Act and not Criminal Procedure Code except when so provided for or in Ch. 41, Criminal Procedure Code).

(1933) 1933 All. 440 (442): 55 All. 463, *Emperor* v. *Faujdar* (S. 162, Criminal Procedure Code and S. 27, Evidence Act—No conflict in re: accused's statement).

(1926) 1926 Lah. 88 (89, 90): 7 Lah. 84, *Rannan* v. *Emperor* (Do.).

(1912) 13 Cri. L. Jour. 305 (349): 35 Mad. 247, *King-Emperor* v. *Nilakanta* (Section 161, Evidence Act to give way to S. 162, Criminal Procedure Code in regard to Police dairy).

Note 4.

(1) *Definition of Local Law.* S. 42, Indian Penal Code.

(2) (1910) 7 Ind. Cas. 389 (389): 33 All. 84, *Emperor* v. *Mohd. Alam* (Bengal Regulation VI of 1825, S. 2).

(1927) 1927 Cal. 496 (504): 54 Cal. 727, *Girendranath* v. *Birendranath* (Bengal Criminal Law Amendment Act only supplemental to the Criminal Procedure Code in Bengal).

(1915) 16 Cri. L. Jour. 238: 8 S. L. R. 213, *Crown* v. *Aslum* (S. 6 (*d*) of Bombay Gambling Act, IV of 1887. Searches need not be in accordance with the Code of Criminal Procedure).

(1915) 31 Ind. Cas. 646 (646): 1915 Pun. Re. No. 25: 1915 Lah. 355, *Bhola Ram* v. *Emperor* (The N.-W.F.P. Crimes Regulation III of 1901).

(1907) 6 Cri. L. Jour. 108 (110): 1907 Pun. Re. No. 5, *Emperor* v. *Arthur Mercer* (Courts of Session in Baluchistan can try European British Subjects notwithstanding above Court are not appointed under S. 9, Criminal Procedure Code, *Vide* Regulation VIII of 1896).

(1905) 7 Bom. L. R. 104 (105): 29 Bom. 575, *Emperor* v. *Comley* (Aden Courts Act).

[See (1925) 1925 Rang. 12 (13): 2 Rang. 321, *Maung Po Lon* v. *King-Emperor* (Upper Burma Ruby Regulations of 1887, S. 6. No provision for appeal and revision thereon—Criminal Procedure Code applies).]

(3) (1929) 1929 Rang. 75 (75): 6 Rang. 791, *Ma Khwet Kyi* v. *Emperor*.

(1894) 1894 Pun. Re. No. 23 (81), *Ganda Shah* v. *Queen-Empress*.

Note 5.

(1) (1872) 7 Mad. H. C. App. 6.

(2) (1886) 10 Bom. 181 (182, 183), *Queen-Empress* v. *Gustadji Burjorji*.

(3) (1907) 6 Cri.L.Jour. 363 (364): 34 Cal. 926, *Budhan Mahto* v. *Issur Singh* (But under the Code of 1898 cases under S. 20 of the Cattle Trespass Act come within the ordinary jurisdiction of the Magistrate).

(1896) 23 Cal. 300 (301), *Shama* v. *Lechhu Shikh* (Before the Code of 1898).

(1896) 23 Cal. 442 (445), *Raghu Singh* v. *Abdul Wahib* (Do.).

(4) (1895) 19 Bom. 741 (744), *Queen-Empress* v. *Rego Montopoulo* (*Vide* order in Council of 1884 under the Foreign Jurisdiction Act).

(5) (1879) 3 Bom. 334 (339), *Emperor* v. *Dossaji*.

Sec. 1, Notes 5—6.

Courts over a "British protected person" under the China and Corea Order in Council.[6]

(4) The jurisdiction of a Political Agent to refer a case to the High Court under S. 7 of the Scheduled Districts Acts.[7]

(5) The power of revision by the High Court under Charter Act. (The Government of India Act, Section 107)[8] and of superintendence under section 15 of the Charter Act.[8-a]

(6) The extraordinary original criminal jurisdiction of the High Court under Cl. 24 of the Letters Patent.[9]

(7) The jurisdiction of the Governor-General to pass ordinances.[10]

(8) The special jurisdiction created by the Bengal Criminal Law Amendment Act[11] and the Merchant Shipping Act.[12]

(9) The jurisdiction of the High Court to issue a writ of *certiorari*.[13]

(10) The jurisdiction of special tribunals created under the Defence of India Act.[14]

See also the undermentioned cases.[15]

6. Special Powers.—The powers of the High Court under section 491, Criminal Procedure Code, are only subject to the special power conferred on the Government under the Indian Extradition Act in respect of the surrender of offenders.[1] The power of the High Court as a superior Court of record to punish summarily for contempt is not affected by the Criminal Procedure Code.[2] The

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(6) (1914) 1914 P. C. 155 (157), *Ibrahim* v. *King*.

(7) (1901) 25 Bom. 667 (674, 675), *Imperatrix* v. *Ratnya*.

(8) (1898) 26 Cal. 188 (192, 193), *Hurbullubh* v. *Luchmeshwar* (This power of revision is not restricted by S. 435, Criminal Procedure Code).

(8-a) (1908) 7 Cri. L. Jour. 499 (501) (Cal.), *Lakhraj* v. *Deb Pershad*.

(9) (1932) 1932 Cal. 123 (123), *Sashadhar Acharjya* v. *Charles Tegart*.

(10) (1933) 1933 Bom. 1 (3): 57 Bom. 93, *Emperor* v. *Balakrishna Hari*.

(1933) 1933 Cal. 537 (538): 60 Cal. 652, *Abdul Majid* v. *Emperor* (Where provisions of Criminal Procedure Code and ordinance are in conflict, ordinance prevails).

[See (1932) 1932 Cal. 745 (747) (S. B.), In the matter of *Ananda Bazaar Patrika*.

See (1933) 1933 Cal. 364 (364): 60 Cal. 814, *Amarchandra* v. *Emperor*.

See also (1920) 1920 P. C. 23 (26): 1 Lah. 326: 47 Ind. App. 128 (P. C.), *Bugga* v. *Emperor*.]

(11) (1933) 1933 Cal. 1 (2), *Prodyot Kumar Bhattachariya* v. *Emperor*.

(12) (1912) 13 Cri. L. Jour. 246 (246): 39 Cal. 487, *Emperor* v. *Salimullah* (57 and 58, Vict. c. 60).

(13) (1919) 1919 P. C. 31 (35): 43 Mad. 146: 46 Ind. App. 176, *Annie Besant* v. *Advocate-General of Madras* (S. 435, Criminal Procedure Code does not take away the said jurisdiction).

[See (1917) 37 Ind. Cas. 607 (626): 1918 Mad. 1266: 39 Mad. 1164, *Annie Besant* v. *Emperor*.]

(14) (1918) 1918 Pat. 103 (107), *Sheo Narayan Prasad* v. *Emperor* (Such tribunals are independent of the superintendence or appellate jurisdiction of the High Courts).

(1917) 18 Cri. L. Jour. 927 (928, 929): 1917 Pun. Re. No. 38, *Samaila* v. *Emperor* (Notification under Defence of India Act ousting jurisdiction of regular Courts).

[See (1918) 1918 Pat. 155 (162), *Parmeshwar Ahir* v. *Emperor*.]

(15) (1868) 5 Bom. H. C. 6 (6), *Reg.* v. *Kasamji Valad Himinji Mhaskar* (Special jurisdiction under S. 13 of Act XIX of 1838).

(1925) 1925 Mad. 465 (466): 48 Mad. 392, *Sri Krishna Kone* v. *Kulasekhara* (Magisterial powers under Madras Village Courts Act II of 1920).

Note 6.

(1) (1933) 1933 Pat. 295 (297): 12 Pat. 347, *Moonga Lal Keot* v. *Emperor*.

(2) (1884) 10 Cal. 109 (133): 10 Ind. App. 171 (P. C.), *Surendranath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal*.

(1926) 1926 All. 623 (626, 628, 638): 48 All. 711, In re *Hadi Husain* v. *Nasir Uddin Haider*.

(1884) 8 Bom. 380 (387), *Bai Amrit Widow of Haribai Icharam*.

(1900) 2 Bom. L. R. 130 (131), In re *D. E. Wachha*.

(1892) Rat. Un. Re. Cr. Cas. 614 (615).

(1927) 1927 Lah. 610 (611), In the matter *of Muslim Outlook, Lahore*.

(1926) 1926 Lah. 1 (2): 6 Lah. 528, In the matter of *Habib*.

(1901) 24 Mad. 523 (N) (548), *King-Emperor* v. *Tirumal Reddi*.

liability to punishment under the Penal Law is not taken away by the fact that powers of departmental punishment have been exercised.[3] The power of granting or dismissing a claim for compensation under S. 45 of the Bombay City Police Act (1902), given to the Chief Presidency Magistrate is as *persona designata* and not as a Criminal Court and consequently no revision or appeal from his order lies under the Criminal Procedure Code.[4]

7. Police at Calcutta, Madras and Bombay.—This section bars the application of the Code to the Police in the presidency towns of Madras, Bombay and Calcutta.[1] It does not bar its application to a Magistrate who is not a police officer; for example, the Presidency Magistrate.[2] The Code itself expressly makes certain sections applicable to the police at Calcutta, Madras or Bombay as for example S. 55 which applies to the police in the town of Calcutta.[3]

Various special Police Acts for the respective Presidency Towns govern the Police therein.[4]

8. Village Headman in Madras.—The powers and duties of the village Headman in the Presidency of Madras are mainly provided in various Madras Acts and Regulations.[1] Clause (*c*) of sub-S. (2) of this section lays down that nothing in the Code shall apply to the village headman, that is to say,

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[See (1903) 26 Mad. 494 (495), *Kochappa* v. *Sachidevi* (A District Court not being a Court of record cannot punish for contempt).
See (1906) 33 Cal. 927 (934, 941, 945), *Hukumchand Boid* v. *Kamalanand Singh*.
See also (1908) 8 Cri. L. Jour. 426 (428, 430): 33 Bom. 240, In re *Narasinga Chintaman Kelkar*.]

(3) (1911) 12 Cri. L. Jour. 143 (144) (Lah.), *Sohan Singh* v. *Emperor* (Departmental punishment under the Police Act).
[See (1915) 31 Ind. Cas. 644 (645): 1915 Lah. 350: 1915 Pun. Re. 26, *Emperor* v. *Gul Muhammad* (Do.).]

(4) (1930) 1930 Bom. 486 (486): 54 Bom. 664, In re *Usman Haji Mhod*.

Note 7.

(1) (1888) 15 Cal. 595 (606), *Queen-Empress* v. *Nilmadhub Mitter* (S. 164, Criminal Procedure Code does not apply to investigation made in town of Calcutta).
(1930) 1930 Bom. 158 (159): 54 Bom. 528, *Emperor* v. *Wahid-ud-din Hamid ud-din*.

(2) (1926) 1926 Pat. 279 (282): 5 Pat. 171, *Nil Madhab Chowdhry* v. *Emperor*.
[See however (1888) 15 Cal. 595 (606), *Queen-Empress* v. *Nil Madhub Mitter*.
See however (1897) 21 Bom. 495 (499), *Queen-Empress* v. *Viram Babaji*.]

(3) (1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho Dhobi*.

(4) [See (1913) 14 Cri. L. Jour. 125 (127): 40 Cal. 470, *Leakat Hossein* v. *Emperor* (Ex. Calcutta Police Act—Commissioner of Police at Calcutta can prohibit procession or public assembly).]
(1926) 1926 Cal. 586 (588): 53 Cal. 650, *Satya Charan Mitter* v. *Emperor* (Do.).
[See also (1933) 1933 Bom. 63 (64), *Emperor* v. *Alli Hassan* (The Railway Police have all the powers of the General Police within their special district).
See (1893) 20 Cal. 670 (672, 673), *Forsyth* v. *Wilson* (Powers of Deputy Commissioner of Police under Calcutta Police Act).]
(1926) 1926 Cal. 1121, *Muhammad Sulaiman* v. *Emperor* (Calcutta Police Act).

Note 8.

(1) (1882) 5 Mad. 268 (268), *Queen* v. *Boya Linga* (Madras Regulation II of 1816 and Regulation IV of 1821).
(1867) 3 Mad. H. C. R. App. xxx (31).
(1868-69) 4 Mad. H. C. R. App. ii (2).
(1870) 5 Mad. H. C. R. App. xxxiii (33).
(1872) 7 Mad. H. C. R. App. 3 (3, 4).
(1873) 7 Mad. H. C. R. App. xxxi (32).
(1882) 5 Mad. 230 (231), *Queen* v. *Pakkella*.
(1883) 6 Mad. 249 (250), *Queen-Empress* v. *Ramachandra*.
(1894) 17 Mad. 103 (104), *Queen-Empress* v. *Fakira*.
(1864) 1 Weir 924 (924).
(1883) 6 Mad. 247 (248), *Queen* v. *Nabi Saheb*.
(1901) 24 Mad. 271 (273), *Rattigadu* v. *Konda Reddi*.
(1904) 1 Cri. L. Jour. 426 (426): 27 Mad. 129, *Chennamalli* v. *Emperor*.
(1909) 9 Cri. L. Jour. 77 (79): 31 Mad. 506, *Chinna Raman* v. *Emperor* (The village headman has no power of investigation).
(1882) 1 Weir 921 (921), Re *Para Vagutan*.
(1887) 1 Weir 928 (926), Re *Parameswara*.
(1885) 1 Weir 921 (921), Re *Para Vagutan*.
(1885) Weir 3rd Edn. 687 (688), Re *Chettiyan*.
(1879) 1 Weir 926 (926).
[See also (1909) 9 Cri. L. J. 170 (172): 32 Mad. 258, *The Sessions Judge of Tinnevelly Division* v. *Sivan Chetty*.]
See also S. 45, Cr. P. Code.

Sec. 1, Notes 8—11.

that, in proceedings which the headman takes as such, he is not governed by the Code. It does not mean for example, that the village headman cannot be a complainant under this Code.[2] The village headman is not a Magistrate for the purposes of the Code except as provided therein, as for example in Cl. 6 of S. 528.[3]

9. **Village Police officers in the Presidency of Bombay.**—The ancient village system of Police regulated formerly by Regulation IV of 1818, and Regulation, XII of 1827, and later by the Bombay Act, VIII of 1867, remains unaffected by the Code except where the Code contains a specific provision to the contrary.[1] *See also* the undermentioned cases as to the power and duties of the village police officers in the Bombay Presidency.[2]

10. **Any Special form of Procedure.**—*See* the undermentioned cases.[1]

11. **Retrospective effect of the Code.**—*See* Note 3 to the Preamble.

Sec. 2.

2.* (Repeal of enactments, notifications, etc., under repealed Acts, Pending cases) Repealed by the Repealing and Amending Act, 1914 (X of 1914).

***(CODE OF 1898—S. 2.)**

(1) On and from the first day of July, 1898, the enactments mentioned in the first schedule shall be repealed to the extent specified in the fourth column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Repeal of enactments.

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(2) (1924) 1924 Mad. 730 (730), *Public Prosecutor* v. *Mari Mudali*.
(1888) 11 Mad. 375 (376), *Queen-Empress* v. *Venkayya*.
[See also (1927) 1927 Mad. 1022 (1023), *Suppan Chetti* v. *King-Emperor*.]
(3) (1903) 26 Mad. 394 (402), *Sevakolandai* v. *Ammayan* (S. 528, Cl. (6) means the headman when he is acting under Regulation IV of 1921 and not Regulation II of 1816).
(1902) 25 Mad. 667 (668), *King-Emperor* v. *Thamma Reddi* (A Village Magistrate is not a "Magistrate" within S. 250 of the Code).
(1914) 1914 Mad. 694 (695, 696): 39 Mad. 1006, *Nachimuthu Chetti* v. *Muthusami Chetty* (Do. Quaere Per *Seshagiri Iyer, J.*).
(1892) 15 Mad. 131 (132), *Queen-Empress* v. *Venkataswami* (Ss. 480 and 482 do not apply to village munsifs).
[But see (1892) 15 Mad. 94 (94), *Madavarayachar* v. *Subba Rao* (The Old Code did not make the special provision in respect of village headman).]

Note 9.

(1) (1895) 19 Bom. 612 (618), *Queen-Empress* v. *Raghu Mahadu*.
(1919) 1919 Bom. 79 (79, 80), In re *Vasudeo Pundlik Saman* (High Court of Bombay has no power under the Criminal Procedure Code to quash proceedings before a Village Police Patel though it has power to do so under the general powers of Superintendence).
(2) (1904) 1 Cri. L. Jour. 327 (327) (Bom.), *Emperor* v. *Puna Laxman Bhil*.
(1883) 1883 Rat. Un. Re. Cr. C. 187 (188), *Queen-Empress* v. *Ragho Nanasingh*.
(1884) 1884 Rat. Un. Cr. C. 196 (196), *Queen-Empress* v. *Hanmanta*.
(1891) 1891 Rat. Un. Re. Cr. Cas. 533 (534), *Queen-Empress* v. *Mehman*.
(1891) 1891 Rat. Un. Re. Cr. Cas. 550. (550), *Queen-Empress* v. *Ratnia*.
(1892) 1892 Rat. Un. Re. Cr. Cas. 609 (609), *Queen-Empress* v. *Punja*.
(1892) 1892 Rat. Un. Re. Cr. Cas. 610 (610), *Queen-Empress* v. *Ravaji*.
(1898) 1898 Rat. Un. Re. Cr. Cas. 980 (980, 981), *Queen-Empress* v. *Dama Ghela*.
(1904) 6 Bom. L. R. 357 (358), *Emperor* v. *Puna Laxman Bhil*.
(1908) 8 Cri. L. Jour. 141 (143) (Bom.), In re *Dayal Kanji* (Right of Superintendence over the judicial functions of the Police Patel is vested in the High Court by Cls. 26 and 27 of the Letters Patent).

Note 10.

(1) (1915) 29 Ind. Cas. 79 (80): 1914 Sind 45: 8 S. L. R. 309, *Liludar Umersi* v. *The Crown* (The Special procedure in Bombay Prevention of Gambling Act IV of 1887).
(1873) 7 Mad. H. C. R. App. xxvi (Procedure under Rules of High Court).

3*. (1) In every enactment passed before this Code comes into force in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section. **Sec. 3.**

References to Code of Criminal Procedure and other repealed enactments.

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2. All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of July, 1898, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

Notifications, etc., under repealed Acts.

(3) The Provisions of this Code shall apply to all proceedings instituted after the commencement of this Code, and, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Pending cases.

(CODE OF 1882—Ss. 2 and 558.)

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Repeal of enactments.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the 1st day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed; defined, passed and made under the corresponding section of this Code.

Notifications, etc., under repealed Acts.

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558. .The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Pending cases.

(Repealed by Act No. XII of 1891, 1st Sch.).

(CODE OF 1872—S. 2.)

2. The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

Repeal of enactments.

* * * * * * *

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act.

***(CODE OF 1882—S. 3.)**

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV. of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

References to Code of Criminal Procedure and other repealed enactments.

Sec. 3.

(2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate", "Subordinate Magistrate, first class", and "Subordinate Magistrate, second class", shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Subdivisional Magistrate", the expression "Magistrate of the district" shall be deemed to mean "District Magistrate", the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

Expressions in former Acts.

SYNOPSIS.

	Note No.
REFERENCES TO CRIMINAL PROCEDURE CODE ..	1
EXPRESSION IN FORMER CODES	2

Other Topics.

Interpretation, Rules of. See Preamble. and 3.
Presidency Magistrate. See Note 2, Pts. 2 Reformatory. See Note 1, Pt. 1.

In every enactment passed before this Code comes into force, the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a Division of a District" shall be deemed to mean "Subdivisional Magistrate" the expression "Magistrate of the District" shall be deemed to mean "District Magistrate" and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Expressions in former Acts.

(CODE OF 1872—S. 2, Paras 3 and 4.)

In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such references shall be taken to be made to this Act.

References to Code of Criminal Procedure.

In every Act passed before this Act, the expressions "Officer exercising the powers of a Magistrate," "Subordinate Magistrate, First class," and "Subordinate Magistrate, Second class," shall, respectively, be deemed to mean "Magistrate of the First class," "Magistrate of the Second class," and "Magistrate of the Third class," as defined in this Act.

References in former Acts.

1. References to Criminal Procedure Code.—Sub-S. (1) makes a formal provision in the nature of an interpretation clause. References to sections of the repealed Code have to be taken to be made to the corresponding provisions of the present Code. For example, S. 2 of the Reformatory Schools Act of 1876, repealed S. 318 of the Code of Criminal Procedure, 1872 in provinces where the former statute came into force. After the passing of the Code of 1882 the corresponding reference would be to S. 399 of that Code.[1]

Sec. 3, Notes 1—2.

2. Expression in former Codes.—The provision contained in Sub-section (2) is rendered necessary by the modifications made in the present Code in the constitution and designation of various Criminal Courts in Chapter II.

Thus the expression "Officer invested with full power of a Magistrate" in the Public Gambling Act, III of 1867, means a Magistrate of the first class.[1] The expression "authorised to exercise any of the powers of a Magistrate" in the Calcutta Port Act, 1890, has been held to apply to a Presidency Magistrate under S. 20 of the Code.[2] The words "Magistrate of Police" in the Workmen's Breach of Contract Act, XIII of 1859, mean the 'Presidency Magistrate'.[3] The words "Subordinate Magistrate of the first or second class" occurred in Aden Act 1864.[4] A Joint Sessions Judge under the Code of 1882 became an Additional Sessions Judge under the Code of 1898 without a fresh appointment.[5]

4.* (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:— Sec. 4.

Definitions.

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*[(CODE OF 1882—S. 4, para. (1).]

Interpretation-clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

[(CODE OF 1872—S. 4, para. (1).]

Definitions.

4. In this Act the following words and expressions have the following meanings, unless a different intention appears from the context:—

Section 3—Note 1.

(1) (1889) 12 Mad. 94 (95, 96) (F. B.), *Queen-Empress* v. *Madaswami.* (1898) 25 Cal. 333 (339), *Deputy Legal Remembrancer* v. *Ahmad Ali.*

Note 2.

(1) (1912) 16 Ind. Cas. 524 (524): 34 All. 597, *Abbu Singh* v. *King-Emperor.* (2) (1919) 1919 Cal. 1 (2): 47 Cal. 147, *Good* v. *Gunpat.* (3) (1898) 25 Cal. 637 (638), *Lal Mohan Chowbey* v. *Hari Das Bairagi.* (4) (1886) 10 Bom. 263 (271), *Queen-Empress* v. *Mangal Tek Chand.* (5) (1898) 2 Cal. W. N. cccv (cccv).

Sec. 4, Note 1.

SYNOPSIS.

Note No.

DEFINITIONS—GENERAL 1

Other Topics.

Interpretation, Rules of. See Preamble.
Presidency Magistrate. See Note 2, Pts. 2 and 3.
Reformatory. See Note 1, Pt. 1.
Unless a different intention appears from the subject or context. See Note 1, Pts. 3 and 4.

1. Definitions—General.—Section 4 is an interpretation clause. Its legitimate function is to declare that certain words and expressions used in the Code shall have the meaning given to them by the definition thereof. It is not intended to annex to such words or expressions every incident which may seem to be attached to them by any other Act of the Legislature.[1] The meaning assigned to a word by this interpretation clause is the meaning of the word wherever it occurs in the Code[2] *unless a different intention appears from the subject or context.* Thus the definition of the word "complaint' does not include a Police report. But a report made by the police may be a 'complaint' by a public servant within the meaning of S. 195.[3] Again "High Court" within the meaning of S. 195, sub-S. (6) as it stood before 1923, did not include a single Judge sitting on the original side though the words as defined in this section will not exclude such Judge.[4]

When a definition 'includes' certain persons or things it does not exclude other persons or things not so included.[5] The word 'includes' is a phrase of extension and generally used in order to *enlarge* the meaning of the words or phrases occurring in the body of the Code.[6] When it is intended to exhaust the

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(CODE OF 1861—S. 2.)

2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction.

Interpretation.

Section 4 (1)—Note 1.

(1) (1926) 1926 Sind 58 (61), *Walter John Brooks* v. *Ne Farwick.*
(1885) 12 Cal. 430 (432, 433), *Umacharan Beg* v. *Ajadannissa.*
(2) (1885) 12 Cal. 430 (432, 433), *Umacharan Beg* v. *Ajadannissa.*
(1903) 30 Cal. 910 (916), *Tara Prasad* v. *Emperor.*
(3) (1912) 13 Cri. L. Jour. 826 (827): 40 Cal. 360, *Dilan Singh* v. *Emperor.*
(4) (1905) 2 Cri. L. Jour. 106 (109): 32 Cal. 469, *Kali Kinkar Seth* v. *Dinabhandu Nundy.*
(5) (1896) 22 Bom. 235 (238), *Queen-Empress* v. *Nagla Kala* (Case under the General Clauses Act (I of 1868).
(1878) 4 Cal. 483 (492, 493), *The Empress* v. *Ashootoosh Chuckerbutty* (Case under the Evidence Act).
(6) (1906) 4 Cri. L. Jour. 23 (31): 30 Bom. 558, *The Municipal Commissioner* v. *Mathoorabai* (Case under Bombay Municipal Act).

signification of the word interpreted, the word 'means' is used.[7]

Sec. 4(a), Note 1.

"Advocate-General".

(*a*)* "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

SYNOPSIS.

	Note No.
ADVOCATE-GENERAL—DUTIES OF	1

Other Topics.

"Includes". See Sub-S. (1), Note, 1 Pts. 5 and 6.

1. **Advocate-General—Duties of.**—The Advocate-General is the principal law officer of the Government in the Presidency towns. As to his powers under the Code, *see* the following sections:—

1. S. 194—Power to exhibit information.
2. S. 333—Power to enter "*Nolle prosequi*".
3. S. 495—Power to appear for prosecution in Courts of Magistrates without permission.

See also the undermentioned cases.[1]

Under S. 114 of the Government of India Act as well as under the Bar Councils Act of 1926, he has a right of pre-audience over all other advocates and for this purpose the term "Advocate-General" includes an acting Advocate-General.[2]

[(CODE OF 1882—S. 4 (k).]

(*k*) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf.

"Advocate-General."

Section 4 (1) (a)—Note 1.

(7) (1878) 2 Mad. 5 (7), *The Empress* v. *Ramanjiyya* (Case under General Clauses Act, I of 1868).
[See also (1918) 1918 All. 168 (170): 40 All. 393, *Mata Ram* v. *Emperor* (Case under Christian Marriage Act, (1872).]

(1) (1912) 13 Cri. L. Jour. 352 (354): 35 Mad. 397, *Muthukumaraswami Pillai* v. *Emperor*.
(1924) 1924 Cal. 257 (261), *The King-Emperor* v. *Barendra Kumar Ghose*.

(2) (1932) 1932 Bom. 71 (74), In re *Precedence of the Acting Advocate-General*.

Sec. 4(b).

(*b*)* "bailable offence" means an offence shown as bailable in the second Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

"Bailable offence."
"Non-bailable offence."

See Notes to Ss. 496 to 502, *infra*.

Sec. 4(c), Note 1.

(*c*) "charge" includes any head of charge when the charge contains more heads than one.

"Charge."

1. Charge—What is.—A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage.[1] It denotes a charge formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used, for instance in S. 224 of the Penal Code.[2]

Under the Code of 1882 there was no definition of the word "charge" and there was difference of opinion, as to whether it meant only a single head of charge or the whole indictment of several counts.[3] The present definition now makes it clear that a charge may include more heads than one.[4]

***[CODE OF 1882—S. 4 (r).]**

"Bailable offence."
"Non-Bailable offence."

..(r) "Bailable offence"' means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence.

(CODE OF 1872—S. 4, Last two paras.)

"Bailable offence or Case."

"Bailable offence or case'' means an offence for, or a case in, which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being:

"Non-bailable offence or case."

"Non-bailable offence or case" means an offence for, or a case in, which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

Section 4 (1) (c)—Note 1.

(1) (1901) 28 Cal. 434 (437), *Reily* v. *King-Emperor*.
(2) [See (1927) 1927 Bom. 96 (96), *Kalia Amra* v. *Emperor*.]
(3) (1884) 8 Bom. 200 (210), *Queen-Empress* v. *Appa Subhana Mendre* (Does not mean whole indictment Scott, J., *contra*).
(1886) 8 All. 665 (667), *Queen-Empress* v. *Kharga* (Do.).
(1887) 9 All. 525 (527), *Queen-Empress* v. *Gordon* (Includes whole indictment).
(4) (1924) 1924 Cal. 625 (626), *Hassemullah Sheik* v. *Emperor*.
[See also (1915) 16 Cri. L. Jour. 573 (574): 9 S.L.R. 37, *Dodo* v. *Emperor*.]

(*d*)* [*Repealed*] This clause was repealed by Section 3 and Sch. II of the Repealing and Amending Act, 1923 (XI of 1923). **Sec. 4(d).**

(*e*)† "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown. **Sec. 4 (e), Note 1.**

"Clerk of the Crown."

1. To discharge the function:—

The functions prescribed under the Code are:—

(1) To receive the further list of persons to be summoned under S. 211;

(2) To summon witnesses under S. 216;

(3) To receive the charge, the record of the enquiry and any weapon or thing to be used in evidence, under S. 218;

(4) To frame a charge or add to or otherwise alter a charge under S. 226;

(5) To prepare lists of common and special jurors under S. 313;

(6) to sign and publish such lists under S. 314; and

(7) to have affidavits and affirmations sworn and affirmed before him under S. 539.

(*f*)‖ "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the Presidency towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant. **Sec. 4 (f).**

"Cognizable offence". "Cognizable case."

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*[**(CODE OF 1898—S. 4 (d).]**

(*d*) **"Chief Justice"** includes also the Chief Judge of the Chief Court of the Punjab and the *Chief or Senior Judge of the Chief Court of Lower Burmah.*

"Chief Justice."

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†[**(CODE OF 1882—S. 4 (1).]**

(*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown.

‖ **[CODE OF 1882—S. 4 (q), para. (1).]**

(*q*) **"Cognizable Offence"** means an offence for, and "cognizable case" means a case in, which a police officer, within or without the presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant.

"Cognizable offence." "Cognizable case."

[CODE OF 1872—S. 4, para. 19).]

"Cognizable offence or Case" means an offence for, or a case in, which a Police Officer may, by any law in force for the time being, arrest without *warrant*:

"Cognizable offence or Case."

Sec. 4(f), Notes 1—3.

SYNOPSIS.

	Note No.
SCOPE	1
POLICE OFFICER	2
'MAY ARREST WITHOUT A WARRANT'	3
SECOND SCHEDULE OR UNDER ANY LAW FOR THE TIME BEING IN FORCE	4

1. Scope.—

Offences and cases are divided into two broad classes:—

(1) *Cognizable offences and cognizable cases, i.e.,* those offences for which, and those cases in which, a police officer may arrest without a warrant from a Magistrate in other words, cases of which a police officer, as such, can take cognizance.

(2) *Non-cognizable offences and non-cognizable cases, i.e.,* those offences for which and cases in which a police officer may not arrest without a warrant: in other words, cases of which, a police officer, as such, cannot take cognizance.[1]

The first class of offences come under this definition. For the second class, *see* S. 4 (1) (*n*).

2. Police officer.—The words "a police officer" do not mean "any and every" police officer. An offence is cognizable even if the offender can be arrested without warrant only by a particular class of police officers.[1]

As to police officer, *see* clause (*p*), *infra.*

3. "May arrest without a warrant".—The power of arrest referred to here, must be an *unqualified* power and not a conditional power[1-a] as where a police officer can arrest without warrant only—

(1) if the accused does not furnish security under S. 24 of the Opium Act I of 1878[1];

(2) if a report had been made of the commission of the offence under S. 60 of the U.P. Excise Act (IV of 1910)[2];

(3) if he is specially authorised by the Commissioner of Police, under S. 10 of the Bombay Prevention of Prostitution Act (XI of 1923).[3]

Section 4 (1) (f)—Note 1.

(1) (1909) 2 Ind. Cas. 436 (448): 36 Cal. 433, *Clarke* v. *Brojendra Kishore Roy Chowdhury* (Overruled on another point by 13 Cri. L. Jour. 698).

Note 2.

(1) (1900) 27 Cal. 144 (150), *Queen-Empress* v. *Deodhar Singh.*
(1926) 1926 Bom. 195 (197, 198): 50 Bom. 344, *Emperor* v. *Abasbhai Abdul Hussein.*
(1930) 1930 Bom. 49 (51): 54 Bom. 146, *Emperor* v. *Ismail Hirji.*
[But see (1932) 1932 Bom. 610 (610), *Raghunath Lahamsa Walvekar* v. *Emperor* (Where the decision rests on another ground, *vide* Note 4). Also 1935 Rang. 181 (182): 13 Rang. 130, *Htwin Htin* v. *Emperor* (Where the view was doubted).]

Note 3.

(1-a) (1935) 1935 Rang. 181 (183): 13 Rang. 130, *Htwin Htin* v. *Emperor.*
(1) (1897) 24 Cal. 691 (695, 696), *Babalal Shah* v. *Tarak Nath Chowdhry.*
(2) (1922) 1922 All. 264 (265), *Shankar Lal* v. *Emperor.*
(3) (1925) 1925 Bom. 131 (134, 135): 49 Bom. 212, *Candri Bawoo* v. *Emperor.*

Consequently the above cases cannot be said to be cognizable cases. **Sec. 4 (f), Notes 3—4.**

4. Second schedule or under any law for the time being in force.— The cases in which or the offences for which a police officer may arrest without warrant are shown in column 3, Sch. II of the Code. An offence is cognizable only if it comes under that schedule or is one for which, under any law for the time being in force a police officer may arrest without warrant.

The first two columns under the heading "offences against other laws", in Sch. II show that a police officer may arrest without warrant only for those offences for which the punishment is imprisonment for 3 *years* or upwards. Thus an offence under S. 19 (*f*) of the Arms Act which is punishable with imprisonment for 3 years is a cognizable offence.[1] An offence under S. 4 of the Bombay Prevention of Gambling Act IV of 1887[2] or under Chapter VII of the Excise Act of 1881[3] or under S. 29 of the Police Act 1861[3-a] punishable with imprisonment for less than 3 years is not a 'cognizable one'.

The words "or under any law for the time being in force" have reference only to such offences "which are punishable with imprisonment for less than three years but are specified as offences for which the police may arrest without a warrant, that is, offences which but for the special provision would not, under the Code, be "cognizable" offences as for example offences made 'cognizable' under S. 131 of the Railways Act (IX of 1890).[4] The words mentioned above are wide enough to include an express or implied provision of any law or enactment.[5]

"Commissioner of Police." (*g*) "Commissioner of Police" includes a Deputy Commissioner of Police. **Sec. 4(g).**

"Complaint". (*h*)* "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence but it does not include the report of a police officer.

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*[CODE OF 1882—S. 4 (1) (a)].

"Complaint." (*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police officer.

Note 4.

(1) (1934) 1934 Nag. 71 (75): 30 N.L.R. 269, *Maganlal Bagdi* v. *Emperor.*

(2) (1932) 1932 Bom. 610 (612), *Raghunath Lakamsa Walvekar* v. *Emperor.*

(3) (1868) 1868 Pun. Re. No. 28, p. 74 (75).

(3-a) (1892-1896) 1 U. B. R. 295 (295), *Empress* v. *Nga Po Thin.*

(4) (1934) 1934 Nag. 71 (75): 30 N.L.R. 269, *Maganlal Bagdi* v. *Emperor.*

(5) (1930) 1930 Bom. 49 (51): 54 Bom. 146, *Emperor* v. *Ismail Hirji.*

Sec. 4 (h), Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
SCOPE OF THE DEFINITION	2
FORM OF COMPLAINT	3
'JOINT COMPLAINT' *See* S. 200 NOTE 19 *infra*	4
WHO MAY COMPLAIN	5
"WHO MAY PRESENT COMPLAINT"—*See* S. 200 NOTE 12 *infra*.	6
STATEMENT IN COMPLAINT IF PRIVILEGED	7
'TO A MAGISTRATE'	8
"WITH A VIEW TO HIS TAKING ACTION"	9
"UNDER THE CODE"	10
"THAT SOME PERSON HAS COMMITTED AN OFFENCE" ..	11
"SOME PERSON KNOWN OR UNKNOWN"	12
"REPORT OF A POLICE OFFICER"	13
LIMITATION	14
STAMP ON THE COMPLAINT—*See* NOTE 6 TO S. 200 *infra* ..	15

Other Topics.

Complaint to Collector. See Note 8, Pt. 3.
Complaint unaffected by stamp question, etc. See S. 200.
Complaints—What are and what are not. See Note 9.
Distinction between complaint and information. (See Note 2).
Made orally or in writing. See Note 3, Pt. 5.
Sending complaint by Post. See S. 200.

1. **Legislative history.**—The word '*complaint*' was for the first time defined in the Code of 1882 under S. 4 (1) (*a*). The definition has been retained in this clause without any change.[1]

2. **Scope of the definition.**—In order to constitute an allegation a complaint within the meaning of this definition,

(1) such allegation must be made *to a Magistrate;*

(2) it must be made *with a view to his taking action under this Code.*[1-a]

A "complaint" must be distinguished from "information".

"The essential difference between a *complaint* and *information* is that a Magistrate acts on a complaint, because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. In the case of a complaint the Magistrate is asked to prosecute the person named as accused, and he has then to decide whether he will accede to the request or not. If he does not, then he must record his reasons under S. 202, *infra*, and may make an enquiry himself or direct an inquiry or investigation or dismiss the complaint under S. 203 after recording reasons. But in the case of receiving information, the Magistrate is not asked by any one to issue process and if he does not choose to act on the information he need not record any reason or pass any order. In the case of information there is no complainant to be examined on oath.

Section 4 (1) (h)—Note 1.

(1) (1904) 1 Cri. L. Jour. 193 (194): 2 L. B. R. 146, *King-Emperor* v. *Nga Po Thin.*

Note 2.

(1-a) (1935) 1935 Sind 1 (2), *Rahimbux Karimbux* v. *Emperor.*
(1934) 1934 Pat. 156 (157), *Raghunandan Lal* v. *Emperor.*
(1884) 1884 P. R. Cr. 8, p. 10, *Mangal Singh* v. *Empress* (Petition of an Excise Officer, though addressed to the Deputy Commissioner, presented to a Magistrate, is a complaint).
(1904) 1 Cri. L. Jour. 671 (673), *Nga Ba* v. *Emperor* (Deputy Commissioner directing a Kunwun to make inquiry—He submitted a report that there was a *prima facie* case against the applicant—The report held to be a complaint).

'On a complaint, the complainant is first examined on oath unless it has been made by a public servant acting in the discharge of his official duty.'"[1] **Sec. 4(h), Notes 2—3.**

The following further points of distinction between a complaint and information may also be noted:—

(1) Third class Magistrates cannot be empowered to take cognizance *upon information*. S. 190, sub-S. (3).

(2) When cognizance is taken by a Magistrate *upon information*, the accused may claim a transfer of the case to some other Magistrate or commitment to the Court of Sessions—S. 191. The word 'complaint' must be interpreted throughout the Code wherever it occurs to mean a 'complaint' as defined under this section.[2]

Though generally Magistrates take cognizance of a cognizable offence upon a Police Report, yet there is nothing in the definition of 'complaint' which requires it to be made only in a non-cognizable case.[3]

In criminal cases, though the complainant brings the facts to the cognisance of those charged by the Crown to administer justice, it is the Crown who prosecutes in vindication of his peace.[4]

3. Form of complaint.—There is no particular form in which the complaint should be made. It is sufficient if the complainant lays before the Magistrate, matter which, if proved would constitute an offence. It is the *substance* of the complaint that is to be regarded. Thus the heading of the complaint[1] or the use of a wrong printed form[2] is immaterial. It is not also necessary that the complaint should state precisely the section of the Penal Code under which the accused should be charged. It is enough if the facts alleged would constitute the offence for which the accused is charged.[3] It does not matter even if the complaint quotes a wrong section.[4]

The complaint may be *oral*.[5]

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(1) (1930) 1930 All. 820 (820, 821), *Sheo Pratap Singh* v. *Emperor*.
(2) (1904) 1 Cri. L. Jour. 25 (29): 30 Cal. 910, *Tara Prosad Laha* v. *Emperor*.
(3) (1930) 1930 All. 820 (821), *Sheo Pratap Singh* v. *Emperor*.
(4) (1919) 1919 Mad. 851 (852), *Mellor* v. *Muthaiah Chetty*.
(1889) 13 Bom. 389 (391), *Queen-Empress* v. *Murarji Gokuldas*.
(1874) 21 Suth. W. R. 13 (13), *Queen* v. *Madhub Chander Giri Mohunt*.

Note 3.

(1) (1918) 14 Cri. L. Jour. 425 (426) (All.), *Bullan* v. *Emperor* (To the Collector).
(1918) 1918 All. 345 (346): 40 All. 41, *Thakur Das* v. *Emperor* (To the Collector and District Magistrate).
(1884) 1884 Pun. Re. No. 8, p. 10 (10), *Mangal Singh* v. *Empress* (To the Deputy Commissioner).
(1917) 1916 Nag. 117: 13 Nag. L. R. 13, *Shanker* v. *Mt. Manni* (Do.).
(1902) 26 Bom. 193 (196), *King-Emperor* v. *Malhar Martand Kulkarni* (To the Assistant Collector).
(1910) 11 Cri. L. Jour. 596 (597) (Lah.), *Mt. Malo* v. *Emperor* (To the Lieutenant Governor).
(2) (1918) 18 Cri. L. Jour. 641 (642): 1918 Mad. 455, *Public Prosecutor* v. *Shamsudin Sahib*.
(3) (1903) 25 All. 209 (211), *Emperor* v. *Alli*.
(1925) 1925 Lah. 631 (632): 6 Lah. 375, *Mt. Nanavati* v. *Emperor*.
(1928) 1928 Lah. 510 (510): 9 Lah. 678, *Emperor* v. *Bal Mukand*.
(1929) 1929 Mad. 188 (189), *Ruppa Baluswamy Ayyar* v. *Emperor*.
(1917) 19 Cri. L. Jour. 392 (394): 1917 Nag. 65: 14 N. L. R. 157, *Radhakishan* v. *Secretary, Municipal Committee, Amraoti*.
(1921) 1921 Oudh 149 (150): 24 Oudh Cas. 232, *Brahma Dat* v. *King-Emperor*.
(1933) 1933 Pat. 297 (300): 12 Pat. 758, *Baldeo Prosad* v. *Emperor*.
(4) (1895) 1895 Pun. Re. 23, p. 63 (65, 66), *Piran Ditta* v. *Queen-Empress*.
(5) (1924) 1924 Rang. 35 (36): 1 Rang. 549, *Dass* v. *King-Emperor*.
(1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.

Sec. 4(h). Notes 3—5.

Allegations not stated in the complaint do not form part of a complaint.[6] So a statement made by a complainant in his examination under S. 200, *infra*[7] or as a witness[8] cannot amount to a complaint.

A complaint should allege *facts* but it is not necessary to allege *all* the facts on which the accused is to be charged.[9] It must contain such facts in a concise and certain language which, if relied upon, will constitute the offence charged. A complaint in which no facts are set out but only the words of the section are copied is not a compliance with the requirements of the law.[10]

A complaint need not contain a list of witnesses.[11]

4. **'Joint complaint'.**—*See* S. 200, Note 19, *infra*.

5. **Who may complain.**—Any person having knowledge of the commission of an offence may set the law in motion by complaint even though he is not personally injured or affected by the offence, as nothing in the Code confines prosecutions to persons directly injured.[1] Nor is it necessary that the person making the complaint should have *personal* knowledge of the facts complained

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(6) (1932) 1932 Pat. 72 (75), *Raghunath Puri* v. *Emperor*.
(7) (1888) 10 All. 39 (43), *Queen-Empress* v. *Deokinandan*.
(1932) 1932 Pat. 72 (75), *Raghunath Puri* v. *Emperor*.
[See also (1922) 1922 Mad. 353 (355, 356), In re *Anjini Gadu*.
But see (1924) 1924 Mad. 323 (323), In re *Arunachalam Chetty*.]
(8) (1933) 1933 All. 626 (626, 627): 55 All. 871, *Jagdamba Prasad* v. *Emperor*.
(1883) 5 All. 233 (235), *Empress* v. *Kallu*.
(1912) 13 Cri. L. Jour. 287 (288) (Bom.), *Emperor* v. *Imankhan Rasulkhan*.
(1913) 14 Cri. L. Jour. 1 (2) (Bom.), In re *Kisandas Hirachand*.
(1875) 24 Suth. W. R. 18 (20), *Queen* v. *Luckhy Narain Nagoroy*.
(1883) 1883 Pun. Re. No. 10, p. 12 (13), *Rahmatullah* v. *Empress*.
[But see (1916) 17 Cri. L. Jour. 72 (73): 38 All. 276, *Emperor* v. *Bhawani Dat* (Where it was held a complaint. This view is contrary to earlier and later Allahabad decisions and decisions of other High Courts and is not correct).
But see (1901) 3 Bom. L. R. 675 (676), *King-Emperor* v. *Luis Mingel Fonceca*.]
(9) (1908) 9 Cri. L. Jour. 108 (111): 32 Mad. 3, In re *Subramania Siva*.
[See (1933) 1933 Oudh 430 (431), *Banki Lal* v. *Maiku*.]
(10) (1912) 13 Cri. L. Jour. 609 (650) (Cal.), *Pulin Behary Das* v. *Emperor*.
(1921) 1921 Cal. 561 (563), *Sukumar Chatterjee* v. *Mofizuddin Ahmed*.
(11) (1933) 1933 Oudh 430 (431), *Banki Lal* v. *Maiku*.

Note 5.

(1) (1889) 13 Bom. 600 (602, 622, 623), In re *Ganesh Narayan Sathe*.
(1933) 1933 Lah. 884 (885), *Mehr Singh* v. *Emperor* (Presiding officer of a Court has power to make a complaint).
(1866) 6 Suth. W. R. Cr. 3 (3), In the matter of *Ramruttun Neogee*.
(1930) 1930 Bom. 49 (51, 54): 54 Bom. 146, *Emperor* v. *Ismail Hirji*.
(1921) 1921 Cal. 627 (629), *Prayag Singh* v. *Mrs. Morgan*.
(1926) 1926 Cal. 795 (796): 53 Cal. 606, *Subal Chandra Namadas* v. *Ahadullah Sheikh*.
(1928) 1928 Lah. 510 (512): 9 Lah. 678, *Emperor* v. *Bal Mukand*.
(1926) 1926 Bom. 178 (179), *Mahomed Azam* v. *Emperor*.
(1896) 18 All. 465 (469), *Farzand Ali* v. *Hanuman Prasad*.
(1930) 1930 All. 820 (821), *Sheo Pratap Singh* v. *Emperor*.
(1897) 21 Bom. 536 (538), *Imperatrix* v. v. *Keshavlal Jekrishna*.
(1932) 1932 Bom. 256 (257), *Baloo Babaji* v. *Emperor*.
(1914) 1914 Cal. 801 (803): 41 Cal. 1013, *Dedar Bux* v. *Syamapada Malakar*.
(1929) 1929 Cal. 639 (640), *Basirullah* v. *Asadulla*.
(1924) 1924 Lah. 286 (286), *Fakir Chcnd* v. *Fakir*.
(1929) 1929 Lah. 210 (210), *Diledad* v. *Emperor*.
(1928) 1928 Mad. 1235 (1236): 52 Mad. 79, *Molaiyappa Goundan* v. *Emperor*.
(1920) 1920 U. B. 62 (63): 3 U. B. R. 111, *Nga Po Tok* v. *Emperor*.
(1908) 8 Cri. L. Jour. 213 (214): 1 S. L. R. 88, *Imperator* v. *Hasomal*.
(1931) 1931 Sind 116 (118): 25 S. L. R. 9, *Mahomed Rafiz* v. *Emperor*.
(1908) 7 Cri. L. Jour. 342 (343) (Cal.), *Mahadeo Lal* v. *Emperor*.
(1913) 14 Cri. L. Jour. 409 (410, 411) (Oudh), *Parshadi Pasi* v. *Bal Jit Singh*.
(1921) 63 Ind. Cas. 464 (464) (Lah.), *Kapur Chand* v. *Ugar Sain*.
(1888) 1888 Rat. Un. Re. Cr. Cas. 392 (392, 393) (Complaint under S. 198).
But see (1882) P. R. No. 20, p. 23 (25), *Empress* v. *Lachman* [Under Code of 1872 where the making of complaint was not restricted to persons aggrieved alone).]
(1882) 1882 Pun. Re. No. 20, page 23 (25), *Empress* v. *Lachman*.

of.[2] An alien enemy, who resides in this country by license of the King and under his protection, has a right to complain against crimes directed against his person or property.[2-a] **Sec. 4(h), Note 5.**

A convicted person is entitled to institute criminal proceedings.[2-b]

There are however certain exceptions to the rule that every person can make a complaint:—

(1) A complaint in respect of an offence specified in S. 195, sub-S. (1), Clause (*a*) can only be made by a *public servant.*

(2) A complaint under Ss. 196 to 199 must be made by the person specified therein.[3]

(3) A complaint in respect of the offences specified in Clauses (*b*) and (*c*) of S. 195, sub-S. (1) can be made only by a *Court*.[3-a]

(4) Where a special or local law specifies the person by whom prosecutions under those laws should be instituted, it is only such person that can make a complaint[4] and not others.[5]

[But see (1869) 1869 Pun. Re. No. 24 (Where a master was held not to be competent to lodge a complaint for an assault upon his servant).]

[See also (1872) 18 Suth. W. R. 55 (56), *Boodhoo* v. *Ramdyal* (Complaint dismissed on the ground that some more responsible should have given it—Held that Magistrate ought to have tried the case).]

(2) (1921) 1921 Cal. 561 (563), *Sukumar Chatterjee* v. *Mofizuddin Ahmed.*
(1889) 13 Bom. 600 (602), In re *Ganesh Narayan Sathe.*
(1914) 15 Cri. L. Jour. 369 (370), *Emperor* v. *Shewakaran.*
(1920) 1920 Pat. 163 (163), *Suresh Chandra Deb* v. *Emperor.*
(1931) 1931 Mad. W. N. 1316 (1317), *Satha Kuttia Pillai* v. *Pickai Cruz.*
(1914) 1914 Sind 65 (65): 7 S. L. R. 77, *Emperor* v. *Shewakram* (Public Prosecutor making the complaint).
(1923) 1923 Nag. 156 (156), *Tukaram* v. *Ganpat* (Case under Cattle Trespass Act).
(1931) 1931 Nag. 98 (98): 27 N. L. R. 167, *Hamirmal* v. *Vinayak Rao.* (Do.).

[But see (1906) 4 Cri. L. Jour. 217 (218) (Cal.), *Thakur Prosad Singh* v. *Emperor* (Which seemingly holds otherwise. The real sense of the decision, however is that the want of personal knowledge, may be a ground for not acting on the complaint and nothing more).]

(1907) 5 Cri. L. Jour. 13 (14) (Cal.) *Chamra Sahu* v. *Emperor* (Do.).]
(2-a) (1919) 1919 Mad. 851 (852), *Mellor* v. *Muthia Chetty.*
(2-b) (1874) 21 S. W. R. 13 (13), *Queen* v. *Madhub Chandergirl Mohunt.*
(3) (1889) 13 Bom. 600 (628), In re *Ganesh Narayana Sathe*
(1921) 1921 Cal. 627 (629), *Rayaz Singh* v. *Mrs. Morgan.*
(1913) 14 Cri. L. Jour. 409 (410, 411) (Oudh).
(1888) 1888 Rat. 392 (392, 393) (S. 198).
(3-a) (1915) 1915 Lah. 259: 1915 P. R. 18, *Ladha Singh* v. *Emperor.*
(1917) 1917 Lah. 388: 1917 Pun. Re. 19, *Emperor* v. *Gurditta.*
(1914) 1914 Bom. 138 (139): 38 Bom. 642, In re *Punamchand Manik Lal.*
(4) (1922) 1922 Lah. 220 (220), *Nihal Singh* v. *The Crown* (Police Officer under Punjab Excise Act I of 1914).
(1916) 1916 Lah. 397 (398): 17 Cri. L. J. 242 (243), *Tota Ram* v. *Emperor* (Companies Act).
(1932) 1932 All. 187 (187), *Chedi* v. *Emperor* (Police Officer under U. P. Excise Act).
(1924) 1924 All. 267 (269): 46 All. 158, *Emperor* v. *Chater Singh* (Do.).
(1918) 1918 Mad. 455 (455), *Public Prosecutor* v. *Shamsudin Saheb* (Sanitary Inspector under Madras Town Nuisance Act III of 1889).
(1932) 1932 Bom. 256 (256, 257), *Baloo Babajee* v. *Emperor* (Railway Police under Bombay Public Conveyances Act).
(1933) 1933 Bom. 63 (64), *Emperor* v. *Ali Hassan Limbuvala* (Do.).
(1928) 1928 Mad. 969 (969), *Public Prosecutor* v. *Ramayya Mudaliar* (Persons competent under S. 223 of the Madras Local Boards Act XIV of 1920).
(1928) 1928 Lah. 27 (28): 8 Lah. 613, *Emperor* v. *Muhammad Shafi* (Persons authorised under S. 228 of the Punjab Municipal Act III of 1911 and the explanation thereto).
(1930) 1930 Nag. 33 (34): 25 N.L.R. 194, *Nanhe* v. *Municipal Committee, Jubbulpore* (Persons authorised under S. 218 (2) of the Central Provinces Act II of 1922).
(1907) 6 Cri. L. Jour. 281 (282): 4 L. B. R. 44, *Emperor* v. *Po Nan* (Persons authorised under S. 195, Burma Municipal Act, 1898).
(5) (1929) 1929 Mad. 604 (605, 606): 52 Mad. 613, *Lazar Fernando* v. *Amirtham Fernando* (Madras Abkari Act I of 1886 and the Indian Opium Act of 1878).
(1918) 1918 Cal. 50 (51), *Jalaluddin* v. *Emperor* (Bengal Excise Act).
(1916) 17 Cr. L. Jour. 199 (200): 1916 Lah. 358: 1916 Pun. Re. 8, *Emperor* v. *Dharma Shah* (Munici-

Sec. 4(h), Notes 5—7.

6. **"Who may present complaint."**—*See* S. 200, Note 12; *infra.*

7. **Statement in complaint, if privileged.**—The question whether a statement made in a complaint, if defamatory; is privileged may arise—

(1) in Criminal prosecutions under S. 499, Penal Code;

(2) in civil suits for damages.

1. If a party to a judicial proceeding is prosecuted for defamation in respect of a statement therein, his liability must be determined with reference to the provisions of S. 499, Penal Code; and not otherwise. Consequently a person in such a position is entitled only to the benefit of the qualified privilege mentioned in S. 499 of the Penal Code. He will be protected only if the statement was made in *good faith.*[1]

2. If the complainant is sued in a Civil Court for damages, for defamation in respect of a statement made in the complaint his liability, must be determined with reference to principles of *justice, equity and good conscience,* which have been interpreted to mean the rules of English Law so far as they are applicable to Indian society and circumstances; under that law, such a statement is *absolutely privileged* and the same will hold good in this country also.[2]

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pal Act).
(1892) 1892 Pun. Re. No. 3, p. 6 (7, 8), *Nur Din* v. *The Municipal Committee, Lahore* (Punjab Municipal Act).
(1917) 18 Cri. L. Jour. 511 (511): 1917 Lah. 233: 1917 Pun. Re. 4, *Ahmed Din* v. *Emperor* (Do.).
(1927) 1927 Nag. 202 (202, 203), *Ramjivan Marwadi* v. *Lahini* (Stamp Act).
(1933) 1933 Lah. 590 (590), *Abdul Kareem* v. *Emperor* (Cantonments Act).
[See (1928) 1928 Nag. 186 (187, 188), *R. B. D. Laxmi Narayan* v. *D. H. Mahajan* (Where even though R. 15 made under S. 248 of the Indian Companies Act prescribes a competent authority, a *person aggrieved* like a shareholder can make a complaint).]
(1895) 9 C. P. L. R. Cr. 26 (26), *Empress* v. *Kisan Kohalee* [Arms Act, S. 19, cl. (*f*)].
(1909) 9 Cri. L. J. 449 (450): 3 S. L. R. 13, *Tikan Valad Kundan* v. *Emperor* (Prosecutions under Bombay District Municipal Act III of 1901).
(1913) 14 Cri. L. J. 637 (638), *Lakshmi Narasayya* v. *Narasimhachari* (Presidency Towns Insolvency Act—A creditor cannot initiate proceedings by complaint).
(1916) 1916 Lah. 295 (295), *Harnam Singh* v. *Emperor* (Punjab Excise Act).
(1910) 11 Cri. L. J. 190 (190), In re *Abdul Kadir Sahib* [Arms Act, S. 19 (*f*)].
(1910) 11 Cri. L. J. 577 (580), *Shib Das* v. *Sangam Lal.*
(1916) 1916 Cal. 455 (456), *Nobin Chandra* v. *Noakhali.*
(1927) 1927 Cal. 149 (150): 53 Cal. 929, *Ashutosh Ganguli* v. *Watson* (Case under Insolvency Act).
(1893) 20 Cal. 448 (453), *Kheroda* v. *Chairman, etc.* (Prosecution under Bengal Municipal Act).
(1900) 27 Cal. 692 (697), *Ahmed Hossein* v. *Queen-Empress* (Prosecution under Arms Act).
(1898) Rat. 987 (987), *Queen-Empress* v. *Nadirshaw* [Under the City of Bombay Municipal Act (III of 1888) Municipal Commissioner is the only person empowered to take proceedings].
(1902) 5 Bom. L. R. 205 (206), *Emperor* v. *Dhanjisha Dadaboy* (Persons entitled to complain under S. 21 of Cattle Trespass Act of 1871).
(1919) 1919 All. 125 (125), *Parsottam Das* v. *Emperor* (Prosecution for offences under U. P. Municipalities Act, S. 314 of that Act).
(1931) 1931 Bom. 141 (142), In re *Motilal Amrillal Shah* (Prosecution under Ss. 155 and 161 of Bombay District Municipal Act can be made by the Municipality only and not by private individuals).

Note 7.

(1) (1921) 1921 Cal. 1 (14, 15): 48 Cal. 388, *Satish Chandra Chakravarthi* v. *Ram Doyal De* (Distinguishing 38 Cal. 880: 11 Ind. Cas. 311 on the ground that it arose in a civil suit for damages).
(1926) 1926 Mad. 906 (909): 49 Mad. 728 (F.B.), *Tiruvengada Mudali* v. *Tiruparasundari Ammal* [Overruling 36 Mad. 216 (F.B.) and 37 Mad. 110 which held that such statements are absolutely privileged].
(1914) 1914 Mad. 382 (382), *Parvataneni Kamayya* v. *Kasinaduni Tripurantakam.*
(1922) 1922 Bom. 381 (382): 47 Bom. 15, *Dinshaji Edalji Karkaria* v. *Jehangir Cowasji Mistri.*
(2) (1918) 1918 All. 69 (70, 71): 40 All. 341 (F.B.), *Chunnilal* v. *Narsingh Das.*
(1928) 1928 All. 316 (319), *Mohd. Sami Ullah Khan* v. *Bishunath.*

S. 4 (1) (h), Notes 8—9

8. **'To a Magistrate'.**—The complaint must be made to a *Magistrate as such*. So where a petition was presented to the *Police* and on the report of the Police the Magistrate passed orders, such orders are illegal as the case is one not instituted on a complaint.[1] Petitions made to a *Collector* as head of the Court of Wards[2] or otherwise,[3] or to an *officer in his executive capacity*[4] or to a *Village Magistrate* who is not a Magistrate under the Code[5] or to a Civil Court, by a means of obstruction to execution[5-a] are not complaints. A complaint by a Magistrate to his own Court, is one made to a *Magistrate* and is not illegal.[6]

9. **"With a view to his taking action".**—The test to decide whether an allegation amounts to a complaint is to see whether it is made with a view to the Magistrate's taking action under the Code.[1] Whether in any particular case the allegations were made with such a view depends upon the facts and circumstances of that case. An express request to that effect is not necessary.[2]

The following have been held not to amount to complaints by reason of their not having been made with a view to action being taken by the Magistrate:—

(1921) 1921 Cal. 1 (14, 15): 48 Cal. 388 (S.B.), *Satish Chandra Chakravarthi* v. *Ram Doyal De*.
(1911) 11 Ind. Cas. 311 (312): 38 Cal. 880, *Golap Jan* v. *Bholanath Khetry*.
(1926) 1926 Mad. 521 (523, 525): 49 Mad. 315, *Sanjivi Reddy* v. *Kondagari Koneri Reddi*.
(1892) 61 L. J. Q. B. 727, *Lilley* v. *Roney* (Based on English common law—A civil suit).
common law—A civil suit).
[See also (1913) 18 Ind. Cas. 737 (739) (Cal.), *C. H. Crowdy* v. *L. O. Reily* (A case of proceedings under S. 144).]

Note 8.

(1) (1883) 6 All. 96 (97), *Ishri* v. *Bakhshi*.
(1904) 1 Cri. L. Jour. 25 (29): 30 Cal. 910, *Tara Prasad Laha* v. *Emperor*.
(1884) 7 Mad. 563 (564), *The Queen-Empress* v. *Palanarapu*.
(1923) 1923 Mad. 59 (59), *Arumuga Mudaliar* v. *Gangubhai*.
(1904) 1 Cri. L. Jour. 763 (763, 764): 17 C. P. L. R. 105, *Emperor* v. *Khushal Singh*.
(1929) 1929 Pat. 473 (475) (F.B.), *Barat Kishore Lal Singh* v. *Judhistir Modak*.
(1903) 30 Cal. 285 (287), *Kailas Kurmi* v. *Emperor*.
(1904) 1 Cri. L. Jour. 1046 (1047): 27 All. 305, *Emperor* v. *Mathura Singh*.
(1898) 22 Bom. 949 (956), In re *Harilal Buch*.
(2) (1903) 30 Cal. 415 (417), *Jagobundo Karmakar* v. *Emperor*.
(1904) 1 Cri. L. Jour. 957 (958) (Lah.) *Ahmed Khan* v. *The King-Emperor*.
(1918) 1918 All. 265 (266), *Debi* v. *Emperor*.
(3) (1913) 14 Cri. L. Jour. 425 (426) (All.), *Bulian* v. *Emperor*.
[See also 14 Cri. L. J. 56 (56): 35 All. 102, *Phulel* v. *King-Emperor*, (Complaint to a District Magistrate as head of the police and not as Magistrate).]
(4) (1891) 1891 Rat. 554 (554), *Queen* v. *Shivram*.
(1915) 1915 All. 457 (458): 38 All. 32, *Bhola Singh* v. *Emperor*.
(5) (1902) 25 Mad. 667 (668), *King-Emperor* v. *Thammana Reddi*.
(5-a) (1904) 1 Cri. L. Jour. 358 (359): 26 All. 183, In the matter of the petition of *Ram Padarath*.
(1876) 1 Bom. 175 (176, 177), In re *Keshav Lakshman*.
(1893) 20 Cal. 481 (482), *Bharut Chundernath* v. *Jabed Ali*.
(1908) 7 Cri. L. Jour. 224 (225, 226) (Cal.), *Bansi Lal* v. *Emperor*.
(1910) 11 Cri. L. Jour. 634 (635): 1910 Pun. Re. 25, *Emperor* v. *Abdul Ghani*.
(1928) 1928 Lah. 827 (828), *Mt. Darkan* v. *Emperor*.
(1888) 1888 A. W. N. 216 (216), In the matter of *Nain Sukh*.
(6) (1926) 1926 Cal. 470 (472, 477, 479): 53 Cal. 350 (F.B.), *Emperor* v. *Colin Mackenzie Mackey*.

Note 9.

(1) (1895) 19 Bom. 51 (62), *Queen-Empress* v. *Karigowder*.
(1918) 42 Ind. Cas. 924 (926): 1918 All. 345: 40 All. 41, *Thakur Das* v. *Emperor*.
(1909) 10 Cri. L. Jour. 18 (19) (All.), *Jhahu Lal* v. *Pir Baksh*.
(1930) 1930 All. 820 (821), *Sheo Pratap Singh* v. *Emperor*.
(1929) 1929 Pat. 473 (475) (F.B.), *Bharat Kishore Lal Singh* v. *Judhistir Modak*.
(1930) 1930 Pat. 550 (553), *Banti Pande* v. *Emperor*.
(1929) 1929 Cal. 346 (347): 56 Cal. 1013, *Muhammad Gul* v. *Hazi Fazley Karim*.
(1924) 1924 Nag. 115 (115), *Mahadu* v. *Emperor*.
(1888) 11 Mad. 443 (444), *Queen-Empress* v. *Monu*.
(1914) 1914 Sind 121 (121): 8 S.L.R. 66, *Hotu Passumal* v. *Emperor*.
(1913) 14 Cri. L. Jour. 76 (76) (Cal.), *Khetter* v. *Emperor*.
(2) [See also (1910) 11 Cri. L. Jour. 351 (352) (All.), *Chhedi Kandu* v. *Emperor* (Held, that under the circumstances there was no complaint).
(1930) 1930 Pat. 550 (553), *Banti Pande* v. *Emperor*.]

S. 4 (1) (h), Note 9.

(1) Where the object of the allegation is merely to inform the Magistrate[3] or to request him to take such action as he may, *in his discretion,* consider necessary[4] or to ask for his directions.[5]

(2) A request for a *departmental* enquiry.[6]

(3) An application made with a view to coerce a party to return stolen property.[7]

(4) A request for a warning order.[8]

(5) An application requesting that he may be saved from police torture.[9]

(6) An application for issue of process against a person not named in the petition of complaint.[10]

(7) Where on process being issued against a person for the offence of giving false information to a police officer, the person files a petition showing cause against such process and states that his information was true.[11]

(8) An order merely sanctioning prosecution.[12]

(9) An *order* of the District Judge to take certain persons into custody on charge of robbery and sending them to a Magistrate for trial[13] or a *direction* by a Magistrate to his subordinate to enquire into and pass a proper order.[14]

(10) A mere authority[15] or resolution[16] or 'recommendation'[17] to start a prosecution under the Municipal Act.

(11) A mere authorisation to prosecute under the Post Office Act.[18]

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(3) (1903) 26 Mad. 640 (644), *Rayan Kutti* v. *Emperor.*
(1913) 14 Cri. L. Jour. 462 (462) (Cal.), *Ahmad Hussain* v. *Emperor.*
(1882) 10 Cal. L. R. 521 (522), In the matter of *Ram Kumar.*
[See also (1866-67) 4 Bom. H. C. R. 4 (4), *Reg.* v. *Larkins.*]

(4) (1926) 1926 All. 566 (567), *Baldeo Singh* v. *Emperor.*

(5) (1919) 1919 All. 455 (456): 40 All. 641, *Sheo Samphat Pande* v. *Emperor.*
(1913) 14 Cri. L. Jour. 425 (426, 427) (All.), *Bullan* v. *Emperor.*

(6) (1903) 30 Cal. 415 (417), *Jagabandu Karmakar* v. *Emperor.*
(1899) 1899 All. W. N. 201 (202), *Karim Bakhsh* v. *Adil Khan.*

(7) (1916) 16 Cri. L. Jour. 466 (468): 1916 Mad. 1059, In re *Rukmani Ammal.*

(8) (1911) 12 Cri. L. Jour. 535 (536) (Cal.), *Purno Chandro Ghosh* v. *Harish Chandra Ghosh.*

(9) (1923) 1923 Nag. 313 (314), *Ramrao Gurao* v. *Emperor.*

(10) (1911) 12 Cri. L. Jour. 2 (3) (Cal.), *Emperor* x. *Lalit Mohan.*
(1898) 2 Cal. W. N. 290 (292), *Inderjit Singh* v. *Thakur Singh.*
(1899) 3 Cal. W. N. cclxxix (cclxxx).

(11) (1930) 1930 Pat. 505 (506), *Gonour Singh* v. *Emperor.*
(1921) 1921 Pat. 302 (303), *Tuloki Mahton* v. *King-Emperor.*

(12) (1868-69) 5 Bom. H. C. R. 48 (49), *Reg.* v. *Bai Divali.*
(1908) 7 Cri. L. Jour. 10 (14): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*
(1890) 1890 Pun. Re. No. 16, pp. 33 (34, 35), *Shamalkhan* v. *Empress.*
[But see (1908) 7 Cri. L. Jour. 353 (354, 355): 1908 Pun. Re. 8, *Swami Dayal* v. *Emperor.*]

(13) (1922) 1922 Sind 9 (11, 12): 15 S. L. R. 119, *Pohumal* v. *Emperor.*

(14) (1878) 1878 Pun. Re. No. 15, pp. 39 (39), *Nabi Shah* v. *The Crown.*

(15) (1892) 1892 Pun. Re. No. 1, p. 1 (2), *Abdul Aziz* v. *The Municipal Committee, Bahadargarh.*
(1892) 1892 Pun. Re. No. 2, p. 3 (4), *Abdul Ghani* v. *The Municipal Committee, Peshawar.*
(1895) 22 Cal. 131 (135), *Chandi Pershad* v. *Abdur Rahman.*

(16) (1894) 1894 Pun. Re. No. 20, p. 68 (69), *Nahinya* v. *Queen-Empress.*

(17) (1917) 1917 Cal. 260 (261), *Kristo Lal Mallick* v. *Chairman of Hooghly, Chinsurah Municipality.*

(18) (1906) 4 Cri. L. Jour. 170 (170) (Cal.), *Emperor* v. *Rohini Kumar Sen.*

(12) Proceedings under Ss. 449 and 450 of the Calcutta Municipal Act III of 1899.[19] S. 4 (1) (h). Note 9.

(13) An application to revive proceedings[20] or for ordering a second complaint[21] or for sanction of the Court for making an investigation under S. 155, sub-S. (2).[22]

(14) Where a person while alleging an offence *expressly* says that he does not wish to make a complaint or to prosecute.[23]

The following have been construed as complaints, as alleging facts of an offence with a view to action being taken thereon:—

(1) Until the amendment of 1923 proceedings taken by a Civil, Revenue or Criminal Court, under S. 476, *infra*, in sending a case for trial to the nearest Magistrate.[24] After the amendment a regular complaint in writing is necessary and a proceeding will no longer be a complaint.[25]

(2) The submission of records[26] or of a report[27] by a subordinate Magistrate, to the superior or District Magistrate, for the purpose of starting a case or for the trial of a person for an offence.

(3) A committal sheet signed by the Superintendent of the Salt Department and sent to the Magistrate setting out the date and particulars of the offence, the names of the accused, and the witnesses, and requesting the Magistrate to try the case[28] or the report of an Excise Officer.[29]

(4) A report of a judicial officer under S. 6 of the Child Marriage Restraint Act.[30]

(5) A petition to the Magistrate impugning the correctness of a police inquiry and praying for the trial of the accused[31] or to be allowed

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(19) (1904) 1 Cri. L. Jour. 69 (70) (Cal.), *The Corporation of Calcutta* v. *Keshub Chander Sen.*
(1910) 11 Cri. L. Jour. 183 (184): 37 Cal. 384, *Sarat Chandra Mukerjee* v. *The Corporation of Calcutta.*
(20) (1923) 1923 Pat. 532 (535), *Gajo Chaudhry* v. *Debi Chandu.*
(1907) 5 Cri. L. Jour. 478 (478) (Rang.), *Nga Nyun Bu* v. *Emperor.*
(21) (1868) 5 Bom. H. C. R. 85 (96), *Reg.* v. *Fattechand.*
(22) (1930) 1930 Bom. 372 (372), In re *Shivalingappa Bhagappa.*
(23) (1913) 14 Cri. L. Jour. 56 (56): 35 All. 102, *Emperor* v. *Phulel.*
(1902) 6 Cal. W. N. 926 (926, 927).
(24) (1885) 7 All. 871 (874), *Ishri Prasad* v. *Shamlal.*
(1912) 13 Cri. L. Jour. 829 (829, 830): 35 All. 8, *Debi Prasad* v. *Emperor.*
(1914) 1914 All. 367 (368), *Rajaram* v. *Emperor.*
(1919) 1919 All. 59 (60), *Baldeo Das* v. *Gobind Das.*
(1868-69) 5 Bom. H. C. R. 29 (31), *Reg.* v. *Sadashivappa Pandurangappa.*
(1889) 13 Bom. 109 (112), *Queen-Empress* v. *Rachappa.*
(1904) 1 Cri. L. Jour. 525 (527): 31 Cal. 664, *The Deputy Legal Remembrancer* v. *Arjun Pramanik.*
(1910) 10 Cri. L. Jour. 420 (423): 33 Mad. 48, In re *Ottupara Narayan.*
(1918) 1918 Nag. 59 (60), *Nanakram* v. *Emperor.*
(1893-1900) 1893-1900 Low. Bur. R. 388 (390), *Krishnaswami* v. *Empress.*
(1907) 6 Cri. L. Jour. 25 (27): 1907 U. B. R. 1, *Nga Paw U* v. *Emperor.*
(25) (1925) 1925 All. 318 (319): 47 All. 409, *Emperor* v. *Madho Singh.*
(26) (1904) 1 Cri. L. Jour. 335 (337): 26 All. 514, *Emperor* v. *Sundar Sarup.*
(1905) 2 Cri. L. Jour. 687 (689): 1905 Pun. Re. 30, *Inder Bhan* v. *Emperor.*
(27) (1924) 1924 All. 190 (191), *Sarju Prasad* v. *The Crown.*
(1930) 1930 All. 820 (821), *Sheo Pratap Singh* v. *Emperor.*
(1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor.*
(28) (1916) 18 Cri. L. Jour. 366 (366), *Pagu Sahu* v. *Emperor.*
(29) (1927) 1927 Cal. 405 (406): 54 Cal. 371, *Radika Mohan Das* v. *Hamid Ali.*
(30) (1933) 1933 Pat. 87 (88), *Sukha Sahu* v. *Emperor.*
(31) (1887) 14 Cal. 707 (716) (F.B.), *Queen-Empress* v. *Shamlall.*

S. 4 (1) (h), Notes 9—11.

to prove his case[32] or that the complaint should be inquired into[33] or to have the petitioners his witnesses summoned and examined.[34]

10. "**Under the Code**".—The action that is sought to be taken must be *under this Code*. So where an allegation is made to a Magistrate with the object of inducing him to take action under the Bombay Prevention of Gambling Act it does not amount to a complaint of an offence, as defined in this section.[1]

11. "**That some person, has committed an offence**".—The complaint must allege that an *offence* [as defined in S. 4-1 (*o*)] has been committed; where therefore no offence is disclosed upon the facts contained in the petition, there is no complaint[1].

An act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act, 1871, was not included in the word "offence" in the Code of 1882, and it was held that a request for action against such acts was not a complaint".[2] Such acts would now, under the present definition clearly be "offences".[2-a]

Section 41 of the Bombay District Police Act does not make the use of a house as a brothel, an offence, for it is not punishable. A complaint under that section therefore is not one as defined in this section.[3] Again, a proceeding under S. 113, Railways Act, to recover excess charge, is not a prosecution for a criminal

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(1905) 2 Cri. L. Jour. 615 (617): 33 Cal. 1, *Jogendralal Mukerjee* v. *Bahu Ballabhor.*
(1909) 13 Cal. W. N. xii (xii).
(1916) 17 Cri. L. Jour. 146 (147): 43 Cal. 173: 1916 Cal. 867, *Gangadar Pradan* v. *Emperor.*
(1917) 1917 Cal. 593: 43 Cal. 1152, *Tayabullah* v. *Emperor.*
(1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor.*
(1932) 1932 Cal. 550 (551), *Charles Johns* v. *Emperor.*
(1933) 1933 Cal. 614 (614), *Shekandarmia* v. *Emperor* (Implied by).
(1917) 1917 Pat. 362 (363), *Lalji Singh* v. *Pardip Singh.*
(1918) 1918 Pat. 270 (271), *Sadhu Charan Ray* v. *Babi Swain.*
(1919) 1919 Pat. 530 (531), *Emperor* v. *Mukund Patel.*
(1923) 1923 Pat. 539 (540), *Nand Kishore Missir* v. *Kalikamissir.*
(1925) 1925 Pat. 483 (484): 4 Pat. 323, *Shaikh Mohd. Yassin* v. *Emperor.*
(1928) 1928 Pat. 585: 7 Pat. 561, *Shukadeva Sahay* v. *Hamid Miyan.*
(1928) 1928 Notes 16 (f) (17), *Ramdhani Gopi* v. *Emperor.*
[See also (1929) 1929 Mad. 849 (849), *Mir Hameed Saheb* v. *Abdul Kadir.*]
(32) (1928) 1928 Pat. 585 (587): 7 Pat. 561, *Shukadeva Sahay* v. *Hamid Miyan.*
(1900) 4 Cal. W. N. ccxxi (ccxxii).
(33) (1901) 5 Cal. W. N. 106 (107), *Lalji Gope* v. *Giridhari Chaudhary.*
(1901) 5 Cal. W. N. 254 (255), In re *Sahiram Agarwalla and Jibun Kamar.*
(1917) 1917 Cal. 593: 43 Cal. 1152, *Tayabullah* v. *Emperor.*
(34) (1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*

Note 10.

(1) (1914) 1914 Sind 121 (121): 8 S. L. R. 66, *Hotu Pessumal* v. *Emperor.*

Note 11.

(1) (1902) 1 Weir 720 (720), Re *Pallavesam* (No allegation that any offence has been committed).
(1865) 1865 Rat. 3 (3), *Reg.* v. *Raghu* (Facts disclosing only a civil case).
(1932) 1932 Cal. 287 (287), *Sheikh Abdullah* v. *Emperor* (Application to have police report expedited).
(1926) 1926 All. 566 (567), *Baldeo Singh* v. *King-Emperor* (Report by Circle Inspector to Superintendent of Police —Endorsement by Superintendent not containing any allegation of offence, does not amount to a complaint).
[See also (1892) 1892 Cr. R. 40 of 1892: Rat. 617 (618), *Namdeo Valad Sambhaji.*
(2) (1896) 18 All. 353 (354), *Meghai* v. *Sheobhik.*
(1871) 8 Bom. H. C. R. 22 (23), *Reg.* v. *Avji Bin Nam.*
(1886) 13 Cal. 304 (305), In the matter of *Kalachand* v. *Gudadhar.*
(1896) 23 Cal. 442 (445), *Raghu Singh* v. *Abdul Wahab.*
(1886) 9 Mad. 102 (102), *Pitchi* v *Ankapya.*
(1886) 9 Mad. 374 (375), *Kottalunada* v. *Muthaiya.*
(2-a) (1927) 1927 Mad. 396 (397): 50 Mad. 841, *Deenadayalu* v. *Ratna Padayachi.*
(1907) 5 Cri. L. Jour. 86 (86): 29 Mad. 517, In re *Ponnuswami.*
(3) (1913) 14 Cri. L. Jour. 320 (320): 6 S. L. R. 254, *Imperator* v. *Musammat Khairi.*

offence.[3-a] Applications for action under S. 107,[4] S. 110,[5] S. 133,[5-a] and S. 145[6] and petitions for maintenance under S. 488[7] are not complaints as the allegations in support thereof do not amount to an offence as defined in clause (*o*).

S. 4 (1) (h), Notes 11—14.

12. "Some person known or unknown".—The definition under this section includes a complaint that some person or persons *unknown* have committed an offence.[1] So it is not necessary that the complainant should *name* all the accused persons[2] or specifically and in terms accuse any particular person of an offence[3] or each person with a particular offence.[4]

A Magistrate having taken cognizance of a complaint can also proceed against other persons who, though not mentioned in the complaint, appear to have been concerned in the commission of the offence.[5]

13. "Report of a Police Officer".—The "report of a Police officer" is not a complaint.[1] There is however a conflict of opinion as to the meaning of the expression "report of a Police officer", *see* S. 190, Notes 20 and 21.

14. Limitation.—There is no limitation for preferring a complaint of a criminal offence[1-a] unless the penal law creating the offence prescribes any period within which a complaint may be made in respect thereof.[1]

(3-a) (1929) 1929 Rang. 11 (11): 6 Rang. 619, *Makalay Ma* v. *Emperor*.

(4) (1910) 11 Cri. L. Jour. 446 (446, 447) (All.), *Ram Sukh Rai* v. *Mahadeo Rai*.
(1931) 1931 All. 53 (54): 53 All. 148, *Mohammed* v. *Abdul Majid*.
(1905) 2 Cri. L. Jour. 697 (701): 1905 Pun. Re. 42, *Muhammad Khan* v. *Emperor*.
(1924) 1924 Lah. 630 (630), *Shamas-ud-din* v. *Ram Dayal Singh*.
(1928) 1928 Lah. 694 (694), *Hari Singh* v. *Jagta*.
(1925) 1925 Oudh 138 (138): 28 Oudh Cas. 44, *Ram Lal* v. *Bankateshar Rawan Bahadur Pal*.
(1930) 1930 Oudh 500 (501), *Sarfaraz Singh* v. *Emperor*.
[But see (1926) 1926 All. 358 (359), *Khacho Mal* v. *Emperor* (Where it was held that where the facts alleged amounted to a substantive offence then the application is a complaint).]

(5) (1900) 27 Cal. 662 (663), *Queen-Empress* v. *Iman Mondal*.
(1908) 6 Oudh Cas. 262 (266, 267).

(5-a) (1897) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi Haldar*.

(6) (1893) 20 Cal. 729 (732), *Chathu Rai* v. *Niranjan Rai*.
(1912) 18 Ind. Cas. 737 (742) (Cal.), *C. H. Crowdy* v. *L. O'Reilly* (*Contra*—Beachcroft, J.).
(1930) 1930 Oudh 500 (501): 6 Luck. 354, *Sarfaraz Singh* v. *Emperor*.

(7) (1885) 1885 Pun. Re. No. 13, p. 26 (27), *The Rev. Father Hildephonrus* v. *Corporal K. Malone*.
(1905) 2 Cri. L. Jour. 367 (368) (Lah.), *Emperor* v. *Amir Khan*.
(1905) 2 Cri. L. Jour. 421 (422): 1905 P. R. 29, *Sardaran* v. *Amir Khan*.
(1888) 11 Mad. 199 (199), *Venkata* v. *Paramma*.
(1893) 16 Mad. 284 (284), *Ponnammal*, In re.
(1910) 11 Cri. L. Jour. 156 (157) (Mad.), *Amboo* v. *Baboo*.
(1904) 1 Cri. L. Jour. 864 (865): 17 C. P. L. R. 127, *Mt. Parbathi* v. *Ohotey*.
(1893-1900) 1893-1900 L. B. R. 662 (663), *Ma Tha Pru* v. *Maung Bon*.
(1907) 1 Sind L. R. 133.
(1928) 1928 Notes 82 (e) (83), *Makhan Singh* v. *Mt. Harnamo*.

Note 12.

(1) (1911) 12 Cri. L. Jour. 399 (399): 4 S. L. R. 258, *Imperator* v. *Lalu*.
(2) (1912) 13 Cri. L. Jour. 588 (589, 590) (All.), *Emperor* v. *Shamacharan*.
(1928) 29 Cri. L. Jour. 942 (944): 7 Pat. 561: 1928 Pat. 585, *Sukadeva Sahay* v. *Hamid*.
(3) (1899) 26 Cal. 786 (789, 790), *Jagat Chandra Mozumdar* v. *Queen-Empress*.
(1933) 1933 Pat. 297 (300): 12 Pat. 758, *Baldeo Prasad* v. *Emperor*.
(4) (1891) 1891 Pun. Re. No. 8, p. 19 (21, 22), *Sardar Dyal Singh* v. *Queen-Empress*.
(5) (1914) 1914 Cal. 801 (804): 41 Cal. 1013, *Dedar Bux* v. *Syamapada Malakar*.

Note 13.

(1) (1888) 1888 Pun. Re. No. 4, pp. 6 (7, 8), *Jit Mal* v. *The Empress*.

Note 14.

(1-a) (1871) 15 Suth. W. R. 25 (27), *Queen* v. *Ameeroddeen*.
(1891) 1891 Rat. 549 (550), *Queen-Empress* v. *Manji* (Magistrate could not rightly refuse to enquire into a complaint because the offence was alleged to have been committed six years ago).
(1887) 11 Mad. 332 (333), Re *Kittu*.
(1) (1896) 20 Bom. 543 (544, 547), *Queen-Empress* v. *Nageshappa Pai*.

S. 4 (1) (i), Note 1.

15. **Stamp on the complaint.**—*See* Note 6 to S. 200, *infra*.

"European British subject."

(*i*) *"European British subject" means—

(1) any subject of His Majesty of *European descent in the male line* born, naturalized or domiciled in the British Islands or any colony, or

(2) any *subject of His Majesty who* is the child or grand-child of any such person by legitimate descent.

SYNOPSIS.

	Note No.
SCOPE OF THE DEFINITION	1

Other Topics.

Legitimate descent. See Note 1, Pt. 2. Pt. 3.
"Naturalised or domiciled." See Note 1,

1. **Scope of the definition.**—The son of an Indian born at Constantinople cannot claim to be a European British Subject merely because of his birth in Europe unless he proves that his father or grand father was domiciled in the British Islands or in any colony.[1]

In order to sustain the plea of a British born subject not only the legitimate descent of the accused but also the nationality of his father or grand father, as the case may be, must be proved.[2]

***[(CODE OF 1898—S. (4) (i).]**

(*i*) "European British Subject" means—

"European British Subject."

(*i*) any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian Colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(*ii*) any child or grand-child of any such person by legitimate descent.

[(CODE OF 1882—S. 4 (u).]

(*u*) "European British Subject means:—

"European British Subject."

(1) Any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grandchild of any such person by legitimate descent.

(1935) 1935 Cal. 116 (116), *Hemodhar Sarmah* v. *Anandiram Saikia* (S. 20 of Cattle Trespass Act of 1871—Complaint filed after 10 days of seizure is time barred).

(1931) 1931 Mad. 276 (276), *Muhammad Ahmed* v. *Bezwada Venkanna* (Merchandise Marks Act IV of 1889, S. 15—Prosecution under S. 486, I. P. C., if launched within 3 years of offence complained against is within time).

(1916) 1916 Sind 49 (50): 10 S. L. R. 45, *Jagannath* v. *Emperor* (Do.).

[See also (1885) 1885 Rat. 220 (221), *Queen-Empress* v. *Ramachandra* (See S. 42 of Bombay District Police Act VII of 1867).]

Section 4 (1) (i)—Note 1.

(1) (1912) 13 Cri. L. Jour. 197 (198): 1912 P. R. 6, *Alexander Ruffe* v. *Emperor*.

(2) (1870-71) 6 Mad. H. C. 7 (9), *Thomas Nash Turnbull*, In re.

The words "Naturalised" or "domiciled" which follow the word "born" are disjunctive and not conjunctive. In other words, it is not necessary that the applicant, in order to come under the definition should, besides being an European British subject by birth, also be domiciled at the same time in the British Islands or in any colony. Therefore an European British woman who marries a native British Indian husband or a subject of an Indian State does not cease to be an European British subject by reason of her marriage or of her domicile in the Native State.[3] S. 4 (1) (i), Note 1.

See also the undermentioned case.[4]

'High Court." (*j*) *"High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras, Bombay, Allahabad, Patna, Lahore and Rangoon, *and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind*; in other cases "High Court" means the highest Court of criminal appeal or revision for any local area, or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf. S. 4 (1) (j)

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*[(CODE OF 1898—S. 4 (j).]

"High Court." (*j*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Chief Court of Lower Burmah; in other cases "High Court" means the highest Court of Criminal Appeal or revision for any local area; or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf.

[(CODE OF 1882—S. 4 (i).]

"High Court." (*i*) "High Court" means in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William in Madras and Bombay, the High Court of Judicature for the North-Western provinces, the Chief Court of the Punjab and the Recorder of the Rangoon.

In other cases "High Court" means the highest Court of Criminal Appeal or revision for any local area; or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf.

[(CODE OF 1872—S. 4, Paras 14 and 15).]

"High Court." "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Punjab.

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(3) (1929) 1929 Bom. 81 (85, 86, 87): 53 Bom. 149, *Bai Aisha, In re.*

(4) (1894) 16 All. 88 (93), *Queen-Empress v. Mosa.*

S. 4 (1) (j), Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"HIGH COURT"	2
PROCEEDINGS AGAINST EUROPEAN BRITISH SUBJECTS ..	3
"SUCH OFFICER"	4

Other Topics.

High Court, Single Judge sitting on the original side—Whether amounts to. See S. 266.

1. Legislative Changes.—

Changes made in the Code of 1882—

(1) The words "and the Recorder of Rangoon" were added at the end of para. 1.

(2) Para. 3 was added.

Changes made in 1900—

The words "Chief Court of Lower Burmah" were substituted for the words "Recorder of Rangoon" by the Lower Burmah Courts (Act VI of 1900.)

Changes made in 1916—

The word "and" before "Bombay" was omitted and the words "Allahabad and Patna" were substituted for the words. "The High Court of Judicature for the North-Western Provinces" (Act XIII of 1916.)

Changes made in 1919—

The words "and" before "Patna" was omitted and the words "and Lahore" were substituted for the words "the Chief Court of the Punjab" by the Repealing and Amending Act XVIII of 1919.

Changes made in 1923—

(1) The word "and" before "Lahore" was omitted and the words "and Rangoon" were substituted for the words "the Chief Court of Lower Burma" by the repealing and Amending Act XI of 1923.

(2) After the word "Rangoon" the words "and the Courts of the Judicial Commissioner of the Central Provinces, Oudh and Sind" were inserted by the Criminal Law Amendment Act XII of 1923.

Changes made in 1925—

After the word "Rangoon" the words "the Chief Court of Oudh" were inserted and the word "Oudh" after the word "Provinces" was omitted by the Oudh Courts Act XXXII of 1925.

Changes made in 1926—

For the words "the Chief Court of Oudh" the words "the Chief Courts of Oudh and Sind" were substituted and for the word "commissioners" the word "Commissioner" was substituted by the Sind Courts Act XXXIV of 1926.

S. 4 (1) (j), Notes 1—4.

2. 'High Court'.—This definition is a general one. For a specific definition, *see* S. 266 *infra*.

3. Proceedings against European British Subjects.—*See* Notes to S. 528-B *infra*.

4. "Such Officer".—As to the appointment of officers, *see* the following:—

(1) *Upper Burmah*:—*See* the Upper Burmah Criminal Justice Regulations, 1892 (V of 1892), Art. 1 as amended by the Burmah Laws Act, 1898 (XIII of 1898) (Burmah Code).

(2) *The Santal Parganas.*—*See* the Santal Parganas Justice Regulation, 1893 (V of 1893), S. 4 as amended by the Santal Parganas Justice and Laws Regulation, 1899 (III of 1899) (B. & O. Code).[1]

(3) *Ajmere-Merwara.*—*See* S. 38 of the Ajmere Courts Regulation, 1877 (I of 1877) (Ajmere Code).

(4) *Coorg.*—*See* S. 16 of the Coorg Courts Regulation, 1901 (I of 1901) (Coorg Code).

(5) *Oudh.*—*See* the Oudh Courts Act, 1891 (XIV of 1891) as amended by Act XVI of 1897 (U.P. Code).

(6) *The North-West Frontier Province.*—*See* S. 6 (1) (*c*) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901) (P. and N.-W. F. Code).

(7) *Baluchistan.*—*See* Art. 6 (1) (*ii*) of the schedule to the British Baluchistan Criminal Regulation, 1896 (VIII of 1896) (Baluchistan Code).

(8) *Districts of Kumaon and Garhwal.*—*See* the Scheduled Districts Act XIV of 1874.[2]

(*k*)* "Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.

S. 4 (1) (k).

"Inquiry."

In other cases "High Court" means the highest Court of criminal appeal or revision in any province.

***(CODE OF 1882—S. 4 (1) (k.)**

(*k*) "Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.

"Inquiry."

Section 4 (1) (j)—Note 4.

(1) (1926) 1926 Pat. 449 (449 to 452): 6 Pat. 88, *Anwar Ali* v. *Chairman, Deoghar Municipality.*

(2) (1902) 24 All. 348 (353, 354) (F. B.), *Padma Dat Joshi*, In re.

S. 4 (1) (k). Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"INQUIRY"	2
"TRIAL"	3
TRIAL WHEN BEGINS AND ENDS	4

Other Topics.

By a Magistrate or Court. See Note 2, Pt. 5.
Fresh Inquiry. See S. 436.
Local Inquiry—Instances of. See Ss. 148, 293 and 556.
Other than a trial. See Note 2, Pts. 7 to 18.
Preliminary inquiry. See Note 2, Pt. 15.
Trial—Whether proceedings under Ch. VIII amount to. See S. 107.

1. Legislative Changes.—The Code of 1861 defined the words "enquired into" as comprising every proceeding preliminary to trial and the word "determined" as comprising trial and every subsequent proceeding. The Code of 1872 defined "inquiry" as including any inquiry conducted by a Magistrate or Court under the Code; "inquired into" as meaning every proceeding preliminary to trial, and "trial" as meaning proceedings taken in Court after a charge had been drawn up.

Under the Code of 1882, "inquiry" was defined as including every inquiry conducted under the Code by a Magistrate or Court, but the word "trial" was not defined. It was, however, held that "inquiry" did not include trial, though some doubt was expressed as to this.[1] The present definition makes it clear that an inquiry does not include a trial.[2]

[CODE OF 1872—(S. 4, Paras 5 to 8).]

"Inquiry." — "Inquiry" includes any inquiry which may be conducted by a Magistrate or Court under this Act.

"Inquired into." — "Inquired into" means and includes every proceedings preliminary to trial.

"Trial." — "Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender.

It includes the proceedings under chapters XVI and XVIII, from the time when the accused appears in Court.

(CODE OF 1861—S. 9.)

"Enquired into." "Determined." — 9. The words "enquired into" shall be deemed to comprise every proceeding preliminary to trial; and the word "determined" to comprise trial, and every subsequent proceeding, including the punishment of the offender.

Section 4 (1) (k)—Note 1.

(1) (1888) 15 Cal. 608 (625) (F. B.), *Hari Dass Sanyal* v. *Saritulla.*

(2) (1909) 9 Cri. L. Jour. 192 (196): 32 Mad. 220, In re *Narayanaswami Naidu.*

S. 4 (1) (k), Note 2.

2. "Inquiry".—This definition is really an explanation of the term as used in the Code[1] and is not exhaustive.[2] The word "inquiry" must be distinguished from 'investigation' under Chapter XIV[3] on the one hand, and a 'trial'[4] on the other.

An inquiry is different from an investigation in the following particulars:—

(1) An inquiry must be by a *Magistrate or Court* whereas an investigation is by a *police officer* or any person *other than a Magistrate or Court.*[5]

(2) The object of an inquiry is to determine the truth or falsity of certain facts in order to take further action thereon, while the object of an investigation is to *collect evidence.*[6]

An inquiry is different from a trial in the following respects:—

(1) A 'trial' is a judicial proceeding which ends in conviction or acquittal. All other proceedings are enquiries which have various endings according to circumstances.[7]

(2) The word 'trial' as used in the Code pre-supposes the idea of an *offence*[8] while an 'inquiry' does not merely mean an inquiry into an offence, such as is contemplated by Chapter XVIII[9] but extends into matters which are not offences, *e.g.*, proceedings

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Note 2.

(1) (1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953, *Clarke* v. *Brojendra Kishore Roy Chowdhry.*

(2) (1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor.*

(3) (1922) 1922 Mad. 40 (41): 45 Mad. 230, *Tangedupalle Pedda Obigadu* v. *Pullasi Pedda.*
(1922) 1922 Bom. 138 (141): 46 Bom. 61, *Emperor* v. *Motilal Hira Lal.*
(1920) 1920 Cal. 352 (353, 354), *Jagannath Agorwalla* v. *Emperor.*
(1866) 9 Mad. 282 (282), *Sadagopachariar* v. *Raghava Chariar.*

(4) (1922) 1922 Bom. 138 (141, 143): 46 Bom. 61, *Emperor* v. *Motilal Hira Lal.*
(1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953, *Clarke* v. *Brojendra Kishore Roy Chowdhry.*
(1924) 1924 Cal. 392 (392, 393): 50 Cal. 985, *Binode Bihari Nath* v. *Emperor.*
(1928) 29 Cri. L. Jour. 372 (372) (Pat.), *Ramchandra* v. *Satyabhama.*

(5) (1922) 1922 Mad. 40 (41): 45 Mad. 230, *Tangedupalle Pedda Obigadu* v. *Pullasi Pedda.*

(6) (1920) 1920 Pat. 563 (565), *Ram Baraj Singh* v. *Ram Pratap Rai.*

(7) (1929) 1929 Pat. 644 (646, 647): 9 Pat. 155, *Hema Singh* v. *Emperor.*
(1932) 1932 Oudh 298 (303), *Mohamed Hussain Afqar Mohain* v. *Mirza Fakhrulla Beg.*
(1930) 1930 Pat. 274 (275): 9 Pat. 131, *Charan Mahto* v. *Emperor.*
[See also (1886) 9 All. 52 (56), *Queen-Empress* v. *Chotu.*
See also (1909) 9 Cri. L. Jour. 192 (204): 32 Mad. 220, In re *Narayanaswami Naidu.*]

(8) (1920) 1920 Mad. 337 (341): 43 Mad. 511, *Venkatachennayya* v. *Emperor.*

(9) (1907) 5 Cri. L. Jour. 417 (419): 3 L.B.R. 280, *Paw Tha* v. *Emperor.*
(1922) 1922 Bom. 138 (141 to 143): 46 Bom. 61, *Emperor* v. *Motilal Hira Lal.*
(1922) 1922 Lah. 49 (53): 3 Lah. 115, *Sahib Din* v. *Emperor.*
(1929) 1929 Pat. 644 (647): 9 Pat. 155, *Hema Singh* v. *Emperor.*
(1920) 1920 Pat. 563 (565), *Ram Baraj Singh* v. *Ram Pratap Rai.*
(1919) 1919 Mad. 190 (191), *The Sessions Judge of Tanjore,* In re.
(1875) 19 Suth. W. R. 57 (60), *Queen* v. *Jafar Ali.*
(1927) 1927 Bom. 21 (21): 50 Bom. 695, *Emperor* v. *Kallappa Dundappa Rudrannavar.*
(1920) 1920 Mad. 337 (337, 341, 343): 43 Mad. 511, *Venkatachennayya* v. *Emperor.*

S 4 (1) (k), Note 2.

under Sections 117,[10] 145[11] and 514[12] of the Code, or under the Workmen's Breach of Contract Act, 1859.[13]

(3) The term 'inquiry' is not confined to proceedings in which an accused is actually placed before a Magistrate on a *charge* for an offence. It is meant to include everything done in a case by a Magistrate whether the case has been *challaned* or not.[14] Thus it will include an inquiry under S. 159, made by the Magistrate in order to ascertain whether an offence has been committed and if so whether any person should be put on his trial[15] or an inquiry by a Magistrate under S. 176, into the cause of death[16] or an inquiry under S. 202, into the truth or falsity of a complaint, before issuing process against the accused[17] or the recording of a statement under S. 164.[18] As to whether an 'inquiry' referred to S. 337 *infra* is one that is covered by this section or not there is a difference of opinion. The Bombay High Court[19] holds that inquiries could only mean inquiries held "under the Code" and not inquiries in a popular sense and as the Code mentions no inquiry to ascertain whether a certain person is willing to accept the terms on which a pardon is offered to him, such an inquiry if made, will not be one conducted under the Code. The High Court of Lahore[20] and the Court of the Judicial Commissioner of Sind[21] however, held, that "inquiries" include all inquiries other than trials and when a case has been reported to a Magistrate by the Police, and he is asked to tender a pardon and does so, there is an "inquiry" within the meaning of the S. 337 of the Code.

An inquiry under S. 465 of the Code as to the state of mind of the accused is only an "inquiry" and not a "trial".[22]

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(10) (1930) 1930 Pat. 274 (275, 277): 9 Pat. 131, *Charan Mahto* v. *Emperor*.
(1920) 1920 Mad. 337 (340, 341, 342, 343): 43 Mad. 511, *Venkatachennaya* v. *Emperor*.
(1915) 16 Cri. L. Jour. 303 (304): 1915 Mad. 831 (832), *Desikachari* v. *Emperor*.
(1924) 1924 Cal. 392 (393): 50 Cal. 985, *Binode Behari Nath* v. *Emperor*.
(1909) 9 Cri. L. Jour. 278 (279) (Cal.), *Ali Mohamed Khan* v. *Tarak Chandra Banerji*.
(1919) 1919 All. 220 (221): 41 All. 231, *Sarju* v. *Emperor*.

(11) (1910) 11 Cri. L. Jour. 440 (440): 37 Cal. 812, *Sheikh* v. *Sheikh*.
(1909) 9 Cri. L. Jour. 278 (279, 280) (Cal.), *Ali Mohamed Khan* v. *Tarak Chandra Banerji*.
(1895) 22 Cal. 898 (901), *Satish Chandra Panday* v. *Rajendra Narain Bagchi*.
(1901) 28 Cal. 709 (713), *Lolit Mohan Moitra* v. *Surja Kanta Acharjee*.
(1901) 25 Bom. 179 (184), In re *Pandurang Govind Pujari*.
(1920) 1920 Pat. 568 (565), *Ram Barai Singh* v. *Ram Pratap Rai*.
[See also (1877-78) 3 Cal. 754 (755), *Sufferuddin* v. *Ibrahim*.]

(12) (1881) 2 Mad. 169 (170), *Anantachari* v. *Anantachari*.

(13) (1924) 1924 All. 76 (77): 45 All. 700, *Bansi* v. *Lakshmi Das*.

(14) (1923) 1923 Lah. 270 (271): 3 Lah. 431, *Sher Muhammad* v. *King-Emperor*.
(1897) 1897 Pun. Re. No. 3, p. 4 (6, 7), *Ballu Singh* v. *Queen-Empress*.

(15) (1922) 1922 Bom. 138 (139, 142): 46 Bom. 61, *Emperor* v. *Moti Lal Hira Lal*.
(1912) 13 Cri. L. Jour. 33 (34): 5 S. L. R. 174, *Emperor* v. *Andal valad Khamiso*.
[See also (1897) 1897 Pun. Re. No. 3, p. 4 (6), *Ballu Singh* v. *Queen-Empress*.]

(16) (1928) 1928 Bom. 390 (393), In re *Lakshminarayan Timmanna Karki*.

(17) (1920) 1920 Pat. 563 (565), *Ram Barai Singh* v. *Ram Pratap Rai*.

(18) (1897) 1897 Pun. Re. No. 3, p. 4 (6), *Ballu Singh* v. *Queen-Empress*.

(19) (1922) 1922 Bom. 138 (139, 143): 46 Bom. 61, *Emperor* v. *Moti Lal Hira Lal*.

(20) (1923) 1923 Lah. 270 (271): 3 Lah. 431, *Sher Muhammad* v. *King-Emperor*.
(1897) 1897 Pun. Re. No. 3, p. 4 (6), *Ballu Singh* v. *Queen-Empress*.

(21) (1912) 13 Cri. L. Jour. 33 (34): 5 S.L.R. 174, *Emperor* v. *Andal valad Khamiso*.

(22) (1918) 1918 Pat. 179 (181), *Ghinua Uraon* v. *Emperor*.

S. 4 (1) (k), Notes 3—4.

3. **"Trial".**—The term 'trial' is not defined in the Code although the Code of 1872 defined it as "a proceeding following a charge, including the punishment of the offender."

The word has no fixed or universal meaning and must be construed with regard to the particular context in which it is used and with regard to the scheme, and purpose of the measure concerned.[1] A 'trial' "generally means the determination of the issues arising in a particular case."[2] It means therefore a proceeding which commences when the case is called on, with the Judge or Magistrate on the Bench, the accused is in the dock, and the representatives of the prosecution, and for the defence, if the accused be defended, are present in Court for the hearing of the case.[3] 'Trial' does not therefore include proceedings where the Court cannot pass final orders but can only report to the High Court.[4]

4. **Trial when begins and ends.**—'Trials' under Chapter XXIII of the Code, before High Courts and Courts of session commence with the framing of the charge.[1] In a Bombay case[2] it was held that it did not begin with the framing of the charge but only when the accused pleaded or claims to be tried as only then the assessors or jurors were chosen.

In cases before Magistrates in warrant cases, the proceedings are only 'inquiries' up to the time when the charge is drawn up, read and explained to the accused and he pleads thereto. Then the 'inquiry' becomes a 'trial'.[3] In summons cases, before Magistrates, the 'trial' begins when the accused is

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Note 3.

(1) (1933) 1933 Cal. 551 (552), *Jiban Molla* v. *Emperor*.
(2) (1920) 1920 Mad. 337 (342): 43 Mad. 511, *Venkatachennaya* v. *Emperor*.
(1904) 1 Cri. L. Jour. 1087 (1088, 1089): 27 Mad. 510, In re *Ramaswamy Chetty*.
(3) (1898) 25 Cal. 863 (865), *Gomer Sirda* v. *Queen-Empress*.
(4) (1904) 1 Cri. L. Jour. 605 (606, 607): 27 All. 25, *Emperor* v. *Mohan Lal* (Report under S. 435 or 438).
(1895) Rat. 830 (831), *Queen-Empress* v. *Dayaram* (Reference under S. 123).

Note 4.

(1) (1922) 1922 Lah. 49 (53): 3 Lah. 115, *Sahib Din* v. *Emperor*.
(1925) 1925 Lah. 435 (436): 6 Lah. 176, *Fakhruddin* v. *Emperor*.
(1909) 9 Cri. L. Jour. 146 (146, 147): 32 Mad. 218, *Palaniyandy Gowndan* v. *Emperor*.
(1909) 9 Cri. L. Jour. 192 (196): 32 Mad. 220, In re *Narayanaswamy Naidu*.
(1927) 1927 Bom. 21 (21): 50 Bom. 695, *Emperor* v. *Kallappa Dundappa Rudrannavar*.
(1929) 1929 Pat. 644 (647): 9 Pat. 155, *Hema Singh* v. *Emperor*.
(2) (1890) 15 Bom. 514 (515), *Queen-Empress* v. *Bastiano bin Alexander Silva*.
(3) (1914) 1914 Lah. 561 (562): 1914 P. R. 29, *Hasta* v. *Emperor*.
(1932) 1932 Oudh 298 (303), *Mohamad Hussain Afqar Mohaim* v. *Mirza Fakhrullah Beg* (Up to the stage when proceedings can result in discharge, they are only an enquiry from the point at which they must result in conviction or acquittal they become a trial).
(1929) 1929 Nag. 237 (237), *Manbodh Singh* v. *Jhabbaolal*.
(1887) 9 All. 52 (56) (F.B.), *Queen-Empress* v. *Chotu*.
(1909) 9 Cri. L. Jour. 146 (147): 32 Mad. 218, *Palaniyandy Goundan* v. *Emperor*.
(1909) 9 Cri. L. Jour. 192 (196, 197): 32 Mad. 220, In re *Narayanaswamy Naidu*.
(1915) 1915 Mad. 23 (23, 24): 38 Mad. 585, *Tanguturi Sriramulu* v. *Nalam Krishna Row*.
(1922) 1922 Mad. 512 (513): 45 Mad. 820, *Maruda Muthu Vannian* v. *Emperor*.
(1923) 1923 Mad. 660 (661): 46 Mad. 719, *Ramanathan Chettiar* v. *King-Emperor*.
(1913) 14 Cri. L. Jour. 230 (231): 9 N.L.R. 42.
(1929) 1929 Pat. 644 (650): 9 Pat. 155, *Hema Singh* v. *Emperor*.
(1905) 1905 U. B. R. 41 (42), *Nga Kun* v. *Emperor*.
(1907) 5 Cri. L. Jour. 417 (420): 3 L. B. R. 280, *Paw Tha* v. *Emperor*.
(1887) 9 All. 52 (56), *Queen-Empress* v. *Chotu*.
[See also (1906) 4 Cr. L. J. 284 (284, 285) (Rang.), *Emperor* v. *Nga Sein Gyi*.
But see (1907) 5 Cr. L. J. 417 (420), *Paw Tha* v. *King-Emperor*.]

S. 4 (1) (k), Note 4. brought before the Magistrate, the particulars of the offence are stated to him, and the Magistrate proceeds to hear the complainant and the prosecution evidence.[4]

It has been held by their Lordships of the Privy Council in *Basil Ranger Lawrence* v. *Emperor*[5] that a 'trial' means all proceedings including the sentence. No trial can therefore be concluded until judgment and sentence are passed.[6] In view of this decision, the view of the Madras High Court,[7] that the 'trial' is over *before* the pronouncing of a judgment and sentence and that the sentence is not part of the trial requires reconsideration.

S. 4 (1) (l), Note 1.

"Investigation."

(*l*) *"Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

SYNOPSIS.

Note No.

SCOPE OF THE SECTION 1

Other Topics.

"All the proceedings under the Code." See Note 1, Pt. 2. "Who is authorised." See Note 1.

1. **Scope of the Section.**—The definition of the word 'investigation' while including all proceedings under the Code, for the collection of evidence,

*[CODE OF 1882—S. 4 (b).]

"Investigation." (*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or police officer) who is authorised by a Magistrate in this behalf.

[(CODE OF 1872—S. 4, Para 4).]

"Investigation." "Investigation" includes all the proceedings by the police, authorised by this Act, for the collection of evidence.

(4) (1909) 9 Cri. L. Jour. 192 (196): 32 Mad. 220, In re *Narayanaswamy Naidu.*
(1913) 14 Cri. L. Jour. 230 (231): 9 N. L. R. 42, *Mannu* v. *Emperor.*
(1907) 5 Cri. L. Jour. 417 (420): 3 L. B. R. 280, *Paw Tha* v. *Emperor.*
(5) (1933) 1933 P. C. 218 (221) (P. C.), *Basil Ranger Lawrence* v. *Emperor.*
(6) (1887) 9 All. 420 (424), *Queen-Empress* v. *McCarthy.*
(7) (1929) 1929 Mad. 201 (202): 52 Mad. 355, *Public Prosecutor* v. *Chockalinga Ambalam.* ..
(1933) 1933 Mad. 251 (251), *Bhogale China Somayya*, In re.

conducted by a police officer[1] or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf, is not exhaustive.[2] Taking out warrant of arrest, arresting the accused, seizing books, etc., form some part of an investigation within the meaning of this clause.[3] It also includes an investigation held by a superior Police Officer, by virtue of S. 551, *infra*.[4] S. 4 (1) (l), Note 1.

As to investigation by Police Officers, *see* Ss. 155, 156, 157 and 174 *infra*.

As to investigation by persons under orders of a Magistrate, *see* S. 155. Sub-Ss. 2 and 3, 159 and 202 *infra*.

(m)* "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. S. 4 (1) (m).

"Judicial proceeding."

SYNOPSIS.

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Other Topics.

"Includes." See Note 2, Pt. (1) and also S. 4 (1-a).

*[CODE OF 1882—S. 4 (d).]

"Judicial proceeding." (*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken.

[CODE OF 1872—S. 4, Para. 9.]

"Judicial proceeding." "Judicial proceeding" means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence or final order is passed on recorded evidence.

Section 4 (1) (l)—Note 1.

(1) (1933) 1933 Sind 240 (243), *Asandas Hashmatrai* v. *Khanchand*.
(1931) 1931 All. 269 (272), *Emperor* v. *Johri*.
(2) (1902) 26 Bom. 533 (538), *Emperor* v. *Tribhovandas Brijbhukandas*.
(1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor*.
(3) (1902) 26 Bom. 533 (536, 538), *Emperor* v. *Tribhovandas Brijbhukandas*.
(4) (1912) 13 Cri. L. Jour. 305 (316, 317): 35 Mad. 247, *Emperor* v. *Nilakanta*.

S 4 (1) (m), Notes 1—3.

1. **Legislative Changes.**—The Code of 1861 contained no definition of the expression "Judicial Proceeding". It was defined for the first time in the Code of 1872.

Changes made in the Code of 1882—

(1) Before the word "taken" the word "legally" was added.

(2) The words "or in which any judgment, sentence or final order is passed on recorded evidence" were omitted.

Changes made in the Code of 1898—

(1) The word "includes" was substituted for the word "means".

(2) The words "on oath" were added.

2. **Scope and applicability of the definition.**—Section 4 (1) (*m*) does not attempt to give an exhaustive definition of a "judicial proceeding" but is content with declaring that in addition to what are plainly and obviously judicial proceedings, that term, "includes any proceeding in the course of which evidence is or may be legally taken on oath".[1] A judicial proceeding is one of which the object is to determine a jural relation between one person and another, or a group of persons or between him and the community generally[2] or a step taken by a Court in the course of the administration of justice in connection with a pending case.[3] The test whether a proceeding is or is not a "Judicial proceeding" for the purposes of the Code is determined by the fact whether, in the course of that proceeding, the presiding Judge has legally taken evidence on oath or has the power legally to take evidence on oath.[4]

The whole sitting for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding and the necessary interval between the conclusions of one case and the opening of another is a stage in a judicial proceeding. It cannot be said that the judicial proceedings of a Court in a particular case, are at an end the moment the sentence is passed or an order for security is made. The judicial proceedings continue until the accused is discharged or removed in custody.[5] But where the Judge in the midst of judicial work turns his attention to his executive duties, that stage is not a judicial proceeding.[6]

This definition is not applicable to the Penal Code[7] or the Civil Procedure Code.[8]

3. **"Legally".**—In *Queen* v. *Gholam Ismail*[1] a decision under the Code of 1872, it was held that the words "a proceeding in which evidence is or may be taken" meant "a proceeding in which evidence is or may be *legally* taken". In consequence of this ruling, the Code of 1882 added the word "*legally*".

Section 4 (1) (m)—Note 2.

(1) (1914) 1914 Nag. 40 (41), *Sheoshankarpuri* v. *Emperor*.
(1910) 11 Cri. L. Jour. 407 (410): 37 Cal. 642 (F.B.), *Shaikh Bahadur* v. *Shaikh Eradutulla Mallick*.
(2) (1888) 12 Bom. 36 (42), *Queen-Empress* v. *Tulia*.
(3) (1864-65) 2 Mad. H. C. 43 (46, 47), *Queen* v. *Venkatachalam Pillai*.
(4) (1910) 11 Cri. L. Jour. 90 (93): 1910 Pun. Re. 1, *Chanan* v. *Emperor*.
(5) (1897) 1897 Pun. Re. No. 16, p. 43 (44, 45), *Queen-Empress* v. *Salig Ram*. (1868) 1 Weir 214 (214).
(6) (1881) 1881 Pun. Re. No. 40, p. 101 (102), *Empress* v. *Sulaiman Khan*.
(7) (1921) 1921 Bom. 3 (8): 45 Bom. 834, *Purushottam Ishvar Amin* v. *Emperor*.
(8) (1878) 2 Bom. 553 (556), *Dalpatbhai Bhagubhai* v. *Amarsang Khemabai*.

Note 3.

(1) (1875) 1 All. 1 (6) (F.B.), *Queen* v. *Golam Ismail*.

S. 4 (1) (m), Notes 4—5.

4. "On oath".—The words *"on oath"* were added in the Code of 1898 because the power to take evidence *on oath* is one of the characteristic test of judicial proceedings.

5. Judicial Proceedings—What are.—

I. Under the Code the following have been held to be judicial proceedings:—

(1) An inquiry for the issue of a search warrant under S. 96[1] or S. 100[2] of the Code.

(2) Proceedings by a Magistrate under S. 117 of the Code.[3]

(3) Proceedings in which a Magistrate comes to a determination as to the fitness of sureties under S. 122.[4]

(4) Proceedings under Chapter X.[5]

(5) Inquiry by a Magistrate before issuing an order under S. 144.[6] The rulings prior to the Code of 1882 held that it was not a judicial proceeding.[7]

(6) Inquiry under S. 145.[8]

(7) Proceedings in which a statement from a witness is recorded under S. 164.[9]

Note 5.

(1) (1888) 15 Cal. 109 (120), *Mahomed Jackariah & Co.* v. *Ahmed Mahomed.*
(1903) 5 Bom. L. R. 980 (982), *In re Lakhmdas Naranji.*

(2) (1916) 1916 Lah. 281: 1916 P. R. 34, *Abdul Aziz* v. *Emperor.*

(3) (1881) 3 All. 545 (554), *Empress of India* v. *Muhammad Jafir.*
(1899) 1899 Pun. Re. No. 10, p. 29 (30), *Sher Zaman Shah* v. *Queen-Empress.*

(4) (1904) 1 Cri. L. Jour. 190 (192): 26 All. 371, *King-Emperor* v. *Ghaum Mustafa.*
(1909) 10 Cri. L. Jour. 225 (226): 2 S. L. R. 11, *Imperator* v. *Mahro.*
(1910) 11 Cri. L. Jour. 497 (498): 4 S. L. R. 18, *Emperor* v. *Haji Usman.*

(5) (1871) 7 Beng. L. R. 449 (481), *The Collector of Hooghly* v. *Tarak Nath Mukhopadya.*
(1870) 5 Mad. H. C. R. 345 (353), *Seshaiyangar* v. *Raghunatha Row* (S. 133).
(1872) 9 Bom. H. C. R. 160 (163) (F.B.), *Ganprasad* v. *Bin Sobharam* (Overruling 4 Bom. H. C. R. [illegible].
(1875) 1875 Pun. Re. No. 17, p. 23 (24), *Abdul Kadir* v. *The Crown* (S. 133).
(1880) 1880 Pun. Re. No. 2, pp. 3 (7), *Harria Mal* v. *Empress* (S. 133).

(6) (1906) 33 Cal. 386 (387), *Badiaddin Ahmed* v. *Nizamuddin Haider.*
(1896) 19 Mad. 18 (21), *Queen-Empress* v. *Thirunarasimhachari.*
(1919) 1919 Mad. 610 (611): 42 Mad. 64, *Arunachalam Pillai* v. *Ponnuswami Pillai.*
(1929) 1929 Pat. 46 (47): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal Marwari.*
[But see (1923) 1923 Mad. 473 (478): 47 Mad. 56, *Nataraja Pillai* v. *Rangaswami Pillai.*]

(7) (1873) 6 N.-W. P. 16 (18), Re *Mokut.*
(1877) Rat. 129 (129).
(1870) 14 Suth. W. R. 46 (46), *Queen* v. *Dassee Mosulmany.*
(1873) 20 Suth. W. R. 53 (54), *Bholanath Bose* v. *Komuruddin.*
(1873) 21 Suth. W. R. 23 (23), In re *Banee Madhub Koondoo.*
(1877) 2 Cal. 293 (295) (F.B.), In re *Chunder Nath Sen.*
(1882) 8 Cal. 580 (582), *Broadley* v. *Jameson.*
(1878) 1 Cal. L. R. 58 (60), In the matter of *Krishna Mohun Bysack.*
(1875) 1875 Pun. Re. No. 17, p. 23 (24), *Abdul Kadir* v. *The Crown.*
(1878) 1878 Pun. Re. No. 33, p. 78 (81), *Mt. Faizulnissa* v. *Faiz Mahomed.*
(1880) 1880 Pun. Re. No. 2, p. 3 (6, 7), *Harria Mal* v. *Empress.*
(1881) 3 Mad. 354 (357), *Elavarasu Vanamamalai Ramanuja Jeeyar Swami* v. *Vanamamalai Ramanuja Jeeyar.*
(1883) 6 Mad. 203 (222), *Sundaram Chetti* v. *Queen.*
(1876) Weir 3rd Edn., 735 (736).
(1879) Weir 3rd Edn., 761 (762).
(1879) Weir 3rd Edn., 763 (763).

(8) (1867) 4 Bom. H. C. R. (A. Civ.) 153 (154), *Bapuji Jagjivan* v. *The Magistrate of Kheda.*
(1900) 25 Bom. 179 (184), In re *Pandurang Govind Pujari.*
(1867) 7 Suth. W. R. 68 (69), *Queen* v. *Buloram.*

(9) (1906) 3 Cri. L. Jour. 370 (370): 29 Mad. 89, *Suppa Tevan* v. *Emperor.*
(1899) 22 All. 115 (117), *Queen-Empress* v. *Khem.*
(1906) 4 Cri. L. Jour. 188 (190, 191) (Bom.), *Emperor* v. *Vishwanath Krishna Sathe.*
(1933) 1933 Mad. 125 (126), *Maromma* v. *Emperor.*
(1892) 16 Mad. 421 (423), *Queen-Empress* v. *Alagu Kone.*
(1912) 13 Cri. L. Jour. 33 (35): 5 S. L. R. 174, *Emperor* v. *Andal Valad Khamiso* (Kathiawar).
(1909) 10 Cri. L. Jour. 24 (25), *Emperor* v. *Nanji Jetha.*
[But see (1921) 1921 Bom. 3 (7): 45 Bom. 834, *Purshottam Ishvar Amin* v. *Emperor.*
(1893) 1893 Pun. Re. No. 2, p. 23 (29), *Lalu* v. *Queen-Empress.*
(1932) 1932 Lah. 254 (254), *Sajawal* v. *Emperor.*]

S. 4 (1) (m), Note 5.

(8) Proceedings of a Magistrate under S. 176.[10]

(9) Proceedings under S. 195 whether original or appellate.[11]

(10) The examination of a complainant with reference to his complaint under S. 200.[12]

(11) An inquiry by a Magistrate under S. 202.[13]

(12) The dismissal of a complaint under S. 203.[14]

(13) The receiving of a complaint and issuing process under S. 204.[15]

(14) The recording of further evidence by an appellate Court under S. 428.[16]

(15) An order under S. 435, after the calling for the record[17] but not the mere calling of record in an executive capacity.[18]

(16) A preliminary enquiry under S. 476.[19]

(17) Maintenance proceedings under S. 488.[20]

(18) Proceedings on an application for bail under S. 498.[21]

(19) Proceedings under S. 514.[22]

(20) An enquiry under S. 89 into claims to attached property after 1923. Prior to the amendment of 1923 it was held that it was not a judicial proceeding.[23]

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(10) (1928) 1928 Bom. 390 (393), In re *Lakshminarayana Timmanna Karki* (Distinguishing 3 Cal. 342).
[But see (1878) 3 Cal. 742, In re *Troyloka-nath Biswas*.]

(11) (1879) 2 All. 205 (213), In re *Gur Dayal*.
(1919) 1919 Mad. 620 (622): 42 Mad. 96 (99), *Gaddam* v. *Sura* (District Magistrate according sanction to prosecute acts judicially).
(1890) 1890 All. W. N. 168 (169), *Queen-Empress* v. *Zorawar*.
(1912) 13 Cri. L. Jour. 717 (717): 34 All. 602, *Chadammi* v. *Lalta Prasad* (Revision).
(1888) 16 Cal. 121 (125), In re *Madhub Chunder Mozumdar* (Overruling 17 Cal. 766 on another point).
(1912) 13 Cri. L. Jour. 1 (2) (Cal.), *Bala Pasban Kuldip Lal* v. *Gurwar Misser*.
(1887) 10 Mad. 232 (235), *Queen-Empress* v. *Sheik Beari*.
(1897) 20 Mad. 383 (384), *Queen-Empress* v. *Seshadri Ayyangar*.
(1900) 23 Mad. 210 (212), *Pampapathi Sastri* v. *Subba Sastri*.
(1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah*.
(1919) 1919 Mad. 610 (611): 42 Mad. 64, *Arunachalam Pillai* v. *Ponnuswami Pillai*.
[But see (1902) 7 Cal. W. N. 423.]

(12) (1872) 4 N.-W.P. 6 (6).

(13) (1909) 9 Cri. L. Jour. 295 (296): 36 Cal. 72, *Kanchan Garhi* v. *Ram Kishore Mundul*.
(1904) 1 Cri. L. Jour. 118 (119), *Public Prosecutor* v. *Pilliyathodirayan*.
(1911) 12 Cri. L. Jour. 323 (325) (Mad.), In re *Kachi Madar Labhai*.
[But see (1896) 2 Weir 167 (167, 168).]

(14) (1898) 2 Cal. W. N. 290 (292).
(1905) 2 Cal. L. Jour. 65n (65n), *King-Emperor* v. *Hinayat Ali*.

(15) (1868) 5 Bom. H. C. R. 29 (30, 31), *Reg.* v. *Sadashivappa Pandurangappa*.
(1877) 2 Bom. 481 (487), *Imperatrix* v. *Lakshman Sakharam*.

(16) (1871) 15 Suth. W. R. 64 (66), *Queen* v. *Bukteer Maifaraz*.

(17) (1902) 25 Mad. 659 (661), *Singilia Pillai* v. *Dt. Magistrate of Trichinopoly*.

(18) (1884) 7 Mad. 560 (562), *Queen-Empress* v. *Kuppu*.
(1906) 3 Cri. L. Jour. 118 (119) (Mad.), In re *Subbaraya Vathyar*.
(1915) 1915 Nag. 58 (62): 11 N.L.R. 36, *Gopal* v. *Emperor*.

(19) (1882) 1882 All. W. N. 229 (230), In re *Rameshar*.
(1906) 4 Cri. L. Jour. 460 (463): 34 Cal. 42, *Deputy Legal Remembrancer* v. *Gopal Barik*.
(1910) 11 Cri. L. Jour. 45 (46): 37 Cal. 52, *Abdulla Khan* v. *Emperor*.
[But see (1882) 1882 All. W. N. 92 (92), *Empress* v. *Nakched* (Dissented from in 1882 All. W. N. 229).
(1893-1900) 1893-1900 L. B. R. 388 (390), *Krishnaswami* v. *Emperor*.]

(20) (1882) 5 All. 224 (226), *Lasaiti* v. *Ramdial*.
(1868) 5 Bom. H. C. R. 81 (82), *Reg.* v. *Thaku Bin Ira*.
(1917) 18 Cri. L. Jour. 556 (557): 1917 Cal. 799, *Nanda Narain Newar* v. *Manmaya Karim*.

(21) (1865) 2 Mad. H. C. R. 396 (397), *Parankusam Narasaya Pantulu* v. *Captain R. A. C. Stuart*.
(1882) 6 Mad. 63 (64), *Manickam Mudali* v. *Queen*.

(22) (1898) 25 Cal. 440 (444), *Queen-Empress* v. *Har Chandra Chowdhry*.
(1879) 2 All. 276 (278), *Empress of India* v. *Nilambur Babu*.

(23) (1884) 6 All. 487 (488), *Queen-Empress* v. *Sheodlal Rai*.
(1867) 7 Suth. W. R. 35 (36), *Queen* v. *Chumroo Roy*.
(1908) 8 Cri. L. Jour. 260 (262): 1908 Pun. Re. 9, *Ilam Din* v. *Emperor*.

S. 4 (1) (m), Note 5.

II. Under other Laws:—

(1) Enquiry under S. 51 of Act (I of 1879) (Stamp).[24]

(2) Proceedings under the Reformatory Schools Act (V of 1876) to ascertain the age of the accused.[25]

(3) An order under S. 202 of the Bengal Municipal Act (1884).[26]

(4) A proceeding before a Magistrate for recovery of Municipal tax under the Bombay Municipal Act (VI of 1873).[27]

(5) Trial under S. 14, Village Police Act (VIII of 1867) by a Village Police Patel in Bombay.[28]

(6) Proceedings of a Magistrate under S. 113 of the Railways Act (1890).[29]

(7) Proceedings of a Magistrate under S. 8 of Bengal Act (VI of 1870). (Village Chaukidar Act).[30]

(8) Proceedings under S. 58 of the Bengal Tenancy Act (VIII of 1885).[31]

(9) Proceedings of a tribunal constituted under the Calcutta Improvement Act of 1911.[32]

(10) Proceedings under S. 42 of Punjab Act (IV of 1872). (Track Law).[33]

(11) Proceedings under S. 283 of the Cantonments Code for breach of the conditions of a license.[34]

(12) Proceedings under the Workmen's Breach of Contract Act.[35]

(13) Order awarding a portion of the fine imposed, to the arresting officer, under the Excise Act.[36]

(14) *The following have been held to be judicial proceedings within the meaning of S. 476 of the Code*:—

(*a*) Execution proceedings.[37]

(*b*) Proceedings of a Presidency Small Cause Court on an application for leave to sue.[38]

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(24) (1882) 5 All. 17 (21, 24), *Empress of India* v. *Niaz Ali.*

(25) (1890) 14 Bom. 381 (383), *Queen-Empress* v. *Manaji.* Rat. Un. Cr. C. 494 (495), *Queen-Empress* v. *Manaji.*

(26) (1925) 1925 Cal. 934 (935): 52 Cal. 670, *Nabadwip Municipality* v. *Purna Chandra Mukerji.*

(27) (1893) 17 Bom. 731 (732, 733), *Municipality of Ahmadabad* v. *Jumna Punja.*

(28) (1908) 8 Cri. L. Jour. 141 (142) (Bom.), In re *Dayal Kanji.*

(29) (1933) 1933 Bom. 59 (61), *Horniman*, In re.

(30) (1896) 23 Cal. 421 (423), *Queen-Empress* v. *Ashwini Kumar Ghose.*

(31) (1913) 14 Cri. L. Jour. 139 (140): 40 Cal. 465, *Phanindar Singh* v. *Emperor.*

(32) (1918) 1918 Cal. 932 (933): 45 Cal. 585, *Nando Lal Ganguli* v. *Khetra Mohan Ghose.*

(33) (1873) 1873 Pun. Re. No. 28, page 39 (40, 41), *Dul Singh* v. *The Crown.*

(34) (1910) 11 Cri. L. Jour. 17 (18): 1909 Pun. Re. 9, *Mangi Ram* v. *Emperor.*

(35) (1918) 1918 Low. Bur. 36 (36), *Ramanath Pandaram* v. *Karupana Tewar.*

(36) (1892-1896) 1 U. B. R. 14 (14), *Queen-Empress* v. *Nga Yan Lin.*

(37) (1910) 11 Cri. L. Jour. 407 (410): 37 Cal. 642, *Shaikh Bahadur* v. *Shaik Eradatullah Mallick* (Overruling 2 Cri. L. Jour. 110, *Har Charan Mukerjee* v. *Emperor*; and 7 Cri. L. Jour. 159, *Kanto Ram Das* v. *Gobardhan Das*).

(1909) 10 Cri. L. Jour. 564 (565, 566) (Cal.), *Dakhineswar Misra* v. *Haris Chandra Chatterji.*

(1906) 3 Cri. L. Jour. 142 (143, 144) (Cal.), *Bhola Nath Dey* v. *Emperor.*

(1911) 12 Cri. L. Jour. 21 (21) (Cal.), *Abdul Basir* v. *Panchkowri.*

(1910) 11 Cri. L. Jour. 90 (94): 1910 Pun. Re. 1, *Asfandyar Khan* v. *Irshad Khan.*

(1913) 14 Cri. L. Jour. 624 (624) (Mad.), *Ponnuswami Pillai* v. *Chokkalingam.*

(1914) 1914 Nag. 40 (42): 10 N. L. R. 177, *Sheoshankar Puri* v. *Emperor.*

(1917) 1917 Pat. 101 (102), *Barham Deo Singh* v. *Emperor.*

(38) (1916) 1916 Cal. 103 (104): 43 Cal. 597, *Budhu Lal* v. *Chatta Gope.*

S. 4 (1) (m). Notes 5—7.

(*c*) An inquiry by the Registrar of the Presidency Small Cause Court as to service of summons.[39]

(*d*) Proceedings to set aside an *ex parte* decree and prohibitory order.[40]

(*e*) A trial after an *ex parte* decree is set aside.[41]

(*f*) Proceedings for a decree under an award.[42]

(*g*) Enquiry under the Legal Practitioners' Act.[43]

(*h*) Proceedings under the Income-tax Act (V of 1898).[44]

(*i*) Proceedings of a Certificate Officer under the Bihar and Orissa Public Demands Recovery Act (1914).[45]

(*j*) An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official.[46]

(15) Mutation proceedings are 'judicial proceedings' within the meaning of S. 478 of the Code.[47]

6. Non-judicial Proceedings—Under the Code.—

The following proceedings under the Code have been held not to be judicial proceedings:—

(1) Proceedings of a District Magistrate under S. 125 for cancelling a bond for keeping the peace or for good behaviour.[1]

(2) An inquest by a Magistrate under S. 174.[2]

7. Proceedings under other laws which are not judicial proceedings within this definition.—

(1) Proceedings under S. 83, Transfer of Property Act.[1]

(2) Application for return of documents under O. 13, C.P.Code.[2]

(3) Proceedings of a Deputy Commissioner as Chairman of District Board.[3]

(4) Proceedings in suit which is beyond the pecuniary jurisdiction of a Civil Court.[4]

(5) Proceedings of an Assistant Collector not competent to receive application under rules framed under S. 70, C. P. Code.[5]

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(39) (1915) 1915 Cal. 105 (106), *Balchand* v. *Tarak Nath Sadhu*.

(40) (1924) 1924 Rang. 54 (55): 1 Rang. 372, *Valab Das* v. *Maung Ba Than*.

(41) (1924) 1924 Mad. 86 (86, 87), *Arumugam Pillai*, In re.

(42) (1911) 12 Cri. L. Jour. 93 (94): 33 All. 396, *Kampta Prasad* v. *Emperor*.

(43) (1918) 1918 Mad. 398 (399), *Nallasivan Pillai* v. *Ramalingam Pillai* (S. 14).
(1912) 13 Cri. L. Jour. 190 (All.), *Gouri Shankar Lal* v. *Emperor* (S. 23).
(1905) 1 Cal. L. J. 76 (76-n.) (S. 36).
[See also (1883) 6 Mad. 252 (253), *Kotha Subba* v. *The Queen*.
(1911) 12 Cri. L. Jour. 33 (34, 35) (Cal.), In re *Bajrangi Shahai*].

(44) (1906) 3 Cri. L. Jour. 128 (129): 1905 P. R. 44, *Emperor* v. *Rup Singh*.
(1871) 8 Bom. H. C. R. 21 (22), *Reg.* v. *Dayalji Endalji*.
(1909) 10 Cri. L. Jour. 395 (402): 3 S. L. R. 66, *Emperor* v. *Deumal*.
(1912) 13 Cri. L. Jour. 723 (730): 36 Mad. 72, In re *Nataraja Iyer*.

(45) (1919) 1919 Pat. 212 (215), *Mathura Prasad Singh* v. *Emperor*.

(46) (1905) 2 Cri. L. Jour. 454 (454, 455): 28 All. 89, *Emperor* v. *Kuna Sah*.
[See also (1868) 4 Mad. H. C. R. 81 (82), *Subharaya Mudali*, In re.]

(47) (1930) 1930 Oudh 58 (59, 60): 5 Luck. 435, *Lachhman Prasad Joshi* v. *Emperor*.
[But see (1885) 1885 All. W. N. 29 (29), *Empress* v. *Din Dayal*.]

Note 6.

(1) (1910) 11 Cri. L. Jour. 147 (147): 37 Cal. 72, *Dayanath Thakur* v. *Emperor*.

(2) (1896) 1896 Rat. 843 (843, 844), *Empress* v. *Bayaji Lakshman*.

Note 7.

(1) (1895) 1895 All. W. N. 145 (146, 147), *Andhar Singh* v. *Ablakh Singh*.

(2) (1921) 1921 Cal. 433 (433), *Girija Nanda Kali Mitter* v. *Emperor*.

(3) (1920) 1920 Oudh 199 (199): 23 Oudh Cas. 136, *Emperor* v. *Kunwar Bahadur*.

(4) (1931) 1931 Mad. 575 (577): 54 Mad. 561, *Sankappa Rai* v. *Keraga Pujary*.

(5) (1915) 1915 All. 283 (284): 37 All. 334, *Bhajan Tewari* v. *Emperor*.

S. 4 (1) (m), Notes 7—8.

(6) Petition before a District Judge alleging that the Lower Court refused to take down evidence.[6]

(7) Proceedings of a Collector or of a Deputy Collector under the Land Acquisition Act.[6-a]

(8) Enquiry by a Collector or a Deputy Collector under the Stamp Act, for the purpose of determining who should be called upon to pay stamp duty.[7]

(9) An enquiry by a receiver appointed under the Provincial Insolvency Act (III of 1907).[8]

(10) Reference proceedings in which the Deputy Commissioner refers the question of innocence or guilt of an accused person to a Council of Elders under Regulation (IV of 1873).[9]

(11) Proceedings of a District Magistrate, under S. 45 of the Punjab Laws Act 1872[10] requiring foreign vagrants to leave the district.

(12) Proceedings of a Deputy Commissioner or other Revenue Officer under S. 19, Punjab Land Alienation Act (XIII of 1900).[11]

(13) Proceedings of a Revenue Officer under the U.P. Land Revenue Act (III of 1901).[12]

(14) Inquiry by a Magistrate under S. 11 of the Frontier Crimes Regulations.[13]

8. Departmental enquiries.—

The following departmental enquiries are not judicial proceedings:—

(1) A proceeding before a Forest Officer who is not empowered by law to hold an enquiry.[1]

(2) An enquiry by the Registrar, High Court, into the conduct of a clerk.[2]

(3) An enquiry by a Collector and Magistrate on charges of bribery or misconduct against a Revenue Officer.[3]

(4) An enquiry by a District Registrar against a Sub-Registrar.[4]

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(6) (1864) 1864 Suth. W. R. 15 (15).

(6-a) (1905) 1 Cal. L. Jour. 227 (230, 231) (P.C.), *Ezra* v. *The Secretary of State* (Appeal against and confirming 30 Cal. 36).

[But see 49 Ind. Cas. 659 (660): 42 Mad. 231: 1919 Mad. 583, *Parameswara* v. *L. A. Collector* (Proceedings under Part III, Land Acquisition Act are judicial).]

(1902) 30 Cal. 36 (85), *Ezra* v. *The Secretary of State*.

(1900) 27 Cal. 820 (826, 827), *Durga Das Rukhit* v. *Queen-Empress*.

(1927) 1927 Cal. 621 (622), *Galstaun* v. *Banku Behary Dher*.

(7) (1903) 7 Cal. W. N. 795 (797), *Kedar Nath* v. *The Emperor*.

(8) (1919) 1919 Cal. 965 (967), *Nilmony Chowdhry* v. *Durga Charan Chander*.

(9) (1880) 1880 Pun. Re. No. 13, page 24 (25), *The Empress* v. *Said Jawai*.

(10) (1907) 6 Cri. L. Jour. 379 (379): 1907 P. R. 9, *Sundar* v. *Emperor*.

(11) (1910) 11 Cri. L. Jour. 601 (602) (Lah.), *Kalyan Singh* v. *Emperor*.

(12) (1910) 11 Cri. L. Jour. 514 (514, 515): 13 Oudh Cas. 198, *Prag Tewari* v. *Emperor*.

(13) (1924) 1924 Lah. 729 (731), *Jahangir* v. *Emperor*.

Note 8.

(1) (1875) 12 Bom. H. C. R. 1 (6), *Reg.* v. *Ramajirau Jibanjirau*.

(2) (1887) 12 Bom. 36 (42), *Queen-Empress* v. *Tulja*.

(3) (1894) 19 Bom. 51 (63, 69), *Queen-Empress* v. *Karigowda*.

(1898) 22 Bom. 936 (939), In re *Chotalal Mathuradas*.

(1900) 4 Cal. W. N. 366 (367), *Amatulla* v. *The Empress*.

[See also (1906) 3 Cri. L. Jour. 376 (377, 378): 29 Mad. 100, *Suryanarayana Row* v. *Bala Ramayya*.]

(4) (1906) 3 Cri. L. Jour. 112 (114) (Cal.), *Mulfat Ali Sheikh* v. *Emperor*.

S. 4 (1) (m), Notes 9—10.

9. Judge acting in his executive capacity.—

Where a Judge or a Magistrate acts in his executive capacity his action is not a judicial proceeding. The following have thus been held not to be judicial proceedings:—

(1) Revision by District Magistrate of a list of petition writers.[1]

(2) Proceedings for the dismissal of a headman, by the District Magistrate, under rules framed under S. 45 of the Code.[2]

(3) A proceeding to discover and bring to punishment a person who made a scandalous petition about a previous Magistrate.[3]

(4) An inquiry into authorship of an anonymous petition.[4]

(5) Proceedings of District Magistrate as Head of the Police, under S. 44 of the Bombay Police Act (IV of 1890).[5]

(6) An inquiry by the District Magistrate under S. 2 of the Eastern Bengal and Assam Disorderly Houses Act (II of 1907).[6]

(7) Proceedings of a Magistrate to expel a woman of bad character from a certain place.[7]

(8) Proceedings for granting or withholding sanction under S. 196 or 197 of the Code.[8]

(9) Proceedings of a Magistrate under S. 3 of the Press Act (I of 1910).[9]

(10) Proceedings relating to the admission of pleaders, under the Legal Practitioners' Act.[10]

(11) Proceedings under S. 8 of the Criminal Tribes Act (1924) to remove the names of certain persons from the Register of Criminal Tribes.[11]

10. Proceedings coram non judice.—Where the proceedings are *coram non judice, i.e.,* without jurisdiction or before the proper Judge they are not judicial proceedings. Thus the following proceedings are not judicial ones:—

(1) An enquiry made under S. 159 of the Code when there is no report under S. 157 without which a Magistrate has no jurisdiction to enquire under S. 159.[1]

Note 9.

(1) (1902) 1902 All. W. N. 175 (175), *Mahadeo Prasad* v. *Takia Bibi.*

(2) (1907) 5 Cri. L. Jour. 476 (477): 29 All. 563, In re *Damma.*

(3) (1874) 11 Bom. H. C. 11 (12), *Reg.* v. *Jibhai Vaja.*

(4) (1866) 5 Suth. W. R. Cri. 72 (72, 73), *Queen-Empress* v. *Bykunt Nath Banerji.*

(5) (1910) 11 Cri. L. Jour. 705 (707) (Bom.), In re *Pandrang Shid Rao.*

(6) (1910) 11 Cri. L. Jour. 112 (113): 37 Cal. 287, *Rajani Kherta Nabi* v. *Emperor.*

(7) (1880) 1880 Pun. Re. No. 26, page 43 (44, 47, 48), *Mt. Bani* v. *Empress.*

(8) (1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, *Dorasamy Pillai* v. *Emperor.*

[See also (1900) 23 Mad. 223, *Queen-Empress* v. *Venkataramanna.*]

(9) (1918) 1918 Mad. 1266 (1272, 1277): 39 Mad. 1164, *Mrs. Annie Besant* v. *Emperor.*

(10) (1922) 1922 Pat. 269 (269, 273): 1 Pat. 104, In re *Sudhansubala Hazra.*

(1922) 1922 Pat. 603 (604): 1 Pat. 590, *Raghunath Sahay* v. *Chowa Mahton.*

(11) (1932) 1932 Pat. 155 (155), *Bideshi Mian* v. *Emperor.*

Note 10.

(1) (1900) 4 Cal. W. N. 351 (352), In the matter of *Mouli Durzi.*

(2) The examination of a person, for obtaining information under S. 190 (*c*) upon which a case might be started.[2] **S. 4 (1) (m), Note 10.**

(3) An enquiry under S. 202 when there is no complaint.[3]

(4) Recording evidence out of Court and in the absence of the accused.[4]

(5) Proceedings under S. 512, without any proof that the accused has absconded.[5]

(6) Examination of a person where no case is pending before the Court.[6]

(7) Examination of a petitioner who does not give a complaint but wants the District Magistrate as head of the police to give him protection against some police officers.[7]

(8) Enquiry by the District Magistrate as to the reasons why a village headman resigned his post.[8]

(9) Enquiry by a District Judge into a verification of an heir, on a letter sent by Telegraph authorities.[9]

(10) Magistrate proceeding to determine a question as to the legal guardianship of a person which is one for the Civil Court.[10]

(11) Enquiry into the unprofessional conduct of a 2nd grade pleader, by a Judge, not the presiding officer of the Court.[11]

(n)* "Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police officer, within or without a presidency-town, may not arrest without warrant. **S. 4 (1) (n).**

"Non-cognizable offence" "Non-cognizable case."

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*[**(CODE OF 1882—S. 4 (q), Para. 2.]**

"Non-cognizable offence." "Non-cognizable case."

"Non-cognizable Offence", means an offence for, and "Non-cognizable Case" means a case in, which a police-officer, within or without the Presidency-towns, may not arrest without warrant.

(CODE OF 1872—S. 4, Para. 20).

"Non-cognizable Offence or case."

"Non-cognizable Offence or Case" means an offence for, or a case in, which a police officer may not arrest without warrant.

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(2) (1900) 27 Cal. 455 (457), *Hari Charan Singh* v. *Queen-Empress.*

(3) (1894) 1894 Pun. Re. No. 15, p. 48 (49), *Fatteh Ali* v. *Queen-Empress.*

(4) (1867) 8 Suth. W. R. 74 (78), *Queen-Empress* v. *Syud Hossain.*

(5) (1890) 1890 All. W. N. 100 (101), *Queen-Empress* v. *Makhni.*

(6) (1911) 12 Cri. L. Jour. 326 (327): 7 N. L. R. 65, *Emperor* v. *Baksho.*

(7) (1913) 14 Cri. L. Jour. 56 (56): 35 All. 102, *Emperor* v. *Phulel.*

(8) (1915) 1915 All. 457: 38 All. 32, *Bhole Singh* v. *Emperor.*

(9) (1883) 6 All. 103 (104), *Empress* v. *Chait Ram.*

(10) (1905) 2 Cri. L. Jour. 851 (854) (Cal.), *Godai Saha* v. *Emperor.*

(11) (1893) 20 Cal. 724, *Abdul Majid* v. *Krishna Lel Nag.*
(1918) 1918 Mad. 398 (399), *Nallasivam Pillai* v. *Ramalingam Pillai.*

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S. 4 (1) (o), Notes 1—3.

(*o*) *"Offence" means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871.

"Offence."

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
MADE PUNISHABLE	3
BY ANY LAW FOR THE TIME BEING IN FORCE ..	4
SECTION 20 OF THE CATTLE TRESPASS ACT	5

Other Topics.

Civil wrong. See Note 3, Pt. 1-2-a.
Offence—Acts committed outside British India—Whether amounts to. See S. 188.
Offences—What are and what are not. See Note 2.

1. Legislative Changes.—

This definition was introduced for the first time in the Code of 1882.

Changes made in the Code of 1898—

The words "it also includes.....S. 20 of the Cattle Trespass Act 1871" were new.

2. Scope of the section.—This definition does not govern the definition of offences under other Acts.[1] Nor does it apply where a different intention applies from the subject or context.[2]

3. "Made punishable".—An act or omission is an offence only if it is *made punishable* by any law for the time being in force.[1] Merely travelling in a train without a ticket or pass is not made punishable, though excess charge may be levied from such passenger. Such travelling is therefore not an offence.[2]

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*[CODE OF 1882—S. 4 (p).]

"Offence."

(*p*) "Offence" means any act or omission made punishable by any law for the time being in force.

Section 4 (1) (o)—Note 2.

(1) [See (1903) 26 Mad. 607 (614, 615, 625), *Adams* v. *Emperor* ('Offence' as used in the Extradition Act XXI of 1879 is not restricted to offences as defined in this Code).]

(2) [See (1916) 1916 Mad. 642 (642), In re *Santa Cruz Morais*.]

Note 3.

(1) (1931) 1931 Pat. 369 (375), In re *Pleaders Ram Gobind Sinha Varma*.
(1931) 1931 P. C. 94 (99), *Proprietary Articles Trade Association* v. *The Attorney-General of Canada*.
(1914) 1914 Lah. 97 (98): 1913 P. R. 26, *Miran Baksh* v. *Emperor* (Positive act made punishable but not omission—Omission is not an offence).

(2) (1897) 20 Mad. 385 (386), *Queen-Empress* v. *Subramanya Iyer*.
(1897) 20 All. 95 (95), *Queen-Empress* v. *Ram Pal*.
(1899) 1 Bom. L. R. 166 (166).
(1906) 4 Cri. L. Jour. 439 (440) (Cal.), *Kuloda Prosad Majumdar* v. *Emperor*.
(1929) 1929 Rang. 11 (11): 6 Rang. 619, *Ma Kalay Ma* v. *Emperor*.

S. 4 (1) (o), Note 3.

For similar instances, *see* the undermentioned cases.[2-a]

In proceedings under Chapter VIII[3] or Chapter XII[4] or under S. 133[5] of this Code, the charge may be regarded as information to set the Magistrate in motion rather than to *punish* the person proceeded against and the proceedings thereunder are therefore not proceedings relating to any '*offence*'.

Again where the law provides for certain orders to be passed by the Magistrate and attaches penalties for the disobedience of such orders, the *orders* themselves are not "offences" though the breach or disobedience thereof will be.

Illustrations.

1. An order to pay maintenance under Section 488 of this Code is not a conviction for an offence.[6] But a breach of such an order or disobedience thereof being punishable with imprisonment is an offence.[7]

[See also (1894) 18 Bom. 440 (441), *Queen-Empress* v. *Kutrapa*.
(1909) 10 Cri. L. Jour. 519 (520): 5 N. L. R. 151, *Emperor* v. *Bulakhi*.
(1930) 1930 Sind. 162 (164): 24 S. L. R. 389, *Secretary of State* v. *Gobindram Jaichandrai*.]

(2-a) (1907) 5 Cri. L. Jour. 463 (464) (Cal.), In re *Basanta Kumar Banerji* (Breach of Rules under S. 47 of the Railways Act).
(1897) 1897 All. W. N. 25 (26), *Queen-Empress* v. *Amba Prasad* (Non-compliance with S. 16 of the Press and Registration of Books Act XXV of 1867).
(1920) 1920 Bom. 350 (350): 44 Bom. 463, In re *Valli Mitha* (Proceedings to recover legal fare under S. 28 of Bombay Public Conveyances Act).

(3) (1870) 2 N.-W.P. 447 (448).
(1924) 1924 Cal. 392 (393): 50 Cal. 985, *Binode Behari Nath* v. *Emperor*.
(1868-69) 4 Mad. H. C. R. App. xxii (xxiii).
(1921) 1921 All. 281 (281): 43 All. 185, *Muli* v. *Emperor*.
(1866) 5 Suth. W. R. (Cr.) 9 (9, 10), *Radhajeebun Moostaffe*, In re.
(1882) 4 All. 212 (212, 213), *Empress of India* v. *Kamta Prasad* (S. 106).
(1886) 9 All. 452 (455, 456), *Queen-Empress* v. *Abdul Kadir* (S. 107).
(1910) 11 Cri. L. Jour. 446 (446) (All.), *Ram Sukh Rai* v. *Mahadeo Rai* (S. 107).
(1914) 1914 All. 370 (370, 371): 36 All. 382, *Bindachal Prasad Rai* v. *Lal Bihari Rai* (S. 107).
(1922) 1922 All. 321 (321), *Ram Sunder Rai* v. *Mt. Kali Kuer* (S. 107).
(1901) 25 Bom. 48 (49), In re *Govind Hanmant* (S. 107).
(1893) 1893 Pun. Re. No. 16, p. 70 (71), *Hazari Mal* v. *Meman Mal* (S. 107).
(1905) 2 Cri. L. Jour. 697 (701): (1905) Pun. Re 42, *Muhammad Khan* v. *Emperor* (S. 107).
(1931) 1931 Pat. 369 (375), In re *Ram Gobind Sinha Verma* (S. 107).
(1907) 5 Cri. L. Jour. 434: 3 N.L.R. 51, *Emperor* v. *Buddhu* (S. 109).
(1884) 7 All. 67 (70), *Queen-Empress* v. *Khandia* (S. 110).
(1893) 15 All. 365 (366, 367), *Queen-Empress* v. *Lakhpat* (S. 110).
(1900) 1900 All. W. N. 206 (S. 110).
(1882) 8 Cal. 331 (332), *Empress* v. *Shasti Churn Napit* (S. 110).
(1914) 1914 Lah. 281 (282): 1914 P.R. 5, *Ahmad Baksh* v. *Emperor* (S. 110).
(1903) 6 Oudh Cas. 262 (266, 267), *Sheodin* v. *Emperor* (S. 110).
(1903-04) 2 L. B. R. 80 (82, 83), *Ibrahim* v. *Emperor* (S. 110).
(1900) 27 Cal. 662 (663), *Queen-Empress* v. *Imam Mondal* (S. 110).
[See also (1919) 1919 All. 388 (389): 41 All. 503, *Muhammad Niazullah Khan* v. *Jai Ram*.]

(4) (1914) 1914 All. 473 (474), *Rudra Pratap Saki* v. *Dawan Singh*.
(1900) 25 Bom. 179 (183, 184), In re *Pandurang Gobind Pujari*.
(1878) 3 Cal. 754 (755), *Sufferddin* v. *Ibrahim*.
(1893) 20 Cal. 729 (732), *Chathu Rai* v. *Niranjan Rai*.
(1893) 21 Cal. 404 (415), *Bechu Sheikh* v. *Deb Kumari Dasi*.
(1899) 3 Cal. W. N. 148 (150), *Maharaja Hurbulb* v. *Byrang*.
(1900) 5 Cal. W. N. 71 (72), *Kefatulla* v. *Furuzuddin*.

(5) (1897) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi Haldar*.
(1905) 2 Cri. L. Jour. 575 (578) (Cal.), *Hirananda Ojha* v. *Emperor*.
[See also (1898) 25 Cal. 425 (428), *Indra Nath Banerjee* v. *Queen-Empress*.]

(6) (1867) 7 Suth. W. R. 10 (11), *Queen* v. *Gollam Hossein*.
(1873) 5 N.-W.P. 237 (238), In re *Todd*.
(1885) 1885 Pun. Re. No. 13, p. 26 (27), *Rev. Father Hildephonsus* v. *Corporal K. Malone*.
(1893) 1893 Pun. Re. No. 3 Cr., p. 30 (32), *Bishen Das* v. *Mt. Nanaki*.
(1896) 1896 Pun. Re. No. 4, p. 13 (13), *Natha Singh* v. *Pala Singh*.
(1929) 1929 Lah. 32 (33): 10 Lah. 406, *Mehr Khan* v. *Mt. Bakat Bhari*.
(1892) 16 Mad. 234 (234), In re *Ponnammal*.
(1898) 11 C. P. L. R. 14 (15), *Mt. Munna* v. *Murlidar*
(1893-1900) 1893-1900 L. B. R. 662 (663).
[See also (1902) 1902 Pun. Re. No. 33, p. 86 (87), *Crown* v. *Kaura and Lahari*.
(1904) 1 Cri. L. Jour. 864 (865): 17 C. P. L. R. 127, *Mt. Parbati* v. *Ohotey*.]

(7) (1891) 13 All. 348 (350), In the matter *of the petition of Malcolm Decastro*.
(1885) 9 Bom. 40 (45), In re *Shaikh Fakrudin*.
[See also (1889) Rat. 488 (488), Re *Pali*.]

S. 4 (1) (o), Notes 3—4.

2. A mere breach of a contract under the Workmen's Breach of Contract Act and the Magistrate's order under sub-S. (1), S. 2 and S. 3 thereof are not 'offences'.[8] But the omission to comply with an order made by the Magistrate is an offence.[9]

3. An order of the Magistrate directing the demolition or alteration of work which has been unlawfully erected, under the Municipal Acts is not a punishment, for an "offence" under the Acts, though a disobedience of such an order is an 'offence'.[10]

4. The mere use of a house as a brothel, or a disorderly house is not an offence but when a Magistrate passes an order prohibiting the use of the house as brothel, the disobedience of such an order is an offence.[11]

4. By any law for the time being in force.—An ordinance is a 'law for the time being in force' and an infringement of its provisions, is an offence within the meaning of this definition.[1] The words 'any law' would include not only the Penal Code but also all Local or Special laws which create offences. The following are some instances of such laws:—

(1) *Opium Act.*—S. 9. Selling of opium in contravention of the conditions of licenses[2] or importing of opium in contravention of the Act.[3]

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(8) (1892) 16 Bom. 368 (370, 371), *Queen* v. *Rajab*.
(1891) Rat. 617 (618), *Empress* v. *Namdeo*.
(1904) 1 Cri. L. Jour. 263 (264): 33 Bom. 22, *Emperor* v. *Dhondu Krishna Kambeya*.
(1900) 27 Cal. 131 (133), *Averam Das Mochi* v. *Abdul Rahim*.
(1900) 4 Cal. W. N. 253 (254), In re *Ram Swarup*.
(1882) 4 Mad. 234 (234), *Pollard* v. *Mothial*.
(1882) 1 Weir 696 (696), Re *Govindan*
(1902) 1902 U. B. R. 3rd qr. 1 (1), *King-Emperor* v. *Nga Yan Shin*.
(1913) 14 Cri. L. Jour. 256 (256): 6 S. L. R. 165.
(1914) 1914 Sind 17 (18): 7 S. L. R. 100, *Ramzan* v. *Noor Mahomed Yacub*.
[See also (1891) Rat. 534 (534), *Empress* v. *Budhu*.]

(9) (1921) 1921 All. 285 (285, 286): 43 All. 281, *Abdus Samat* v. *Yusuf*.
(1891) Rat. 617 (618), *Empress* v. *Namdeo*.
(1904) 1 Cri. L. Jour. 263 (264), *Emperor* v. *Dhondu Krishna Kambeya*.
(1901) 24 Mad. 660 (662), *Emperor* v. *Takasi Nukayya*.
(1905) 2 Cri. L. Jour. 149 (151): 28 Mad. 37, In the matter of *Anusoori Sanyasi*.
(1920) 1920 Mad. 553 (554, 555): 43 Mad. 443, *Hussaina Behari* v. *Emperor*.
(1923) 1923 Mad. 719 (720): 46 Mad. 723, *Ramamma* v. *Gurunathan*.
(1903-04) 2 Low. Bur. R. 163 (164), *Emperor* v. *Periaswami Achari*.
(1913) 14 Cri. L. Jour. 404 (404): 9 L. B. R. 35, *Krishna Pardan* v. *Pasand*.
(1897) 1 Weir 703 (703), Re *Krishnasami*.
[See also (1907) 35 Cal. 1035 (1037): 9 Cri. L. Jour. 187 (188), *Narwanji Prasad Singh* v. *Lachan Hajam* (Order of imprisonment in default passed simultaneously with an order to perform the work contracted for is illegal).]
(1867) 4 Bom. H. C. R. 37 (37), *Reg.* v. *Jona bin Balu* (The Magistrate has no power to order imprisonment until the failure to comply occurs and is proved).
[See also (1871) 6 M. H. C. R. App. xxiv (xxv) (Do.).
(1865) 2 Mad. H. C. R. 427 (428), *Vernede* v. *Abdul Giri Chinnasami*.]

(10) (1903) 7 Cal. W. N. 853 (856), *Noindal* v. *Corp*. (Section 580 of the Calcutta Municipal Act III of 1899).
(1904) 1 Cri. L. Jour. 69 (70) (Cal.), *The Corporation of Calcutta* v. *Keshub Chunder Sen*.
(1910) 11 Cri. L. Jour. 183 (184): 37 Cal. 384, *Sarat Chandra Mukerjee* v. *Corporation of Calcutta*.
(1927) 1927 Cal. 509 (510, 511): 54 Cal. 532, *Krishnen Doyal Jalan* v. *Corporation of Calcutta*.
(1910) 11 Cri. L. Jour. 63 (64): 1909 P. R. 13, *Emperor* v. *Dina Nath*.

(11) (1910) 11 Cri. L. Jour. 112 (112): 37 Cal. 287, *Rajani Khemtawali* v. *Emperor* (The Eastern Bengal and Assam Disorderly Houses Act).
(1913) 20 Ind. Cas. 768 (768) (Cal.), *Dhirajbala Dasi* v. *Gopal Chandra Mukerji* (Bengal Disorderly Houses Act III of 1906).
(1929) 1929 Pat. 406 (406), *Munshi Mian* v. *Emperor* (Bengal Disorderly Houses Act).
(1913) 14 Cri. L. Jour. 282 (282): 6 S. L. R. 224, *Emperor* v. *Versimal* (Bombay Police Act, S. 41).
(1913) 14 Cri. L. Jour. 320 (320): 6 S. L. R. 254, *Imperator* v. *Khiri* (Bombay District Police Act).
(1918) 1918 Lah. 249 (250), *Mt. Kanku* v. *Mathra Das* (Punjab Municipal Act).

Note 4.

(1) (1916) 1916 Lah. 207 (208): 1916 P. R. 10, *Sher Singh* v. *Emperor*.
(2) (1912) 13 Cri. L. Jour. 282 (283): 34 All. 319, *Babu Lal* v. *Emperor*.
(1919) 1919 Lah. 116 (117, 118): 1919 P. R. 9, *Emperor* v. *Munshi Ram*.
(1920) 1920 Lah. 405 (406): 1919 P.R. 33, *Daulat Ram* v. *Emperor*.
(3) (1932) 1932 Cal. 465 (466): 59 Cal. 1065, *The Superintendent and Remembrancer of Legal Affairs, Ben-*

S. 4 (1) (o), Note 4.

(2) *Companies Act.*—Section 35. Omission to duly stamp a share warrant under S. 35.[4]

(3) *Bengal Tenancy Act.*—Section 58. Failure to prepare and retain counter-foils of rent receipts as specified therein.[5]

(4) *Calcutta Rent Act.*—Section 20. The acts referred to therein.[6]

(5) *Lower Burmah Towns Act.*—Section 6. Neglect of duty by village headman thereunder.[7]

(6) *Legal Practitioners' Act.*—Section 12. The word 'offence' referred to therein.[8]

(7) *Mussalman Wakf Act.*—Section 10. Offences thereunder.[9]

(8) *Court-Fees Act.*—Section 34. Sale of stamps by persons without authority. This was no offence before the Act was amended in 1891.[10]

(9) *Municipal Acts.*—Non-payment of municipal taxes entailing liability for a penalty[11] or selling fish outside a vessel in the Chaupati Sands at Bombay[12] or an erection of a house without the sanction of the Municipality.[13]

(10) *Arms Act.*—Section 19. Possession of a gun without license[14] or concealing arms from the Railway authorities.[15]

(11) *Burmah Rural Self-Government Act (IV of 1921).*—Section 12 Any breach of the by-laws made thereunder.[16]

(12) *Burmah Excise Act.*—Section 37. Possession of an excisable article unlawfully manufactured.[17]

(12-A) *Bengal Excise Act.*—Government Notification under S. 19, Cl. 4.[17-a]

(13) *Cantonment Code.*—Section 231. Absence of the delinquent for nine days from a cantonment under.[18]

(14) *Forest Act.*—Section 25. Hunting in a forest without a permit under Cl. (*i*).[19]

(15) *Motor Vehicles Act.*—Failure of the driver to produce the driving license on demand by the Police officer[20] or over-loading of a

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gal v. *Ladur Chandra Das.*

(4) (1893) 20 Cal. 676 (681), *Queen-Empress* v. *Moore.*

(5) (1905) 2 Cri. L. Jour. 532 (533) (Cal.), *Emperor* v. *Mohunt Ram Das.*
(1916) 1916 Pat. 174 (175), *Naik Pandey* v. *Bidya Pandey.*

(6) (1921) 1921 Cal. 708 (710): 48 Cal. 955, *Gobardhan Das Deora* v. *Doolie Chand Shethia.*

(7) (1893-1900) 1893-1900 L. B. R. 329 (329).

(8) (1931) 1931 Pat. 369 (375), In re *Ram Gobind Sinha Varma.*

(9) (1928) 1928 Sind 43 (44): 22 S. L. R. 141, *Ali Mahomed* v. *Emperor.*

(10) (1882) 4 All. 216 (217), *Empress* v. *Jallu.*

(11) (1894) 18 Bom. 400 (401), In re *Lakmia* (Bombay District Municipalities Act VI of 1873).

(12) (1905) 2 Cri. L. Jour. 604 (606, 609): 30 Bom. 126, *Emperor* v. *Budhoobai* (S. 410 of the Bombay Municipal Act III of 1888).

(13) (1915) 1915 Cal. 806 (806), *Mohabir Das* v. *Gaya Municipality.*

(14) (1912) 13 Cri. L. Jour. 525 (525) (Bom.), *Emperor* v. *Jafu Bapu.*

(15) (1931) 1931 Lah. 571 (571, 572), *Prem Kumar* v. *Emperor.*

(16) (1929) 1929 Rang. 75 (75): 6 Rang. 791, *Ma Khwet Kyi* v. *Emperor.*

(17) (1918) 1918 Upp. Bur. 23 (23): 3 U. B. R. 86, *Emperor* v. *Nga Po Kyan.*

(17-a) (1914) 1914 Cal. 634 (636), *Makund Sahu* v. *Emperor.*

(18) (1918) 1918 Sind 47 (48): 12 S. L. R. 40, *Hotchand Atmaram* v. *Emperor.*

(19) (1918) 1918 All. 338 (338): 40 All. 38, *Barkat Ali* v. *Emperor.*
(1918) 1918 Bom. 150 (151): 42 Bom. 406, *Amirsaheb Balaniya Patil* v. *Emperor.*

(20) (1921) 1921 All. 277 (278): 43 All. 123, *Madan Mohan Nath Raina* v. *Emperor* (The Motor Vehicles Act of 1914).
(1932) 1932 Lah. 363 (364), *Bahadur Singh* v. *Emperor* (Do.).

S. 4 (1) (o), Notes 4—5.

motor lorry[21] or driving a car recklessly and negligently[22] or the failure to sound horn when going from the right to the wrong side to turn it.[23]

(16) *Police Acts.*—An act or possession made punishable by S. 54-A of the Calcutta Police Act (IV of 1866)[24] or a breach of the order of the Commissioner of Police under S. 62-A of the Calcutta Police Act and S. 93-A of the Suburban Police Act[25] or being found between sunrise and sunset with face covered and being unable to give a satisfactory account of oneself under S. 30 (*c*) of the Rangoon Police Act (IV of 1899).[26]

(17) *Press and Registration of Books Act,* 1867.—Keeping a cyclostyle machine for printing, and publishing news by such machine without observing the provisions of the Act.[27]

(18) *Prevention of Cruelty to Animals Act, S.* 6.—Employing or allowing to be employed in any work or labour, an animal, unfit therefor, owing to disease, infirmity or other causes.[28]

(19) *Public Demands Recovery Act, Bengal Act (I of* 1895).—The cutting and taking away of crops attached under the Act.[29]

(20) *Railways Act.*—Section 109. Entering a compartment of a railway carriage reserved for some other persons and refusing to leave when required to do so.[30]

(21) *Act XXVI of* 1870.—A breach of Jail Rules.[31]

5. **Section 20 of the Cattle Trespass Act.**—The second sentence of the definition is new and was introduced in 1898. Under the old Code an act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act, 1871, was held not to be an offence.[1] The introduction of the said sentence now makes it clear that such acts are offences.[2] *See also* Note to Cl. (*h*) *ante.*

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(21) (1932) 1932 Lah. 366 (366), *Jaimal Singh* v. *Emperor* (Do.).
(22) (1911) 12 Cri. L. Jour. 89 (90): 38 Cal. 415, *Edward Thornton* v. *Emperor* (Motor Car and Cycle Act III of 1903, Bengal).
(23) (1912) 13 Cri. L. Jour. 487 (488) (Mad.), *Rathnam* v. *Emperor* (Madras Motor Vehicles Act of 1907).
(24) (1918) 1918 Cal. 406 (406, 407): 45 Cal. 727, *Manhari Chowdhury* v. *Emperor.*
(25) (1931) 1931 Cal. 410 (412, 413): 58 Cal. 1303.
(26) (1911) 12 Cri. L. Jour. 280 (281) (Rang.), *Kft Foon* v. *Emperor.*
(27) (1931) 1931 Pat. 351 (352): 10 Pat. 492, *Rameshwar Prashad Verma* v. *Emperor.*
(28) (1932) 1932 Pat. 65 (66): 10 Pat. 847, *Bindeshwar Prasad* v. *Emperor.*
(29) (1901) 28 Cal. 217 (220), *Sunder Dasadh* v. *Sital Mahto.*
(30) (1920) 1920 All. 106 (108): 42 All. 327, *Birajbasi Lal* v. *Emperor.*
(31) (1875) 1875 Pun. Re. No. 12, p. 17 (17), *The Crown* v. *Rahman.*

Note 5.

(1) (1896) 18 All. 353 (353), *Meghai* v. *Sheobbik.*
(1868) 5 Bom. H. C. R. 13 (13), *Reg.* v. *Vithal Lakshman* (Old Act).
(1871) 8 Bom. H. C. R. 22 (23), *Reg.* v. *Avji Bin Naru.*
(1886) 13 Cal. 304 (305), *Kala Chand* v. *Gudadhur Biswas.*
(1896) 23 Cal. 248 (249), *Nedaram Thakur* v. *Joonab and others.*
(1896) 23 Cal. 442 (445), *Raghu Singh* v. *Abdul Wahab.*
(1878) 2 Cal. L. R. 507 (508), In the matter of *Ketabdi Mundal.*
(1870) 7 Mad. H. C. R. App. 24 (24).
(1886) 9 Mad. 102 (102), *Pitchi* v. *Ankappa.*
(1886) 9 Mad. 374 (375), *Kottalanda* v. *Muthaya.*
(1902) 1 Weir 763 (763), *Public Prosecutor* v. *Malaga Kone.*
(1879) 1 Weir. 711 (711).
(1898) 11 C. P. L. R. 10 (11), *Karim Khan* v. *Nathoosa.*
[See also (1896) 23 Cal. 300 (301, 302), *Shama* v. *Lechhu Shekh.*]
(2) (1920) 1920 Bom. 85 (85), *Emperor* v. *Visvanath Vishnu Joshi.*
(1907) 6 Cri. L. Jour. 363 (364): 34 Cal. 926, *Budhan Mahto* v. *Issur Singh.*
(1901) 1 Weir 712 (713), *Ponnuswami,* In re.
(1927) 1927 Mad. 396 (397): 50 Mad. 841, *Deenadayalu Naidu* v. *Ratna Padayachi.*
(1907) 6 Cri. L. Jour. 121 (121): 4 L. B. R. 10, *Emperor* v. *Miharima.*
(1907) 6 Cri. L. Jour. 122 (122): 4 L. B. R. 11, *Emperor* v. *Tha Nyo U.*

A fine, however, levied by a pound keeper under S. 12 of the Act is not a punishment imposed on conviction for an '*offence*' within the meaning of this definition.[3]

S. 4 (1) (o), Note 5.

(*p*)* "Officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police officer so present.

S. 4 (1) (p), Note 1.

"Officer in charge of a Police station."

SYNOPSIS.

OFFICER IN CHARGE OF POLICE STATION .. .. Note No. 1

Other Topics.

'Constable.' See Note 1, F.N. 4.
Powers and duties of such officer. See Ss. 55, 56, 94, 127, 128, 133, 157, 175, 62, 154, 169, 173 & 174.

1. Officer in charge of Police station.—The object of the definition is to permit of the discharge of the duties of an officer in charge of a police station by some other person when such officer is absent from the station house or is unable from illness or other cause to attend to his duties.[1] The definition comes into play only when the officer in charge of the Police station is absent from the station house or is unable to perform his duties. When he is *present* in the station house and able to attend to his duties, the other persons mentioned in the definition cannot wield the powers of an officer in charge of a Police station.[2]

The power to act for the officer in charge of a police station is conferred on the next senior police officer who is "present at the station house". This does not mean that the moment such officer leaves the station house he loses his

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*[CODE OF 1882—S. 4 (o), Part 2.]

"Officer-in-charge of a police station" includes when the officer-in-charge of the police station is absent therefrom or unable from illness to perform his duties, the police officer present at the police station who is next in rank to such officer and is above the rank of a constable, or, when the Local Government so directs, any other police officer so present.

"Officer-in-charge of a police station."

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(3) (1870) 7 Bom. H. C. R. 55 (56), *Reg.* v. *Durgaram Madhavaram.*

Section 4 (1) (p)—Note 1.

(1) (1919) 1919 Mad. 226 (227): 42 Mad. 446, *Asam Alliar Marai Kayar* v. *Mastamani Nadar.*

(1923) 1923 Pat. 547 (549): 2 Pat. 379, *King-Emperor* v. *Bhola Bhagat* (Sub-Inspector in charge ill—Writer Head Constable can act for him).

(2) (1928) 1928 Cal. 771 (772), *Momin Talukdar* v. *Emperor.*

S. 4 (1) (p), Note 1.

authority. The expression "present at the station house" refers to the time when charge is *assumed*.[3]

The section requires that the officer exercising the functions of an officer in charge of a Police station must be above the rank of a constable but empowers the Local Government to authorise even police officer of lower rank to officiate.[4] Under S. 551, *infra*, police officers superior in rank to an officer in charge of a Police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

For definition of "police station" *see* Cl. (*s*) *infra*.

S. 4 (1) (q).

"Place."

(*q*) *"Place" includes also a house, building, tent, and vessel.

S. 4 (1) (r).

"Pleader."

(*r*)† "Pleader" used with reference to any proceeding in any Court, means a pleader *or a mukhtar* authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any .... other person appointed with the permission of the Court to act in such proceedings.

SYNOPSIS.

PLEADER .. .. Note No. 1

Other Topics.

Admission by Pleader—Effect of. See Note 1, Pts. 3 & 4.
Ss. 271 & 340.
Consideration, in granting permission. See "License for one District." See Note 1, F.N. 11.

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*[CODE OF 1882—S. 4 (w).]

"Place."

(*w*) "Place" includes also a house, building, tent and vessel.

†[CODE OF 1898—S. 4 (r).]

"Pleader."

(*r*) "Pleader", used with reference to any proceeding in any Court, means a pleader authorised under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorised, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding.

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(3) (1919) 1919 Mad. 226 (227, 228) : 42 Mad. 446, *Asam Alliar Maraikayar* v. *Masilamani Nadar*.

(4) [See (1911) 12 Cri. L. Jour. 190 (192) (Mad.), *The Public Prosecutor* v. *Kuppa Kavundan* (Madras Government has directed that senior constable present at station shall be deemed to be officer in charge of station for the time being, during the absence of the officer in charge as defined in the said section).]

Mukhtars. See Note 1, Pts. 8 to 10.
"Other person." See Note 1, Pt. 1-a.
Permission of the Court. See Note 1, Pts. 5 & 6.

S. 4 (1) (r), Note 1.

1. "Pleader".—The effect of this clause is to extend the meaning of the term "pleader" so as to include persons who may not otherwise come within the expression. The words "any other person.....and such proceeding" are not to be read *ejusdem generis* with the previous words and do not refer to advocates, pleaders, or mukhtars authorised under any law to practice.[1-a] Thus, even a person who has not been enrolled as a legal practitioner but who has been appointed by a party with the permission of the Court to represent him in any proceeding under the Code would be a "pleader" for the purpose of that proceeding.[1] Thus "Private vakils" can be allowed to appear as pleaders in criminal cases.[2]

The discretion of the Court in permitting persons to appear as "pleaders" must be exercised judicially with due regard to the interests of the party engaging him.[3] The character of the person appointed is one of the factors to be considered in granting permission.[4] The discretion, again, must be exercised in *each case*. A general order prohibiting a particular class of persons from appearing is not legal.[5] Similarly, a Court cannot pass an order prohibiting a certain person from appearing in *any* case in that Court.[6] Moreover, unless a person has been appointed by a party the Court cannot sanction his appearance as a pleader in a case.[7]

Mukhtars.—Before the amendments of 1923 even a mukhtar authorised to practise in a Court had to obtain the permission of the Court in each case before he could appear as a pleader in criminal proceedings.[8] Now as a result

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[CODE OF 1882—S. 4 (n).]

"Pleader."

(*n*) "Pleader" used with reference to any proceeding in any Court, means a pleader authorised under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorised, and (2) any Mukhtar or other person appointed with the permission of the Court to act in such proceeding.

Section 4 (1) (r)—Note 1

(1-a) (1934) 1934 Bom. 212 (213), *Emperor* v. *Jaffar Cassum.*

(1) (1862) 1862 Rat. 1 (2), *Reg.* v. *Ramachandra* (Case under S. 432 of Code of 1861 which authorised an accused to engage any person to defend him).
(1934) 1934 Bom. 212 (213), *Emperor* v. *Jaffar Cassum* (Estate agent as constituted attorney can appear for accused).
(1930) 1930 Nag. 150 (151): 26 N. L. R. 172, *Emperor* v. *Chotekhan* (Even a prosecuting inspector can be allowed to defend the accused in a particular case).
(1926) 1926 Bom. 218 (222): 50 Bom. 250, *Dorabashah Bomanji Dubash* v. *Emperor* (It is open to an accused to appoint his estate manager to appear in his stead).
(1884) 1884 Rat. 206 (207), *Empress* v. *Chandra Bhaga* (Father-in-law of accused a woman allowed to appear in her place).

(2) (1874) 7 Mad. H. C. App. 37 (37), *Robinson* v. *Ayya Krishna Chettiar.*
(3) (1918) 1918 Upp. Bur. 56: 2 U. B. R. 121, In re *W. Calogreedy.*
(4) (1911) 12 Cri. L. Jour. 111 (112): 38 Cal. 488, *Ishan Chandra Bhat* v. *Emperor.*
(5) (1928) 1928 Bom. 33 (34), In re *Bajirao Abaji Kulkarni.*
[See also (1902) 2 Weir 401 (401, 402), In re *Krishnamachariar.*]
(6) (1908) 4 Mad. L. T. 91, In re *Ranga Rao.*
(7) [See (1930) 1930 Nag. 150 (151): 26 N. L. R. 172, *Emperor* v. *Chotekhan* (Accused, Government servant—District Magistrate directing prosecuting inspector to defend them. Held, that in the circumstances the prosecuting inspector can be taken as appointed by the accused).]
(8) (1881) 6 Bom. 14 (15), *Imperatrix* v. *Shivaram Gundo.*
(1911) 12 Cri. L. Jour. 118 (118): 4 S. L. R. 195, *Topanmal Jethmal* v. *Emperor* (Distinguishing 6 Bom. 14 (15).]

S. 4 (1) (r), Note 1.

of the amendments, a mukhtar who is authorised to practise in the Court in question is not required to take the permission of the Court in each case before appearing in it as a pleader. So long as he is entitled to practise in a Court as a mukhtar, he is also entitled to appear in that Court as a pleader in criminal cases.[9] In provinces in which Mukhtars are not recognised they can appear by getting the permission of the Court in each case.[10]

Persons who have been enrolled as pleaders, advocates, vakils or attorneys but who are not entitled to practise in the particular Court in question cannot appear as "Pleaders" in criminal cases as a matter of right but can do so only with the permission of the Court.[11]

Where under the Bombay High Court Rules (Appellate side) Advocates on the appellate side are precluded from appearing in the sessions Courts, they are not "pleaders" *quoad* that Court.[12]

S. 4 (1) (s), Note 1.

(*s*) *"Police-station" means any post or place declared, generally or specially by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf.

"Police-station."

SYNOPSIS.

	Note No.
APPLICABILITY OF THE SECTION	1

1. **Applicability of the Section.**—This clause does not apply to the Police in the towns of Calcutta and Bombay by virtue of S. 1, sub-S. 2.[1]

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*[**CODE OF 1882—S. 4 (o) Part (1).**]

"Police station" means any post declared generally or specially, by the Local Government to be a police station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf.

"Police station."

(1908) 7 Cri. L. Jour. 21 (22): 30 All. 66, In re *Anantram.*

(1886) 1886 Rat. Un. Re. Cr. Cas. 314 (314), In re *Venkatesh Sripad Alagavadi.*

(1911) 12 Cri. L. Jour. 111 (111, 112): 38 Cal. 488, *Ishan Chandra Bhat* v. *Emperor.*

(9) (1928) 1928 Bom. 33 (33), In re *Bajirao Abaji Kulkarni.*

The following cases bearing on the rights of Mukhtars decided under the Old law are no longer of any importance now.

(1865) 10 Suth. W. R. 355 (356), In re *Gujraj Singh.*

(1903) 7 Cal. W. N. 524 (525), In the matter of *Tharendranath Chatterpi.*

(1881) 1881 All. W. N. 20 (20), In re *Sultan Ahmad.*

(10) (1928) 1928 Bom. 33 (33), In re *Bajirao Abaji Kulkarni.*

(11) (1911) 12 Cri. L. Jour. 118 (119): 4 S. L. R. 207, *Kimatari* v. *Emperor* (Sanad applying to one district—Permission of Court necessary for appearance in any other district).

(1914) 1914 Sind 7 (8): 7 S. L. R. 98, In re *C. H. Clements.*

(1918) 1918 Upp. Bur. 56 (56): 2 U. B. R. 121, In re *N. Godinho* (Do.).

[See also (1934) 1934 Bom. 70 (71), In re *Philip N. Godinho N.* (Advocates of Bombay High Court on the Appellate Side have no right of audience in Criminal Sessions of the High Court).

(1932) 1932 Cal. 394 (395), *Sashadar Acharjya* v. *Charles Tegart.*

(12) (1934) 1934 Bom. 70 (71), In re *Godinho.*

Section 4 (1) (s)—Note 1.

(1) (1904) 31 Cal. 557 (560), *Emperor* v. *Madho Dhobi.*

(*t*) *"Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction.

"Public Prosecutor."

S. 4 (1) (t), Note 1.

SYNOPSIS.

APPOINTMENT OF PUBLIC PROSECUTOR .. .. Note No. 1

Other Topics.

Complainant's right to appoint Pleader. See S. 495.

Propriety of appointing a Magistrate who had tried. See Ss. 492 & 495.

1. **Appointment of Public Prosecutor.**—As to the appointment of a Public Prosecutor *see* Ss. 492 to 495, *infra*.

As to his duties *see* Ss. 270 to 286 *infra*.

(*u*) †"Sub-division" means a sub-division of a district.

"Sub-division."

S. 4 (1) (u), Note 1.

1. **Sub-division.**—*See* S. 8, *infra* as to power to divide districts into sub-divisions and S. 13, *infra*, as to power to appoint Magistrates to Sub-division.

(*v*)‖ "Summons-case" means a case relating to an offence and not being a "warrant-case," and

"Summons-case."

S. 4 (1) (v).

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*[CODE OF 1882—S. 4 (m).]

(*m*) "Public Prosecutor" means any person appointed under Section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Public Prosecutor".

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†[CODE OF 1882—S. 4 (f).]

(*f*) "Sub-division" means a sub-division made under this Code of a District.

"Sub-Division."

‖[CODE OF 1882—S. 4 (t).]

(*t*) "Summons-case" means a case relating to an offence not so punishable.

"Summons-case."

(CODE OF 1872—S. 4, Para 21.)

"Summons case" means an offence of the class described in Section one hundred and forty-eight.

"Summons-case."

S. 4 (1) (w), Note 1.

(*w*) †"Warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.

"Warrant-case."

SYNOPSIS.

SUMMONS AND WARRANT CASES .. .. .. Note No. 1

Other Topics.

Sessions Case, What is. See S. 206.

1. Summons and warrant cases.—The distinction between a summons case and a warrant case, is to be noted chiefly because the procedure prescribed for each is different. They are prescribed under Chapters XX and XXI respectively. The distinction is quite apart from the question whether a summons or warrant shall issue in the first instance and whether an offence is cognizable and non-cognizable. Thus where the Code deals with offences only, it divides them into cognizable and non-cognizable but when it deals with procedure it speaks of cases, as a summons case or as a warrant case.[1] In such a case the nature of the 'offence' need not be considered and a case becomes a 'summons case' or 'warrant case' according to the nature and the measure of punishment which the law attaches to the offence.[2] Where there is a charge of abetment of a specific offence, the abetment is a summons case or a warrant case according as the specific offence is a summons or a warrant case.[3]

Words referring to acts.

(2)* Words which refer to acts done extend also to illegal omissions; and

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"Warrant-case."

†[CODE OF 1882—S. 4 (s).]

(*s*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

"Warrant-case."

(CODE OF 1872—S. 4 Para 22.)

"Warrant case" means an offence of the class described in section one hundred and forty-nine:

Words referring to acts.

*(CODE OF 1882—S. 4 last two paras.)

Words which refer to acts done extend also to illegal omissions; and

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Section 4 (1) (w)—Note 1.

(1) (1918) 1918 Mad. 371 (373): 41 Mad. 727, *Raghwalu Naiker* v. *Singaram.*

(2) (1932) 1932 Nag. 111 (111): 28 N. L. R. 18, *Punamchand Mahoshri* v. *Gadiram Kunbi.*

(3) (1931) 1931 Bom. 199 (199), *Narsinha Narayan Chandur* v. *Emperor.*

all words and expressions used herein, and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

S. 4 (2), Notes 1—2.

Words to have same meaning as in Indian Penal Code.

SYNOPSIS.

	Note No.
ACTS EXTEND TO ILLEGAL OMISSIONS	1
WORDS TO HAVE THE SAME MEANING AS IN THE PENAL CODE	2

1. **Acts extend to illegal omissions.**—For analogous provisions, *see* S. 3 (2) of the General Clauses Act X of 1897 and S. 32 of the Penal Code. *See also* the following cases.[1]

2. **Words to have the same meaning as in the Penal Code.**—This section adopts the definitions of words given in the Penal Code when they are not expressly defined in this Code. Thus the words "Force" and "Criminal force" used in S. 522 must be interpreted according to the definitions of those words in Ss. 349 and 350 of the Penal Code.[1] Similarly the words "Special Law" in S. 1, sub-S. (2)[2] "in jury" in S. 545[3] "punishable"[4] and "Judge" in S. 539[5] in this Code must have the meaning given them in Ss. 41, 44, 53 and 19 of the Penal Code, respectively.

The second paragraph of this sub-section, however, must be read as qualified by the words "unless a different intention appears from the subject or context" occurring in the beginning of sub-S. (1). Thus "adultery" in S. 488 means intercourse by a husband or wife with another, and is not limited to the meaning of the word in S. 497 of the Penal Code.[6]

Words to have same meaning as in Penal Code.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Section 4 (2)—Note 1.

(1) [See (1920) 1920 Pat. 324 (327), *Allan Mathewson* v. *District Board of Manbhum.*
See (1932) 1932 Sind 28 (29): 25 S. L. R. 395, *Abdullah Khan* v. *Emperor.*]

Note 2.

(1) (1903) 25 All. 341 (343), *Churaman* v. *Ram Lal.*
(1898) 25 Cal. 434 (439), *Ram Chandra Boral* v. *Jityandra.*
(1900) 27 Cal. 174 (175), *Ishan Chandra Kalla* v. *Dina Nath Badhak.*
(1901) 5 Cal. W. N. 250 (252), *Srihari Some* v. *Lal Khan.*
(1919) 1919 Lah. 248 (248): 1919 Pun. Re. 16, *Hari Chand* v. *Emperor.*
(1921) 1921 Pat. 391 (392), *Balaram Sahu* v. *Chamru Sahu.*
(2) (1933) 1933 All. 440 (442): 55 All. 463, *Emperor* v. *Fanjdar.*
(3) (1898) 21 Mad. 74 (76) (F.B.), *Yella Gangulu* v. *Manridi Dali.*
(4) (1928) 1928 All. 755 (756), *Neur Ahir* v. *Emperor.*
(5) (1926) 1926 Pat. 214 (216, 218): 5 Pat. 110, *Ramachandra Modak* v. *Emperor.*
(6) (1897) 20 Mad. 470 (475), *Gantapalli Appalamma* v. *Gantapalli Yellayya* (Overruling 17 Mad. 260).

S. 4 (2), Note 2. Again the word "moveable property" as defined in S. 22 of the Penal Code is limited to *corporeal* property while the definition of the same word in the General Clauses Act includes *debts* also. The word as used in this Code does not always either convey the restricted sense of the Penal Code or the extended sense of the General Clauses Act but should be construed with reference to the context. Thus where the word 'attached' is used with reference to "moveable property", the latter includes debts and choses in action but where the words "distress and sale" are used then moveable property means only tangible or corporeal property and does not include debts or choses in action.[7]

S. 5. **5*.** (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

Trial of offences under Penal Code.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force, regulating the manner or place of investigating, inquiring into, trying, or otherwise dealing with such offences.

Trial of offences against other laws.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF THE SECTION ..	2
"OTHERWISE DEALT WITH"	3
"ENACTMENT"	4
"ANY OTHER LAW"	5
OFFENCES AGAINST OTHER LAWS—SUB-S. (2)	6

Other Topics.

Power of High Court to punish for contempt. See Ss. 478 to 480. **Subject to any enactment. See Note 6, Pts. 1-3.**

***(CODE OF 1882—S. 5.)**

All offences under the Code. **5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.**

(7) (1917) 1917 Mad. 748, *Secretary of State* v. *Sengammal.*

1. Legislative changes—

Change made in the Code of 1898:—

The words "investigated" and "otherwise dealt with" were added in both the Sub-Ss. 1 and 2.

The above amendment makes the section applicable to proceedings before the Police also.

2. Scope and applicability of the section.—This section states the procedure to be followed in the investigation, inquiry or trial of offences under the Penal Code as well as offences under other laws. In the former class of offences, the procedure to be followed is that provided by this Code. In the latter class of offences also the same procedure is to be followed, but *subject to any enactment in force* regulating the procedure in such cases.

In criminal proceedings the question is not alone whether substantial justice has been done according to law. All proceedings in *poenam* are *strictissimmi juris*.[1] It is therefore the duty of the presiding officer in criminal trials to see that the procedure as laid down in the Code is strictly and fully complied with.[2]

(CODE OF 1872—Ss. 6, 7, 8, Para 1, and S. 63 Expl.)

What officers to hold inquiries.

6. All inquiries by Magistrates shall be held according to the provisions hereinafter contained.

What Courts to try offences.

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

Offences under local and special laws.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or officer before which or before whom they are tried, may be inquired into and tried according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

63.—*Explanation*:—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

(CODE OF 1861—S. 21. CHAP. 2.)

Of the jurisdiction of the Criminal Courts.

Offences cognizable by Criminal Courts.

21. The Criminal Courts of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV of 1860) or under any special or local law (except offences which are by any such law made punishable by some other authority therein specially mentioned), and in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act.

Section 5—Note 2.

(1) (1925) 1925 Oudh 1 (8): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(2) (1927) 1927 Cal. 936 (936), *Tuka Mea* v. *Emperor*.
(1927) 1927 Cal. 631 (632), *Emperor* v. *Rajab Ali Fakir*.
(1929) 1929 Lah. 382 (384): 10 Lah. 223, *Faqir Singh* v. *Emperor*.
(1932) 1932 Mad. 502, *Lakshminarayana* v. *Suryanarayana*.

S. 5, Notes 3—6.

3. "**Otherwise dealt with.**"—An offence may be said to be "otherwise dealt with" in the following cases:—

(1) Where offenders liable to be tried by a Court Martial are delivered over to Military authorities under S. 549, *infra*.

(2) Where a case is transferred from one Panchayat Court to another under S. 526.[1]

4. "**Enactment**"—The word "Enactment" applies only to provisions *directly enacted by the Legislature*. It does not include a *Rule* framed under the provisions of an Act[1] though such Rule may be a "Law."

5. "**Any other Law.**"—A notification issued under an Act is a law within the meaning of this section: as for example one made under S. 30 of the Police Act (1861).[1] Similarly an "Ordinance" is a "law" within the meaning of this section.[2]

6. "**Offences against other laws**"—**Sub-S. (2).**—Where an offence is one under a special or local law but there is no enactment prescribing any procedure for the investigation of the offence, the procedure laid down in this Code must be followed.[1] Where, on the other hand a complete procedure is provided in any enactment for the trial, etc., of such offences, it is that procedure that must

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Note 3.

(1) (1927) 1927 All. 199 (200): 49 All. 188, *Basdeo Misra* v. *Badal Misra*.

Note 4.

(1) (1921) 1921 Cal. 708 (711, 718): 48 Cal. 955, *Gobardhan Das* v. *Doolie Chand* (Rule 4 framed by Local Government under S. 23, of the Calcutta Rent Act).
(1894) 1894 Pun. Re. 23, pp. 80 (81), *Ganda Shah* v. *Queen-Empress* (Rule framed under the Punjab Laws Act).

Note 5.

(1) (1923) 1923 Pat. 1 (3, 4): 2 Pat. 134, *Emperor* v. *Abdul Hamid* (*Per* Mullick and Coutts JJ.—Das J. Contra.
(2) (1916) 17 Cri. L. Jour. 225 (226): 1916 Lah. 207: 1916 Pun. Re. No. 10, *Sher Singh* v. *Emperor*.

Note 6.

(1) See the following cases arising under special or local laws:
(1913) 14 Cr. L. J. 105 (106): 35 All. 173, *Emperor* v. *Dinanath* (Companies Act VI of 1882).
(1920) 1920 Cal. 83 (85, 86): 47 Cal. 164, *Kishori Mohan* v. *Hari* (Copyright Act III of 1914).
(1919) 1919 Mad. 24 (25): 42 Mad. 69, *Kandaswami Pillai* v. *King-Emperor* (Defence of India Act, 1915).
(1870) 2 N.-W.P. 113 (115, 116), *The Queen* v. *Cheit Ram* (Income Tax Act IX of 1869).
Police Act V of 1861.
(1876) 25 Suth. W. R. Cr. 20 (21), *Queen* v. *Golam Arabee*.
(1865) 5 Suth. W. R. 22 (22), *Queen* v. *Cheit*.
(1929) 1929 Bom. 433 (438), *Balchandra Trimbak* v. *Emperor* (Bombay City Police Act).
(1928) 1928 Bom. 162 (164): 52 Bom. 238, *Shivabhat* v. *Emperor* (Railways Act).
(1876) 1 Mad. 55 (55) (Religious Endowments Act XX of 1863).
(1866) 1866 Pun. Re. 29, page 29 (29), *Crown* v. *Eshree* (Whipping Act VI of 1864).
Workmen's Breach of Contract Act XIII of 1859.
(1913) 14 Cri. L. Jour. 256 (256): 6 Sind L. R. 165, *The Crown* v. *Sohrab*.
(1879) 1 Weir 694 (694), Re. *Higgins*.
(1897) 20 Mad. 235 (239), *Queen-Empress* v. *Kattayan*.
(1898) 1898 Pun. Re. No. 11, page 27 (27, 28), *Queen-Empress* v. *Chetu*.
(1904) 1 Cri. L. J. 263 (264): 33 Bom. 22, *Emperor* v. *Dhondu*.
(1897) 20 Mad. 457 (458, 459), *Queen-Empress* v. *Muthiyya*.
(1916) 17 Cri. L. Jour. 225 (226): 1916 Lah. 207: 1916 Pun. Re. No. 10, *Sher Singh* v. *Emperor*.
Ordinance III of 1914.
[See (1931) 1931 Lah. 359, *Chint Ram* v. *Emperor* (Ordinance III of 1930).
Bombay Municipal Acts.
(1871) 8 Bom. H. C. R. 12 (12, 13), *Reg* v. *Dharmaya Valad Sangappa* (Act XVI of 1850).
(1893) 17 Bom. 731 (733), *Municipality of Ahmedabad* v. *Jamma Punja* (Act VI of 1873).
(1899) 23 Bom. 446 (448, 449), *Municipality of Wai* v. *Krishnaji Gangadhar* (Do.).
Calcutta Municipal Acts.
(1905) 2 Cri. L. Jour. 1 (8) (Cal.), *Sew Prosad* v. *Corporation of Calcutta* (Act III of 1899).
(1910) 11 Cri. L. J. 183 (184): 37 Cal. 384, *Sarat Chandra* v. *Corporation of Calcutta* (Do.).
(1925) 1925 Cal. 1251 (1252): 52 Cal. 962, *Ramgopal* v. *Corporation of Calcutta* (Act III of 1923).
(1926) 1926 Cal. 786 (788): 53 Cal. 631, *Sishir Kumar* v. *Corporation of Calcutta* (Do.).
[See (1927) 1927 Cal. 509 (510): 54 Cal. 532, *C. Krishnan Dayal Jalan* v. *Corporation of Calcutta* (Do.).
See also (1905) 2 Cri. L. J. 532 (533) (Cal.), *Emperor* v. *Mohunt Ram Das* (Bengal Tenancy Act VIII of 1885).]

be followed and not the one prescribed by this Code.[2] But where an enactment provides a special procedure only for some matters its provisions must apply in regard to those matters and the provisions of this Code will apply for the matters on which the enactment is silent.[3]

See also Note 14 to S. 96, *infra*.

The Provincial Insolvency Act before its amendment in 1926 prescribed no procedure for the trial of offences under that Act and the proceedings were

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(1869) 12 Suth. W. R. 29 (30), *In the matter of Northern Assam Tea Company* (Bengal Transport of Native Labourers Act VI of 1865).
(1896) 23 Cal. 421 (423), *Queen-Empress* v. *Aswini Kumar* (Bengal Village Chaukidars Act VI of 1870).
(1921) 1921 Cal. 708 (711): 48 Cal. 955, *Gobardhan Das Deora* v. *Doolie Chand* (Calcutta Rent Act III of 1920).
(1923) 1923 Cal. 339 (341, 342), *Ishan Chandra* v. *Manmatha* (Do.).
(1913) 20 Ind. Cas. 768 (768) (Cal.), *Dhiraj* v. *Gopal* (Bengal Disorderly Houses Act III of 1906).
(1929) 1929 Pat. 406 (406), *Munshimain* v. *Emperor* (Do.).
(1912) 13 Cri. L. Jour. 691: 57 Cal. 287, *Feroja Peshakar* v. *Emperor* (East Bengal and Assam Disorderly Houses Act II of 1907).
(1910) 11 Cri. L. Jour. 112 (113): 37 Cal. 287, *Feroja* v. *Amiruddin* (Do.).
(1905) 2 Cri. L. Jour. 317 (318) (Rang.), *Nga Teh Pya* v. *Emperor* (Burma Gambling Act).
(1925) 1925 Rang. 69 (70): 2 Rang. 524, *Parsodan* v. *Emperor* (Burma Habitual Offenders Restriction Act).
(1925) 1925 Rang. 112 (112): 2 Rang. 641, *San Dun* v. *Emperor* (Do.).

Madras Salt Act.
(1931) 1931 Mad. 769 (769), *Sudarsanam* v. *Emperor*.
(1927) 1927 All. 199 (199, 200): 49 All. 188, *Basdeo Misra* v. *Badal Misra* (U. P. Panchayat Act, 1920).
(1912) 13 Cri. L. Jour. 246 (246): 39 Cal. 487, *Emperor* v. *Salimulla* (Offences committed on High seas).
(1894) 21 Cal. 782 (784), *Thomson* v. *Gunning* (Do.).

(2) *Legal Practitioners Act XVIII of* 1879.
(1910) 11 Cri. L. Jour. 320 (322, 323) (Cal.), *Hari Charan* v. *District Judge*.
(1872) Rat. Un. Cr. 62 (62-63), *Aba Apaji Cr. Rg.* (Special jurisdiction granted to District Magistrate under Reg. XXI of 1827 is not affected by the Code).
(1924) 1924 Lah. 123 (124, 126): 4 Lah. 271, Re *Abdul Rashid*.
(1926) 1926 Cal. 586 (588): 53 Cal. 650, *Satya Charan Mitter* v. *Emperor* (Calcutta Police Act).

(3) *See the following Acts and cases thereunder noted below. The matters in which special procedure is provided in such Act is given in brackets.*

Arms Act (1878).
(1918) 1918 All. 113 (115), *Babu Ram* v. *Emperor* (Search).

Cantonments Act XXII of 1864.
(1870) 1870 Pun. Re. No. 12, p. 21 (22, 23), *Musst. Surdaree* v. *Crown* (Special tribunal within the cantonment area).
(1928) 1928 Notes 44 (c) (44) (Nag.), *Surajdeen* v. *Emperor* (Who can complain).

Explosives Act (*VI of* 1908).
(1912) 13 Cri. L. Jour. 433 (435): 39 Cal. 119, *Lalit Chandra Chanda Chowdhry* v. *Emperor* (Search).

Factories Act (*XII of* 1911).
(1932) 1932 Pat. 188 (189), *J. Agarwala* v. *Emperor* (Joint trial under S. 41).

Opium Act (*I of* 1878).
(1929) 1929 Mad. 604 (605): 52 Mad. 613, *Fernando* v. *A. Fernando* (Who can complain).

Bombay (*Opium*) *Regulation* (*XXI of* 1827).
(1870) 7 Bom. H. C. R. 59 (60), *Reg* v. *Hira Jiva* (The Court empowered to try).
(1871) 8 Bom. H. C. R. 118, *Reg* v. *Lakhu Valad Sakru* (Do.).
(1872) 9 Bom. H. C. R. 166 (166), *Reg* v. *Sadu Dadabhai* (Do.).

Presidency Towns Insolvency Act.
(1913) 14 Cri. L. Jour. 637 (638), *Lakshmi Narasayya* v. *Narasima Chari* (Who can complain).

Public Gambling Act (*III of* 1867).
(1920) 1920 All. 150 (152): 42 All. 385, *Emperor* v. *Mahadeo* (Search).
(1910) 11 Cri. L. Jour. 570 (571): 1910 Pun. Re. No. 23, *Girdhari Lal* v. *Emperor* (Search).
(1922) 1922 Lah. 458 (458, 459): 3 Lah. 359, *Khilinda* v. *Crown* (Search).

Bombay Prevention of Gambling Act (*IV of* 1887).
(1907) 6 Cri. L. Jour. 60 (66): 31 Bom. 438, *Emperor* v. *Fernad* (Search).
(1932) 1932 Bom. 610 (613), *Emperor* v. *Raghunath Lahunasa* (Do.).

Salt Act (*XII of* 1882).
(1932) 1932 All. 18 (23): 53 All. 642, *Joti Prasad* v. *Emperor* (Who can complain).

Salt Act (*VII of* 1864 *B. C.*).
(1870) 14 Suth. W. R. Cr. 36 (37 to 39), *Queen* v. *Abdul* (Trial of offences).

Emergency Powers Ordinance (1932).
(1933) 1933 Cal. 401 (402): 60 Cal. 851, *Manmathanath Kundu* v. *Emperor* (Special tribunal).
(1933) 1933 Cal. 537 (538): 60 Cal. 652, *Abdul Majid* v. *Emperor* (Do.).

Bengal Criminal Law Amendment Act (1925).
(1927) 1927 Cal. 496 (504): 54 Cal. 727, *Girendranath* v. *Birendranath* (Habeas Corpus under S. 491 of the Code).
(1933) 1933 Cal. 1 (2), *Prodyot Kumar Bhattacharia* v. *Emperor* (Special tribunal).

Bengal Excise Act (*V of* 1909).
(1914) 1914 Lah. 603 (605): 41 Cal. 694, *Upendranath* v. *Emperor* (Restrictions specified in the Act).

Bengal Self-Government Act (*V of* 1919).
(1932) 1932 Cal. 867 (867): 59 Cal. 1080, *Yasin Moral* v. *Isaf Khan* (Revision against orders under).

Frontier Crimes Regulation (*III of* 1901).

S. 5, Note 6. carried on in the manner provided for by this Code.[4] This has now been made clear in the Amendment of S. 70 of that Act.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

Of the Constitution of Criminal Courts and Offices.

A—Classes of Criminal Courts.

S. 6. **6.** *Besides the High Courts and the Courts constituted under any Law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

Classes of Criminal Courts.

I.—Courts of Session;

II.—Presidency Magistrates;

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*(CODE OF 1882—S. 6).

CHAPTER II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:——

Classes of Criminal Courts.

I.—Courts of Session.

II.—Courts of Presidency Magistrates.

III.—Courts of Magistrates of the first class.

IV.—Courts of Magistrates of the second class.

V.—Courts of Magistrates of the third class.

(1910) 11 Cri. L. Jour. 426 (427): 1910 Pun. Re. 103, *King-Emperor* v. *Musst. Alam Khatun* (Where the trial is held with the assistance of elders under S. 59).

[See also (1872) 1872 Pun. Re. No. 18, p. 24 (26), *Crown* v. *Muhammad Ali* (Do.).

Bombay Abkari Act (*V of* 1878).

(1933) 1933 Sind 325 (326), *Emperor* v. *Mohd. Usman* (Search).

Bombay District Police Act.

(1918) 1918 Sind 49 (50): 11 Sind L. R. 113, *Dharnibai* v. *Emperor* (Revision against order under S. 43).

Madras Abkari Act (*I of* 1886).

(1923) 1923 Mad. 339 (339, 340), In re *Kuppuswamy Naidu* (Who can investigate) [But see (1925) 1925 Mad. 856 (858)].

(1929) 1929 Mad. 604 (605): 52 Mad. 618, *Lazar Fernando* v. *Amirtham Fernando* (Who can complain).

Madras Children's Act (1920).

(1932) 1932 Mad. W. N. 1076 (1076), *Appalaswamy*, In re (Special tribunal).

Madras Panchayat Courts Act (*II of* 1920).

(1924) 1924 Mad. 540 (540): 47 Mad. 396, Re *Timmala Reddy* (Examination of accused under R. 36 made under the Act).

(4) (1917) 18 Cri. L. Jour. 409 (410): 1917 All. 354, *Muhammad Ashanullah* v. *Emperor*.

(1917) 1917 All. 280 (281): 39 All. 171, *Ladu* v. *Mahabir*.

(1919) 1919 All. 344 (345): 41 All. 486, *Jagannath* v. *Ganga*.

(1903) 27 Bom. 394 (399), Re *Vallaba Das*.

(1910) 11 Cri. L. Jour. 548 (549): 35 Bom. 63, *Emperor* v. *Mulshanker*.

(1890) 17 Cal. 209 (220), Re *Rash Behari*.

(1892) 19 Cal. 605 (609), *Yeo Swee Choon* v. *Chartered Bank of India*.

[See also (1914) 1914 Cal. 183 (183), *Amiruddin* v. *Jadeb*.

(1915) 16 Cri. L. Jour. 135: 1915 Cal. 117, *Harihar Singh* v. *Mahashur Prasad*.

(1918) 17 Cri. L. Jour. 318 (319): 1918 Lah. 182: 1916 Pun. Re. No. 110, *Nawab* v. *Topan Ram*.

(1917) 18 Cri. L. Jour. 618 (619): 1917 Oudh 207: 20 Oudh Cas. 123, (P. C.), *Patan Din* v. *King-Emperor*.

[But see (1918) 1918 Nag. 214 (214), *Ganapathy* v. *Chimnaji*.]

III.—Magistrates of the First Class;
IV.—Magistrates of the Second Class;
V.—Magistrates of the Third Class.

S. 6, Note 1.

SYNOPSIS.

	Note No.
CRIMINAL COURT	1
MAGISTRATE ACTING IN EXECUTIVE OR ADMINISTRATIVE CAPACITY	2
COURTS ENUMERATED IN THE SECTION ARE DIFFERENT FROM EACH OTHER	3
CRIMINAL COURTS CONSTITUTED UNDER OTHER LAWS ..	4

Other Topics.

Court and Magistrate. See Note 1, Pts. 2-3.
Courts of Session. See S. 9.
District Magistrate, etc. See Note 3, Pt. 5 and Ss. 10 and 13.
Presidency Magistrate. See Note 3, Pts. 3 and 4 and S. 18.

1. Criminal Court.—Under the Code of 1861 the words "Criminal Court" and "Court of Justice" were defined as follows:—

"S. 11.—The words "Criminal Court" shall denote every Judge or Magistrate lawfully exercising jurisdiction in criminal cases, whether for the *decision* of such cases in the first instance or an appeal, or for *commitment* to any other Court or officer."

"S. 12—The words "Court of Justice" shall denote a judge who is empowered by law to act judicially alone, or a body of judges empowered by law to act judicially as a body when such judge, or body of judges is acting judicially."

In the undermentioned case[1] arising under that Code it was held that the definition of the words "Criminal Court" as given above was not an exhaustive

(CODE OF 1872—Ss. 5, 19.)

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.

Of Criminal Courts.

5. Besides the High Courts, there shall be four Grades of Criminal Courts in British India:—

I.—The Court of the Magistrate of the Third Class.
II.—The Court of the Magistrate of the Second Class.
III.—The Court of the Magistrate of the First Class.
IV.—The Court of Session.

CHAPTER IV.

Of Magistrates and their Powers.

Magistrates to be of three classes.

19. Magistrates shall be either-Magistrates of the First Class, Magistrates of the Second Class, or Magistrates of the Third Class.

(CODE OF 1861—Nil.)

The Queen v. *Buktear Malfaraz.*

Section 6—Note 1.
(1) (1871) 15 Suth. W. R. 64 (66) (F.B.).

S. 6, Note 1.

enumeration of the functions of Criminal Courts and that a Magistrate who is directed by the appellate Court to take further evidence is also a "Criminal Court." In view of this decision the Code of 1872, after adding a definition of the words "Judicial proceeding", defined a "Criminal Court" as meaning and including "every Judge or Magistrate, or body of judges or Magistrates inquiring into, or trying any criminal case or engaged in *any judicial proceeding.*"[1-a] The definition of the words "Court of justice" was omitted apparently on the ground that it was unnecessary, inasmuch as the expression was actually never used anywhere in the Code.

The Code of 1882, omitted the definition of the words "Criminal Court," but by S. 4 thereof imported therein the definition of all words given in the Penal Code which were not defined by it. The definition of "Criminal Court" was really not necessary, as, according to well known principles, a Judge or Magistrate acting judicially in criminal matters is obviously a criminal Court. The omission might have been due also to the fact that the definition as given was not a correct one in that it could be construed to include *all* Courts whatever be the nature of the proceeding, whether criminal or otherwise, provided it was a judicial proceeding.

This section divides the Criminal Courts in British India into several groups, and the second, third, fourth and fifth groups are "Magistrates." This however, does not mean that a Magistrate is *always* a Court whatever he is doing. He has executive as well as judicial duties to perform[2] and it is in the performance of the *latter* duties that he is acting as a Court. The section can therefore, only mean that among the Criminal Courts in British India are Magistrates, and that when the latter act judicially they are criminal Courts.[3] In *Clarke* v. *Brojendra Kishore Roy*,[4] their Lordships of the Privy Council observed that "for the sake of brevity the Code uses the terms "Court" and "Magistrates", *generally* if not *always*, as convertible terms." An examination of the various sections of the Code would seem to show that the word "Court" is used wherever it is intended to include all classes of Criminal Courts (including the Court of Session and the High Court), and the word "Magistrate", wherever it is intended to exclude certain Courts or classes of Courts.

But though a Magistrate acting judicially is a Criminal Court, he is not always a "Judge" or his Court a "Court of Justice." The reason is this: S. 19 of the Penal Code excludes *committing* Magistrates from the definition of "Judge" and S. 20 defines a "Court of Justice" as *denoting* a judge. These definitions, apply, as has already been seen, to this Code also by virtue of S. 4, sub-S. 2, and consequently, even under this Code a committing Magistrate is

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(1-a) [See also (1879) 2 All. 205 (208, 209), In re *Gur Dayal.*]

(2) (1909) 2 Ind. Cas. 436 (439): 36 Cal. 433, *Clarke* v. *Brojendra Kishore Roy Chowdhry* (Reversed on another point by 13 Cr. L. Jour. 693, (P.C.).

(1919) 1919 P. C. 31 (34): 43 Mad. 146: 46 Ind. App. 176 (P.C.), *Annie Besant* v. *Advocate-General of Madras.*

(1928) 1928 Mad. 1108 (1109): 52 Mad. 69, *Vedappan Servai* v. *Perianan Servai* (Section 6 is not inconsistent with this idea).

(3) [See (1928) 1928 Mad. 1108 (1109): 52 Mad. 69, *Vedappan Servai* v. *Perianan Servai.*]

[See also (1901) 28 Cal. 709 (713), *Lolit Mohan Moitra* v. *Surja Kanta Acharjee* (Magistrate taking cognizance of a case under S. 145 is a "Criminal Court").]

(4) (1912) 16 Ind. Cas. 501 (508): 39 Cal. 953, *Clarke* v. *Brojendra Kishore Roy Chowdhry.*

not a judge, and his Court not a "Court of Justice".[5] It is, however, clear that he is engaged in a judicial proceeding and is therefore a Criminal Court.[6]

2. Magistrate acting in executive or administrative capacity.—As has been seen in Note 1 above a Magistrate under the Code has executive as well as judicial powers. Thus an order under S. 144 of the Code is an *executive* act.[1] Similarly the making of a departmental inquiry under the orders of the Government is an executive act.[2] An order under S. 96 of the Code[3] or under S. 145 of the Code[4] is, on the other hand a *Judicial* Order.

See also Notes to S. 435, *infra*.

3. Courts enumerated in the section are different from each other.—

The Courts enumerated in the section are as follows:—

1. High Courts (for definition *See* S. 4 (*j*).)
2. Courts constituted under any law other than this Code.
3. Courts of Session.
4. Presidency Magistrates.
5. Magistrate of the First Class.
6. Magistrates of the Second Class.
7. Magistrates of the Third Class.

Each class of Court is distinct and different from the others. Thus a High Court is not a Court of Session—even when exercising original criminal jurisdiction.[1] Nor is a Court of Session, a Magistrate under any circumstances.[2] Nor is a Presidency Magistrate, a Magistrate of the First Class,[3] or any other class of Magistrate referred to in the section.[4]

Where a First Class Magistrate is appointed under S. 10, *infra* for a District he is called a "District Magistrate." A Magistrate of the first or second class placed in charge of a sub-division under S. 13, *infra* is called a Sub-Divisional Magistrate." A person on whom any or all the powers of a Magistrate

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(5) (1887) 10 Mad. 154 (156), In re *Venkatachala Pillai*.
[See also (1926) 1926 Pat. 214 (216, 217): 5 Pat. 110, *Ramchandra Modak* v. *King-Emperor*.]
(1897) 20 Mad. 189 (206), *Queen-Empress* v. *Arumugam*.

(6) (1887) 10 Mad. 154 (156), In re *Venkatachala Pillai*.

Note 2.

(1) (1928) 1928 Mad. 1108 (1109): 52 Mad. 69, *Vedappan Servai* v. *Perianan Servai*.
(1890) 13 Mad. 353 (360, 361), *Queen-Empress* v. *Cheria Koya*.
(1886) 9 Mad. 224 (227, 228), *Queen-Empress* v. *Viran*.

(2) (1895) 19 Bom. 51 (69), *Queen-Empress* v. *Karigowda*.
(1905) 28 All. 89 (90), *Emperor* v. *Kuna Sah*.
[See also (1908) 4 N.L.R. 134 (136) (District Magistrate receiving applications for licenses under the Indian Arms Act is not acting as a Criminal Court but as an executive officer).]

(3) (1912) 13 Cri. L. Jour. 693 (701): 39 Cal. 953: 39 Ind. App. 163 (P.C.), *Clarke* v. *Brojendra Kishore Roy Chowdhry*.

(4) (1901) 28 Cal. 709 (713), *Lolit Mohan Moitra* v. *Surja Kanta Acharjee*.

Note 3.

(1) (1925) 1925 Cal. 384 (385): 51 Cal. 980, *Emperor* v. *Harendra Chandra Chakravarthy*.

(2) (1910) 1910 Pun. L. R. 184 (528): 1910 Pun. Re. No. 11 at 37, *Emperor* v. *Ali*.
(1910) 37 Cal. 287 (291), *Rajani Khemtawati* v. *Pramatha Nath Chowdhry*.

(3) (1907) 31 Bom. 611 (623), *Emperor* v. *Jeevanji* (For the purpose of the Emigration Act XXI of 1883, a Magistrate of the first class, however, includes a Presidency Magistrate. See also 32 Bom. 10 (12).
(1897) 24 Cal. 551 (555), *Hem Coomaree Dassee* v. *Queen-Empress*.
(1906) 3 Cal. L. Jour. 357 (359), *Kedar Nath Kar* v. *King-Emperor*.

(4) (1900) 27 Cal. 126 (128, 129), *Charoobala Dabee* v. *Barendra Nath Mazumdar*.
(1909) 10 Cri. L. Jour. 393: 32 Mad. 303, *Emperor* v. *Chota Singh* (He is not a "District Magistrate").

S. 6, Notes 3—4.

of the first, second or third class under S. 14, *infra* is called a "Special Magistrate." But all these fall only under one or other of the third, fourth and fifth classes of Courts mentioned in the section. The Code does not recognise any such Court as the "Court of a District Magistrate" or the "Court of a Sub-Divisional Magistrate" or the Court of a Deputy Magistrate" or "the Court of a Special Magistrate.[5]

4. Criminal Courts constituted under other laws.—A Court constituted under any other law for the time being in force to try criminal cases is a Criminal Court.[1-a] Thus the Court of a Municipal Magistrate of Calcutta[1] or of the village headman under the Burmah Village Act (III of 1889)[2] or of a village *Panchayat* constituted under U. P. Act VI of 1920[3] is a Criminal Court. But a Police Patel under the Village Police Act (VIII of 1867)[4] or the President of the Tribunal under the Calcutta Rent Act, 1920[5] is not a Criminal Court.

B.—Territorial Divisions.

S. 7.

Sessions divisions and districts.

7.* (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

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*(CODE OF 1882—Ss. 7, 12, 13 and 14.)

B. Territorial Divisions.

Sessions Divisions.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

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(5) [See (1881) 2 All. 205 (209), *Gur Dayal, In re.*]
(1906) 4 Cri. L. Jour. 140 (141), *Emperor* v. *Syed Sajjad Husain.*
(1881) 3 All. 563 (566), *Empress of India* v. *Anand Sarup.*
(1906) 3 All. L. Jour. 825 (827), *Emperor* v. *Syed Sajjoo.*
(1929) 1929 Nag. 97 (98): 25 N.L.R. 1, (F.B.), *Pilalal* v. *Emperor.*
(1877) 2 Bom. 384 (386), *Imperatrix* v. *Padmanabha Pai.*
(1920) 1920 All. 177: 42 All. 649, *Mt. Choti* v. *Khechern.*
(1912) 23 Mad. L. Jour. 670 (675), *Public Prosecutor* v. *Sadanand* (The title "Deputy Magistrate" and "General Deputy Magistrates" are titles unknown to the Code).
(1899) 22 Mad. 47 (48), *Queen-Empress* v. *Sri Ahobalamatam Jeer.*

Note 4.

(1-a) As to such Courts see the following Acts:—
(*a*) Punjab Frontier Crimes Reg. III of 1901, Ss. 2, 11, 13 and 15.
(*b*) Act VII of 1878.
(*c*) Act XIX of 1881.
(*d*) Madras Act V of 1882.
(*e*) Act XIV of 1887.
(*f*) Act V of 1869.
(*g*) Act XII of 1894.
(*h*) 26 and 27 Vict., c. 24.
(*i*) Act XII of 1859.
(*j*) Act XII of 1883.
(*k*) Act V of 1869.
(*l*) 44 and 45 Vict., c. 58 (Army).
[See also (1933) 1933 Pesh. 6 (8), *Emperor* v. *Johnson* (District Magistrate passing sentence under Punjab Frontier Crimes regulation after receipt of Jirga's finding acts as a Criminal Court. 18 Cr. L. J. followed and 17 Pun. Re. 1904 not followed).]
(1) (1925) 1925 Cal. 1251 (1252, 1253): 52 Cal. 962, *Ram Gopal Goenka* v. *Corporation of Calcutta.*
[See also (1905) 9 Cal. W. N. 18 (24), *Sheo Prasad* v. *Corporation of Calcutta*].
(1920) 1920 Cal. 321 (322): 47 Cal. 547, *Probodh Chandra Bose* v. *Corporation of Calcutta.*
(2) (1924) 1924 Rang. 23 (23): 1 Rang. 449, *Nga E* v. *King-Emperor.*
(3) (1926) 1926 All. 27 (28): 48 All. 23, *Kamlapati Panth* v. *Emperor.*
(1927) 1927 All. 199 (200): 49 All. 188, *Basdeo Misra* v. *Badal Misra.*
[But see (1924) 1924 All. 265: 46 All. 167, *Sat Narain* v. *Sarju.*]
(4) (1880) 4 Bom. 479 (481), *Imperator* v. *Irbasapa.*
(1887) 1887 Rat. 317, *Queen-Empress* v. *Ramia.*
(5) (1921) 1921 Cal. 708 (714): 43 Cal. 955, *Gobardhan Das* v. *Doulie Chand Shethia.*

Power to alter divisions and districts.

(2) The Local Governments may alter the limits or, the number of such divisions and districts. **S. 7, Notes 1—2.**

Existing divisions and districts maintained till altered.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

Presidency towns to be deemed districts.

(4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
"PROVINCE"	3
"PRESIDENCY TOWN"	4
"LOCAL GOVERNMENT"	5
"DISTRICT"	6
SESSIONS DIVISION	7
LOCAL GOVERNMENT'S POWER TO ALTER	8

Other Topics.

Sessions divisions existing when the Code come into force. See Note 2.

Two Sessions divisions in a district. See Note 7.

1. Legislative changes.—The words "with the previous sanction of the Governor-General in Council" which occurred in Sub-S. 2 of the section were omitted by S. 2 and Schedule I of the Devolution Act, (XXVIII of 1920).

2. Scope and object of the section.—The object of Cl. 1 of the section is not to enable the Local Government to constitute Sessions Divisions out of Districts but to lay down a rule governing the relation between Sessions Divisions and Districts.[1] In other words it means that a Sessions Division shall not consist

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Districts.

Power to alter Divisions and Districts.

Existing Divisions and Districts maintained till altered.

Presidency-towns to be deemed Districts.

and every Sessions Division shall, for the purposes of this Code, be a District, or consist of Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number, of such Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions, and Districts respectively, unless and until they are so altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Section 7—Note 2.

(1) (1931) 1931 Mad. 697 (698): 54 Mad. 943, *Arumugam* v. *Emperor.*

(1886)[2] 10 Bom. 274 (282, 283), *Queen-Empress* v. *Mangal Tekchand.*

S. 7, Notes 2—6.

of half a district or even one and a half districts but shall consist of one district or a plurality of whole districts.[2] Clause 3 enacts that the Sessions Divisions and Districts existing when the Code comes into force shall be Sessions Divisions and Districts respectively until they are altered by the Local Government under Cl. 2.

3. "**Province.**"—The word "province" has not been defined in this Code and consequently the definition thereof in the General Clauses Act, 1897 will apply. A "province" under S. 3, Sub-S. 43 means the "territories for the time being administered by any Local Government". S. 60 of the Government of India Act, 1915 provides that the Governor-General in Council, may, by notification, declare, appoint or alter the boundaries of any of the province into which British India is divided, and distribute the territories among the several provinces thereof in such manner as may seem expedient subject to certain qualications.

4. "**Presidency Town**".—The expression "Presidency Town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras and Bombay.[1]

5. "**Local Government**".—As defined by S. 3, Cl. 29 of the General Clauses Act, 1897 "Local Government" means the person authorised by law to administer executive Government in that part of British India in which the Act or regulation containing the expression operates and includes a Chief Commissioner.

6. "**District.**"—The word "District" has not been defined in this Code or in the General Clauses Act, 1897. It has been held by a Full Bench of the High Court of Madras that it is not the same thing as a *revenue* district, though very often they are co-extensive and conterminous, but means a district for the purposes of *criminal administration*.[1] Where, under Sub-S. 2 of the section the Government notified that the "deep stream" of the river Gogra was to be the

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Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

Power to alter Divisions.

13. The Local Government shall have power to alter, from time to time, the number or extent of such Divisions.

Existing Local Jurisdictions of Sessions Courts to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Sessions shall be Sessions Divisions unless and until they are so altered.

(CODE OF 1861—Nil.)

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(2) (1931) 1931 Mad. 697 (698, 699): 54 Mad. 943, *Arumuga Solagan* v. *Emperor*. Note 4.

(1) [See S. 3 (41) of the General Clauses Act, 1897.]
[See also Clause 11 of the Letters Patent for Madras, Bombay and Calcutta for the local limits of the original civil jurisdiction of the High Court.] Note 6.

(1) (1931) 1931 Mad. 697 (698): 54 Mad. 943, *Arumuga Solagan* v. *Emperor* (*Contra* per Jackson, J., at p. 701).

boundary between two districts *X* and *Y* but after the date of the notification the river divided into two branches and the question arose as to whether the land between the two branches formed part of the district *X* or district *Y* it was held by the High Court of Calcutta that the "deep stream" spoken of in the notification must be the deep stream as it existed *at the time of the notification.*[2] The Oudh Judicial Commissioner's Court has dissented from this view and has held that the boundary must be the "deep stream" as found *at the particular time in question* and not at the date of the notification.[3] S. 7, Notes 6—8.

7. Sessions Division.—The formation of two Sessions Divisions in the same *Revenue District, i.e.,* in the same Collectorate is not unwarranted by law.[1] It has been held by a Full Bench of the High Court of Madras that, by virtue of the words "every Sessions Division shall *for the purposes of this Code, be* a district, each of the Sessions Divisions so formed will become a "District" for the purposes of criminal administration.[2] In that case two Sessions Divisions. East Tanjore and West Tanjore were formed by the Local Government by notification, in the same *revenue* district of Tanjore and the question arose whether the notification was *ultra vires or intra vires.* The majority of the judges held that each of the Sessions Divisions so formed would become a separate district for the purposes of criminal administration and that the notification was not *ultra vires.* Jackson J., however differed from this view and held that the word "District" must be given its ordinary sense of revenue district, that if the Government had made two districts, East and West Tanjore, it would have appointed a District Magistrate in each district as, under S. 10 of the Code, it was bound to do, and that the formation of two Sessions Divisions in the same district was therefore *ultra vires.* The doubt as regards the particular notification has, however, now been set at rest by the *East and West Tanjore* Sessions Divisions Validation Act VI of 1931 (Madras).

See also the undermentioned cases.[3]

8. Local Government's power to alter.—*See* Notes 2, 6, and 7 above.

8.* (1) The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division and may alter the limits of any sub-division. S. 8.

Power to divide districts into sub-divisions

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*(CODE OF 1882—S. 8.)

Power to divide Districts into Sub-divisions.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any sub-division.

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(2) (1898) 25 Cal. 858 (859), *Punardeo Narain Singh* v. *Ram Sarup Roy.*

(3) (1918) 45 Ind. Cas. 100? (1008): 1918 Oudh 158 (Oudh), *Kayamuddin* v. *Dwarka.*

Note 7.

(1) (1907) 30 Mad. 136 (137), *Valia Ambu* v. *Emperor.*

(2) (1931) 1931 Mad. 697 (698, 699): 54 Mad. 943, *Arumuga Solegan* v. *Emperor.*

(3) (1912) 17 Ind. Cas. 786 (788), *Public Prosecutor* v. *Sadanand.*

(1905) 29 Bom. 575, *Emperor* v. *Robert Comley* (Jurisdiction and powers of Sessions Judge, Aden in the Perim District).

S. 8. (2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing sub-divisions maintained.

C.—Courts and offices outside the Presidency-towns.

S. 9. 9.* (1) The Local Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court.

Court of Session.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order be made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one, or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

Existing sub-divisions maintained. — **All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.**

(CODE OF 1872—S. 39.)

Division of Districts into divisions. — **39. The Local Government may divide any district into divisions, and from time to time alter their limits.**

Existing divisions preserved. — **All existing divisions of districts, which are now usually put under the charge of a Magistrate, shall be divisions until their limits are so altered.**

(CODE OF 1861—Nil.)

***(CODE OF 1882—S. 9.)**

C.—Courts and Offices outside the Presidency-towns.

Court of Session. — **9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.**

SYNOPSIS. S. 9.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
COURT OF SESSION	3
JURISDICTION OF JUDGES APPOINTED UNDER THIS SECTION	4
POWER TO DIRECT PLACE OR PLACES OF SITTING ..	5
COURTS CONSTITUTED UNDER OTHER LAWS	6

Other Topics.

Additional and Assistant Sessions Judges. See Note 3, Pt. 5, Note 4. See also S. 17.

High Court in original criminal jurisdiction, whether a Sessions Court. See Note 3, Pts. 3 & 4.

Jurisdiction outside Sessions division whether exists. See Note 4, Pts. 7 & 8.

Resident's Court at Aden whether a Sessions Court. See Note 6, F.N. 3.

Sessions Court at Baluchistan. See Note 6, F.N. 2.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

(CODE OF 1872—Sections 15, 16, 17 and 18).

15. There shall be a Court of Session in every Sessions Division:

One Court for each Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

Appointment and powers of Sessions Judges.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges, who shall exercise all the powers of a court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division make over to them either by general orders or by a special order.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify r annul such sentence of the Assistant Sessions Judge.

S. 9, Notes 1—3.

1. **Legislative Changes.**—

Difference between the Code of 1872 *and the Code of* 1882—

Section 17 of the Code of 1872 provided that the Additional Sessions Judges, etc., appointed by the Local Governments "shall try such cases only as the local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial". The Code of 1882 transferred the matter in quotation to a separate section namely S. 193. The distribution however, did not make any difference in the law.[1]

Difference between the Code of 1882 *and the present Code.*—

(1) Sub-Ss. 2 and 4 of this Section are new.

(2) The words "Joint Sessions Judges" which occurred in the portion corresponding to the present sub-S. 3 have been omitted. *See also* S. 3, Sub-S. 2 *ante* under which the expression "joint Sessions Judge" in previous enactments shall mean "Additional Sessions Judge."[2]

2. **Scope of the Section.**—Under the Scheme of the Code the general frame work of the administration of justice, such as the division of the province into sessions division and their boundaries and places of sitting, the appointment of Sessions Judges and the classification of offences into those triable by jury and those triable with the assessors is left by Ss. 7 to 9 and S. 269 of the Code to the Local Government.[1] This Section deals with the power of the Local Government to establish Court of Sessions to appoint Judges thereto and to direct at what place or places such Court shall hold its sitting.[2] The conditions necessary for exercise of jurisdiction by such Judges is set forth in Ss. 193 and 409 *infra*.

3. **Court of Session.**—The Local Government is bound under this Section to establish the Court of Session for every Sessions division in the province.[1] The words "Court of Session", wherever it is used in the Code, means a Court established *under this Section*[2]. A High Court exercising original criminal jurisdiction[3] or a Court established under a special or local law with powers similar to a Court of Sessions under the Code,[4] is not a Court of Sessions within the meaning of the Code.

Section 9—Note 1.

(1) (1885) 9 Bom. 164 (168), *Re Musa Asmal.*
(2) (1898) Rat. Un. Rep. Rulings 972 (972, 973) (Officer appointed as joint Sessions Judge under 1882, Code becomes invested with the powers of Additional Sessions Judge under the Code of 1898).

Note 2.

(1) (1931) 1931 Bom. 313 (316): 55 Bom. 576 (S. B.), *Emperor* v. *Lakshman Chavji.*
(2) (1931) 1931 Cal. 190 (191): 58 Cal. 1117, *Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Ijjatulla Patker.*
(1931) 1931 Bom. 313 (319): 55 Bom. 576, *Lakshman Chavji Naranjiker* v. *Emperor.*

Note 3.

(1) (1886) 10 Bom. 258 (262), *Queen-Empress* v. *Mangal Teckchand.*
(2) (1925) 1925 Cal. 384 (385): 51 Cal. 980, *Emperor* v. *Harendra Chandra Chakravarthy.*
(3) (1925) 1925 Cal. 384 (385): 51 Cal. 980, *Emperor* v. *Harendra Chandra Chakravarthy.*
[See also (1932) 1932 Cal. 867 (868): 59 Cal. 1248, *Yasin Moral* v. *Isaf Khan*].
(4) (1886) 10 Bom. 263 (271, 272), *Queen-Empress* v. *Mangal Teckchand.*

S. 9, Notes 3—4.

There can be one Court of Session for every sessions division though it may be manned by several Judges; it would be inaccurate to use the expression "Court of the Sessions Judge" or "Court of the Additional or Assistant Sessions Judge".[5] The High Court of Bombay has however held that the Sessions Judge and the additional and the Assistant Sessions Judges, though exercising jurisdiction as a Sessions Court are, while exercising such jurisdiction, different Courts for the purpose of Ss. 473,[6] 487[7] and 526[8] of the Code.

4. Jurisdiction of Judges appointed under this Section.—A person not appointed under this Section as a Sessions Judge or as an additional or assistant Sessions Judge, has no jurisdiction to act as such, under the Code and if he does so act, the acts would be void.[1] The Local Government is *bound* to appoint a Judge for every Court of Sessions. It *may* also appoint additional or assistant Sessions Judges to exercise jurisdiction in such a Court. But, as has been seen before, there is only one Court of Sessions manned by several Judges. A Sessions Judge is therefore competent to make a complaint in respect of an offence committed before the Additional Sessions Judge,[2] or withdraw to his file an appeal made over by him to the Additional Sessions Judge.[3]

The exercise of jurisdiction by the additional and assistant Sessions Judges is however limited by several sections of the Code, *e.g.*, Ss. 193 and 409, *infra*.[4] Thus under S. 193 of the Code they can try only such "cases" as the Local Government may, by special or general order, direct, or as the Sessions Judge of the Division may, by such order, make over to them for trial.[5] Under S. 409 of the Code appeals can be tried only by Sessions Judges and additional Sessions Judges and even the latter can hear only such appeals as the Local Government may, by general or special order, direct, or as the sessions may make over to them for trial. An assistant Sessions Judge has no power to hear any appeals and the Sessions Judge has therefore no power to transfer an appeal filed in his Court to an assistant Sessions Judge for hearing.[6]

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(5) (1931) 1931 Cal. 190 (191): 58 Cal. 1117, *Superintendent and Legal Remembrancer of Legal Affairs, Bengal* v. *Ijjatulla Paiker*.
(1891) 1 Mad. L. Jour. 397 (400) (F.B.), *Queen-Empress* v. *Kunjan*.

(6) (1874) 11 Bom. H. C. R. 98 (101), *Reg.* v. *Gulabdas* (For the purpose of S. 473).

(7) (1874) 11 Bom. H. C. R. 98 (101), *Reg.* v. *Gulabdas* (For purposes of S. 487).
(1875) 12 Bom. H. C. R. 1 (8), *Emperor* v. *Ramajivan* (Do.).

(8) (1931) 1931 Bom. 313 (320, 321): 55 Bom. 576, *Emperor* v. *Lakshman*.

Note 4.

(1) (1885) 10 Bom. 263 (271, 272), *Queen-Empress* v. *Mangal Tekchand*.
(1864) 1 Bom. H. C. R. 107 (111, 112), *Reg.* v. *Rama Bin* (Subsequent ratification of illegal appointment ineffectual).
(1885) 9 Bom. 288 (295, 299), *Queen-Empress* v. *Morton* (Do.).

(2) (1931) 1931 Cal. 190 (191): 58 Cal. 1117, *Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Ijjatulla Paiker*.
(1922) 1922 All. 387: 44 All. 157, *Birjer Marwari* v. *Emperor*.

(3) (1922) 1922 All. 387 (388): 44 All. 157, *Birjee Marwari* v. *Emperor*.

(4) (1920) 1920 Bom. 415 (416): 44 Bom. 877, In re *Sikhandar Khan*.
(1895) Rat. 830 (831), *Queen-Empress* v. *Daya Ram*.
(1900-02) 1 L. B. R. 119 (120) (Additional Sessions Judge has no power to call for proceedings under S. 435 or to refer to High Court under S. 438).
(1885) 9 Bom. 164 (168), In re *The Petition of Musa Asmal and others* (Additional Sessions Judge cannot exercise powers of Sessions Judge under Chapter 32 of the Code).

(5) (1920) 1920 Bom. 415 (416): 44 Bom. 877, In re *Sikkandar Khan*.
(1891) 1 Mad. L. Jour. 397 (400) (F.B.). *Queen-Empress* v. *Kunjan*.
(1903) 23 All. W. N. 28 (29), *Emperor* v. *Ramchandra*.
(1890) Rat. 500, *Queen-Empress* v. *Mahadhu* (Even an Assistant Sessions Judge, directed by Government to take over charge of the duties of a Sessions Judge, during a temporary vacancy in the office, has no jurisdiction to try any case unless it was made over to him).

(6) (1915) 28 Ind. Cas. 652 (652): 37 All. 286: 1915 All. 101, *Emperor* v. *Abdul Razak*.
(1906) 28 All. 93 (94), *Allah Dei* v. *Kesari Mal* (Meaning of 'case' discussed).

S. 9, Notes 4—6.

A Sessions Judge can exercise jurisdiction only in his division and therefore cannot direct a stay of proceedings in a case pending before a Magistrate outside his Sessions division, although the case has arisen out of a sanction granted by a Magistrate within such division.[7] He can however, under S. 438 *infra*, refer the proceedings of the latter to the High Court.[8]

5. **Power to direct place or places of sitting.**—The power to direct at what place or places the Court of Sessions shall hold its sitting does not affect the powers of the High Court to transfer cases from one Court to another under S. 526 *infra*. Thus where the Local Government of Bombay directed by notification that the Additional Judge at Thana shall hold his sitting at Alibag and try a particular case there, it was held by the Court of Bombay that, under S. 526 of the Code it can transfer the case from the Court of Session sitting at Alibag to the Court of Session at Thana.[1] In the absence of any such order by the Local Government the hearing or trial of a case should be held within the area of the Sessions Division and not outside it.[2] The reason is that "all judicial acts exercised by persons whose judicial authority is limited as to locality should be done within the locality to which such authority is limited. *See also* notes to S. 531, *infra*.

6. **Courts constituted under other laws.**—The provisions of the Code do not affect any special or local law in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.[1] It follows that where a Court has been established under a special law and a Judge appointed for such Court, the Local Government cannot establish a Court under this Section and appoint a Judge therefor so as to affect the jurisdiction of the Court established under the special law.[2] The powers exercisable by the Judge of the latter Court will be such as are conferred upon him by the Act under which he is appointed.[3]

S. 10.

10.* (1) In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class who shall be called the District Magistrate.

District Magistrate.

*(CODE OF 1882—S. 10.)

District Magistrate. 10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(7) (1903) 26 Mad. 137 (139), *Shanmugam Chetty* v. *Ponnappa Mudali*.
(8) (1903) 26 Mad. 137 (138), *Shanmugam Chetty* v. *Ponnappa Mudali*.

Note 5.

(1) (1931) 1931 Bom. 313 (316): 55 Bom. 576, *Emperor* v. *Lakshman*.
(2) (1894) 17 All. 36 (37), *Queen-Empress* v. *Fazl Azin* (Such a hearing outside the Local limits is only an irregularity curable under S. 531).
[See (1934) 1934 Pat. 643 (643), *Deodhari Rai* v. *Emperor* (Sessions division covering two districts—Appeal to Sessions Judge—His discretion to hear appeal in any one of districts must be exercised in a judicial and reasonable manner—Judgment after exercising discretion wrongly can be set aside).]

Note 6.

(1) See Section 1, *ante*.
(2) (1907) 1907 Pun. L. R. 41, p. 231: 1907 Pun. Re. 5 (Cr.), *King-Emperor* v. *Arthur Mercer* (Court appointed under Regulation VIII of 1896).
(1886) 10 Bom. 263 (272), *Queen-Empress* v. *Mangal Tekchand*.
(3) (1905) 29 Bom. 575 (578), *Emperor* v. *Comley* (Resident's Court at Aden—Appointed under Act II of 1864).

S. 10, Note 1.

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code *or under any other law for the time being in force*, as the Local Government may direct.

(3) *For the purposes of Sections* 192, *sub-Section* (1), 407, *sub-sections* (2) *and* 528, *sub-sections* (2) *and* (3), *such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.*

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"IN EVERY DISTRICT"	2
DISTRICT MAGISTRATE	3
"SHALL APPOINT A MAGISTRATE OF THE FIRST CLASS".	4
ADDITIONAL DISTRICT MAGISTRATE	5
SUBORDINATION OF ADDITIONAL DISTRICT MAGISTRATE TO DISTRICT MAGISTRATE	6
POWERS AND DUTIES OF THE DISTRICT MAGISTRATE ..	7

Other Topics.

Deputy Commissioner in a non-regulation province. See Note 3, F.N. 1.

Presidency Magistrate—If a District Magistrate. See Note 3, Pt. 2.

1. Legislative Changes.—

Difference between the Code of 1882 *and* 1898—

(1) Sub-S. 2 was newly added in 1898.

Amendment of 1923—

(1) The words "for a period not exceeding six months" which occurred in sub-S. 2 after words "an Additional District Magistrate" were omitted.

(2) The words "or under any other Law for the time being in force" after the words "under this Code" were added.

(3) Sub-S. 3 was newly added.

(CODE OF 1872—S. 35.)

The Magistrate of the District.

Magistrate of the District.

In every District there shall be a Magistrate of the First Class appointed by the Local Government, who shall be called the Magistrate of the District and shall exercise throughout his district all the powers of a Magistrate.

(CODE OF 1861—Nil.)

S. 10, Notes 2—5.

2. **"In every District".**—The words "shall appoint a Magistrate *in* every District" does not necessarily imply that the Magistrate so appointed shall be situate in the distinct and that he may not be one with headquarters elsewhere.[1] As to the meaning of the word "District" *see* S. 7 *ante*.

3. **District Magistrate.**—Under the Code of 1861 the words "Magistrate of the District" were defined as meaning the Chief Officer charged with the executive administration of a District in criminal matters by whatever designation such officer was called.[1] Under the present Code, the Local Government should appoint in a district *outside the Presidency Towns* a Magistrate of the first class who shall be called the District Magistrate. A Presidency Magistrate is not a 'District Magistrate' within the meaning of the Code. The reason is that he is not appointed as a Magistrate in a district *outside the Presidency Town*.[2]

4. **"Shall appoint a Magistrate of the first class".**—It has been held by a Full Bench of the High Court of Madras that one officer can be appointed separately as District Magistrate for two or more Districts.[1] But no Magistrate can be appointed as District Magistrate to a *non-existent* district. Thus where the Criminal District of Tanjore became, by virtue of a Government Notification of the year 1921, split up into the two Criminal districts of East and West Tanjore, but the Government continued to appoint a District Magistrate for "Tanjore", it was held that since the notification of 1921, the Criminal district of "Tanjore" had ceased to exist and the Magistrate appointed thereto could have no jurisdiction.[2]

5. **Additional District Magistrate.**—The object of the appointment of an Additional District Magistrate is to relieve the District Magistrate of some of his duties and not to place the former on the footing of the latter.[1] The fact, therefore, that the Additional District Magistrate may have all or any of the powers of a District Magistrate does not make him a "District Magistrate" himself. There can be only one person in the District who can be the District Magistrate.[2]

The scope of the powers conferred under Sub-S. 2 is not limited to the ordinary powers of a District Magistrate set out in Schedule III (*v*) but extends to all powers which the District Magistrate is empowered to exercise at the date of a particular notification appointing an Additional District Magistrate and

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Section 10—Note 2.

(1) (1931) 1931 Mad. W. Notes 1064 (1066), *Kandaswami Pillai* v. *Tirunavukkarasu Pillai*.

Note 3.

(1) [See (1871) 16 Suth. W. R. 1 (9), *Boron Dhoom* v. *King-Emperor* (Deputy Commissioner in a Non-Regulation Province was a District Magistrate).]
[See also (1865-67) 3 Bom. H. C. 18 (19), *Reg* v. *Bhaishankar Hariram*.]

(2) (1897) 24 Cal. 551 (553), *Hem Coomaree Dassee* v. *Queen-Empress*.
(1907) 31 Bom. 611 (623), *Emperor* v. *Jeeranji*.
(1909) 3 Ind. Cas. 885 (885): 32 Mad. 303, *Emperor* v. *Chota Singh*.

Note 4.

(1) (1931) 1931 Mad. 697 (700), *Arumuga Solagan* v. *Emperor*.

(2) (1931) 1931 Mad. W. N. 1064 (1065), *Kandaswamy Pillai* v. *Tirunavukarasu Pillai*.

Note 5.

(1) (1908) 1908 Pun. Re. No. 25, pp. 70, 71, 72, *Crown* v. *Abdul Karim*.
[See however (1919) 1919 L. B. 43 (44), *Emperor* v. *Nawab Ali*.]

(2) (1921) 1921 Cal. 347 (348): 48 Cal. 874, *Mahendra Bhumy* v. *King-Emperor*.
[See also (1897) 19 All. 114 (119), *Balwant* v. *Kishan*.]

S. 10, Notes 5—7.

conferring on him all the powers of a District Magistrate, *e.g.*, power to grant sanction under S. 197 of the Code.[3]

6. Subordination of Additional District Magistrate to District Magistrate.—Before the amendment of 1923 there was a difference of opinion as to whether an Additional District Magistrate is subordinate to the District Magistrate.[1] Sub-S. 3 now makes it clear that he is subordinate to the District Magistrate to the extent specified therein.

7. Powers and duties of the District Magistrate.—The District Magistrate is primarily liable for the peace of the district.[1] He exercises general control over the police force[2] and is the Court of appeal from the orders of first class Magistrates in proceedings under Chapter VIII.[3] He is the principal representative of the law, for most purposes, in the eyes of the people and occupies a position of great power and responsibility.[4] It is also the duty of a District Magistrate to see that all the Magistrates in the district exercise the powers conferred on them not only in accordance with law but also in an equitable and rational manner.[5]

S. 11.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11.* Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

***(CODE OF 1882—S. 11.)**

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

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(3) (1923) 1923 Mad. 338 (338), *K. Chinna Chanrayya* v. *M. Subbarayudu*.
[See also (1922) 1922 Cal. 550 (551), *In the matter of Mohendra Lal Roy* (He has the powers of a District Magistrate under S. 14 of the Legal Practitioners Act).]

Note 6.

(1) (1908) 9 Cri. L. Jour. 104: 25 P. R. 1908, *Crown* v. *Abdul Karim* (Yes).
(1919) 1919 L. B. 43 (44), *Emperor* v. *Nawab Ali* (No.).
(1907) 34 Cal. 918 (920), *Prakas Chundur Dutt* v. *Emperor* (No).

Note 7.

(1) (1914) 1914 All. 158 (160): 36 All. 147, *Kharga* v. *Emperor*.
(1914) 1914 Mad. 618 (619): 37 Mad. 125 (F.B.), *Mare Gowd* v. *Emperor*.
(1912) 13 Cri. L. Jour. 693: 39 Cal. 953, *Clarke* v. *Brajendra*.
(1906) 10 Cal. W. N. 82 (94), *Gopinath Paryah* v. *Emperor*.
(1906) 10 Cal. W. N. 322 (328), *Umesh Chandra Gupta* v. *Emperor*.
(1907) 34 Cal. 1 (2), *Nabu Sardar* v. *Emperor*.
(1874) 22 Suth. W. R. 37 (37), *Re Narain Soobodhee*.
(1904) 31 Cal. 350 (354), *Surya Kanta* v. *Emperor*.
(2) (1906) 10 Cal. W. N. 322 (328), *Umesh Chandra Gupta* v. *Emperor*.
(3) (1914) 1914 All. 158 (160): 36 All. 147, *Khagra* v. *Emperor*.
(4) (1906) 10 Cal. W. N. 82 (92), *Gopinath Paryah* v. *Emperor*.
(5) (1899) 29 Mad. 126 (148), *Emperor* v. *Chinna Kaliappa* (Per *Moore, J.*)

S. 11, Notes 1—2.

SYNOPSIS.

SCOPE OF THE SECTION .. .. Note No. 1
POWERS AND DUTIES OF OFFICER SUCCEEDING TO A VACANCY 2

Other Topics.

Reversion whether affects jurisdiction. See Note 2, Pt. 2.

1. **Scope of the section.**—This section applies only:
   1. Where the office of the District Magistrate becomes *vacant* and
   2. Where any officer *succeeds temporarily* to the chief executive administration of the District.

An office cannot be said to be "vacant" where the officer is temporarily disabled from attending to his work and is absent on casual leave.[1] Nor can an Officer be said to "succeed temporarily" to the chief executive administration of the district unless he has, by order, been *appointed* to officiate as the District Magistrate.[2] Consequently an officer who assumes charge of the current duties of the office during the absence on casual leave of the District Magistrate, cannot exercise all the powers or perform all the duties of a District Magistrate. Thus he cannot transfer a case from one Magistrate to another[3] or act under section 437.[4]

2. **Powers and duties of officer succeeding to a vacancy.**—The officer succeeding temporarily to the chief executive administration of the District has all the powers and should perform all the duties of a District Magistrate.[1]

Where a Magistrate of the first class while officiating for the District Magistrate commences a trial and during its pendency reverts as Magistrate of the first class he has jurisdiction to continue the trial provided that he, as a Magistrate of the first class, could have held the trial.[2]

(CODE OF 1872—S. 55.)

Powers of officers temporarily succeeding to vacancies in office of Magistrate of District.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers, and perform all the duties, of the Magistrate of the District.

(CODE OF 1861—Nil.)

Section 11—Note 1.

(1) (1921) .. 1921 Oudh 162 (162): 24 Oudh Cas. 255, *Emperor* v. *Achhaibar Singh*.
(2) (1921) 1921 Oudh 162 (163): 24 Oudh Cas. 255, *Emperor* v. *Achhaibar Singh*.
(3) (1921) 1921 Oudh 162 (163): 24 Oudh Cas. 255, *Emperor* v. *Achhaibar Singh*.
(4) (1885) 11 Cal. 236 (237), *Ramanund* v. *Koylash*.

Note 2.

(1) (1919) 49 Ind. Cas. 161 (163): 1919 Mad. 24; 42 Mad. 69, *Kandasami* v. *Emperor* (Acting District Magistrate has powers to sanction prosecution under Rules framed under the Defence of India Act, 1915).
(2) (1906) 3 All. L. J. 825 (827), *Syed Sajjad Husain*.

S 12. Note 1

12.* (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the Local Government or the District Magistrate, subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

Local limits of their jurisdiction.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
DURATION OF APPOINTMENT OF MAGISTRATES ..	2
CANTONMENT MAGISTRATES	3
"LOCAL AREA"	4
EXTENT OF JURISDICTION OF MAGISTRATES ..	5
JURISDICTION OF MAGISTRATES OUTSIDE DISTRICT ..	6
TRANSFER OF MAGISTRATE—EFFECT OF	7

Other Topics.

Order of appointment if retrospective. See Note 2, F.N. 2.

Reversion to former post. See Note 7, F.N. 1.

1. Legislative changes.—S. 23 of the Code of 1861 empowered the Local Government to appoint Magistrates of the first and second class only.

Para 1 of S. 37 of the Code of 1872 corresponding to the first half of sub-S. 1 of this section provided for the appointment of third class Magistrates also.

The second clause of Sub-S. 1 and Sub-S. 2 of this section were newly introduced into S. 12 of the Code of 1882.

*(CODE OF 1882—S. 12.)

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Local limits of their jurisdiction.

S. 12, Notes 1—4.

There has been no change in the section since the enactment of the Code of 1882.

2. **Duration of appointment of Magistrates.**—It has been held by the Judicial Commissioner's Court of Nagpur that the practice of appointing Magistrates for a term of years is wrong and that where a Magistrate is appointed for a particular period, the term imposed is *ultra vires* the powers of the Government and that his jurisdiction to try cases extends even after the expiry of the period in the absence of an order cancelling his appointment.[1] Compare with Sub-S. 2 of S. 14.

See also the undermentioned cases.[2]

3. **Cantonment Magistrates.**—S. 7 of the Cantonments Act (XIII of 1889) provides that the Cantonment Magistrate shall be a Magistrate appointed by the Local Government under this section. Therefore convictions by Cantonment Magistrates of offences punishable under Cantonment rules are appealable in the same manner as convictions by other Magistrates of the same Class.[1]

4. **Local Area.**—The words "Local Area" in this section appear to contemplate some area within a district.[1] *See also* Note 3 to S. 14, *infra*.

(CODE OF 1872—S. 37, Para 1 and S. 49.)

Subordinate Magistrates.

Subordinate Magistrates.

37. The Local Government may appoint as many other persons, besides the Magistrate of the district, as it thinks fit, to be Magistrates of the first, second or third class in the District.

Local Government may authorize Magistrate of District to distribute business by localities.

49. The Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders; Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

(Code of 1861—S. 23.)

Local Government may invest any person with powers of Magistrate or Subordinate Magistrate.

23. The Local Government may invest any person with the powers of a Magistrate or of a Subordinate Magistrate of the first or second class, as described in the last preceding Section, with a view to the exercise, by such person, of such powers under this Act or under any special or local law.

Section 12—Note 2.

(1) (1930) 1930 Nag. 96 (97), *Tukaram* v. *Dagdu*.

(2) (1923) 1923 Mad. 598 (599, 600), *Kottithoti Hamed Hazi* v. *Emperor* (Powers of a Magistrate terminate on his retirement from service and is therefore incompetent to be appointed a special Magistrate under S. 4 (2) (*b*) of the Malabar Restoration Ordinance).

(1914) 1914 All. 410 (410): 36 All. 513, *Nathimall* v. *Emperor* (Magistrate appointed Chairman of Municipal Board. He is divested of his jurisdiction as a Magistrate).

(1887) Rat. 322 (322), *Empress* v. *Rama* (A Mamlatdar invested by name with 2nd Class powers in a district retains them though he ceases to be a Mamlatdar).

Note 3.

(1) (1897) 1897 Pun. Re. 1 (2), *Emperor* v. *Maula Baksh*.

Note 4.

(1) (1901) 1901 Pun. Re. 24, p. 59, 62, *Lakshmi Chand* v. *Emperor*.

S. 12, Notes 5—7.

5. Extent of jurisdiction of Magistrates.—A Magistrate who has been appointed, under this section, to a district has jurisdiction throughout the district unless the area of his jurisdiction has been defined or curtailed under the latter part of Sub-S. 1 of this section.[1] If the jurisdiction of a Magistrate is so defined to a local area or a sub-Division, he cannot take cognisance of a case outside such local area or sub-division.[2]

6. Jurisdiction of a Magistrate outside the District.—The Legislature does not contemplate the exercise of jurisdiction by any Magistrate outside the limits of an area called a district in which he might be appointed by the Local Government.[1]

7. Transfer of Magistrates—Effect of.—It has been already seen in Note 5, *ante*, that the jurisdiction of a Magistrate extends to the whole of a district. Therefore, where a Magistrate is transferred from one local area to another within the same district he does not thereby cease to have jurisdiction in the former area.[1] The Magistrate has the same Magisterial powers, though his judicial designation and his local jurisdiction may be changed. But when a Magistrate is transferred from one *district* to another and he hands over charge to his successor, he has no jurisdiction thereafter in the former area and a judgment pronounced by him after handing over charge is bad in law.[2]

S. 13.

Power to put Magistrate in charge of sub division.

13.* (1) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

***(CODE OF 1882—S. 13.)**

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Note 5.

(1) (1932) 1932 Cal. 864 (864): 59 Cal. 1484, *Golam Rahaman Khan* v. *Kali Pada Manna*.
(1906) 4 Cri. L. Jour. 223 (227), *Ram Kishore Roy* v. *Dwarkanath Sen*.
(1902) 29 Cal. 389 (391), *Sarat Chandra Roy Chowdry* v. *Sen*.
(1901) 5 Cal. W. N. 686 (689), *Raj Mohan Roy* v. *Prosunno*.
(1881) Rat. 177 (178), *Empress* v. *Jamshedji*.
(1933) 1933 Lah. 143 (144), *Ghulam Hussain* v. *Sajawal Shah*.
(1880) 2 Weir 13 (13).
(1925) 1925 Nag. 40 (40), *Yaqub* v. *Appaswami*.
(1921) 1921 Oudh 162: 24 Oudh Cas. 255, *Emperor* v. *Achhaibar Singh* (But he cannot take cognisance of a case pending in another Court unless there is a valid order transferring the case from the file of that Court to his file).
(1920) 1920 Pat. 563 (566), *Ram Barai* v. *Ram*.
(2) (1921) 1921 All. 123 (124), *Kunj Behari Lal* v. *Lama*.

Note 6.

(1) (1885) 9 Bom. 40 (45), In re *Shaikh Fakruddin*.
(1921) 1921 All. 61 (62), *Nahar Singh* v. *Emperor*.
(1884) 1884 Pun. Re. Cr. 15, p. 20 (20, 21), *Bisheswar Nath* v. *Empress*.

Note 7.

(1) (1898) 22 Mad. 47 (48), *Queen-Empress* v. *Sri Ahobilamatam Jeer*.
(1920) 1920 All. 177 (179): 42 All. 649, *Choli* v. *Khccheru*.
(1912) 13 Cri. L. Jour. 203 (204), *Mithani* v. *Emperor*.
(1906) 4 Cri. L. Jour. 140 (142), *Emperor* v. *Sajjad Hussain* (1st Class Magistrate acting as District Magistrate commenced trial and during trial reverted as Joint Magistrate. He has jurisdiction to conclude trial).
[But see (1904) 1 All. L. J. 315 (316), *Chunni Lal* v. *Harbans Rai* (Not followed in 4 Cri. L. Jour. 140).]
(2) (1932) 1932 All. 582 (582), *Ram Ratan* v. *Emperor*.
(1881) 3 All. 563 (565, 566), *Empress* v. *Anand Sarup*.
(1897) 19 All. 114 (117), *Balwant* v.

S. 13, Note 1.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

(3) The Local Government may delegate its powers under this section to the District Magistrate.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
POWERS OF SUB-DIVISIONAL MAGISTRATES	2

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872:—

1. Under S. 23-D of the Code of 1872 corresponding to this section the Local Government alone had the power to appoint any Magistrate to the charge of a division of a district.[1] But under S. 40 of the Code of 1872 the Local Government could delegate its powers to the Magistrate of a District.

II. Under the Code of 1861, *any* Magistrate could be appointed to the charge of a sub-division; while under S. 40 of the Code of 1872 only, a Magistrate of the first or second class could be so appointed.

Difference between the Codes of 1872 *and* 1882.

The words "and shall exercise the powers conferred on him under this Act or under any law for the time being in force subject to the control of the Magistrate of the district" occurring at the end of Sub-S. 2 of S. 40 of the Code of 1872 were omitted in S. 13 of the Code of 1872.

There has been no alteration since 1882.

Delegation of powers to District Magistrate.

The Local Government may delegate its power under this section to the District Magistrate.

(CODE OF 1872,—S. 40.)

Local Government may put Magistrate in charge of division.

40. The Local Government may place any Magistrate of the first or second class in charge of a division of a district.

Such Magistrate shall be called a Magistrate of a Division of a District, and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

Delegation of power to Magistrate of District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

(CODE OF 1861—Nil.)

Kishen.

(1924) 1924 Cal. 192 (193), *Jagat Bandhu Sha* v. *Jagat Bandu Saha.*

(1924) 1924 Cal. 55 (55); 50 Cal. 664, *Baishnab Charan* v. *Amin Ali.*

(1902) 15 C. P. L. R. 15 (16), *Emperor* v. *Dhondu.*

[See (1913) 14 Cri. L. Jour. 239 (240), *Hira* v. *Emperor.*]

Section 13—Note 1.

(1) (1871) 16 Suth. W. R. Cr. 79 (80), *MacDonald* v. *Mr. Riddell.*

2. Powers of Sub-Divisional Magistrates.—It has been already mentioned in Note 5 to S. 12, *ante* that the jurisdiction and powers of a Magistrate extend throughout the district unless it has been defined. Therefore, where a Magistrate of the first or second class is placed in charge of a sub-division, he acquires certain additional powers in the area of the sub-division, but the appointment does not deprive him of his powers as a Magistrate in the area outside the sub-division.[1] Thus, where a Magistrate of the first class having jurisdiction throughout a district is placed in charge of a sub-division, he is competent to issue a warrant under S. 5 of the Gambling Act (1867) to search a house situate in the same district, but outside the area of his sub-division.[2]

S. 13, Note 2.

S. 14.

14.* (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency-towns.

Special Magistrates.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the Local Government may by general or special order direct.

(3) The Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police officer except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

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*(CODE OF 1882—S. 14.)

14. The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases, or to a particular class or particular classes of cases or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

Note 2.

(1) (1912) 13 Cri. L. Jour. 716 (716): 34 All. 597, *Abbu Singh* v. *Emperor*.
(1920) 1920 Pat. 25 (27), *Rameshwar Dusadh* v. *Emperor*.
(1892-1896) 1 U. B. R. 16 (17), *Queen* v. *Laban Hla* (Sub-Divisional Magistrates can record confession of accused—Though he is beyond the limits of his sub-division).
[But see (1871) 6 Mad. H. C. App. xliii (xliv).]

(2) (1912) 13 Cri. L. Jour. 716 (716): 34 All. 597, *Abbu Singh* v. *Emperor*.

S. 14, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"LOCAL AREA"	3
"CASE" MEANING OF	4
APPOINTMENT TO TRY—POWER TO COMMIT	5
TRIAL BY POLICE OFFICER	6
APPEAL	7

Other Topics.

Powers conferred on Police officers. See Note 6, Pt. 6.

1. Legislative Changes.—

There was no section in the Code of 1861 corresponding to this.

Difference between Codes of 1872 *and* 1882—

The words "in any local area outside the presidency towns" occurring at the end of sub-S. 1 of S. 14 of the Code of 1882 were substituted for the words "in any part of a district, or in any one or more districts, subject to such Local Government" occurring in S. 42 of the Code of 1872.

Difference between the Codes of 1882 *and* 1898—

The words "and shall be appointed for such term as the Local Government may by general or special order direct" at the end of sub-S. 2 of this section were newly added in the Code of 1898.

Amendment after 1898—

The words "with the previous sanction of the Governor-General in Council" occurring at the beginning of sub-S. 3 were omitted by the Devolution Act XXXVIII of 1920.

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

(CODE OF 1872—S. 42.)

"Special Magistrates."

42. The Local Government may confer upon any person all or any of the powers of a Magistrate of the first, second or third class, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district, or in any one or more districts, subject to such Local Government.

Such Magistrates shall be called "Special Magistrates."

(CODE OF 1861—Nil.)

S. 14, Notes 2—6.

2. Scope of the section.—The connotation of a special Magistrate appointed under this section is that he should have (*a*) specified powers conferrable by the Local Government on a Magistrate, (*b*) a local area within which to exercise those powers, and (*c*) jurisdiction to try particular cases or a particular class of cases generally.[1]

3. "Local Area".—The term 'local area' in S. 12 *ante* appears to contemplate some area *within a district*. *See also* Ss. 40, 182 and 531 where the same words are used. But in this section the term is wide enough to permit the inclusion of a whole province (except the presidency towns) within the jurisdiction of a special Magistrate.[1] Thus, where the Government of the Punjab appointed a special Magistrate under this section with all the powers of a Magistrate of the first class in regard to cases generally throughout the Punjab, it was held that the appointment was not *ultra vires*, inasmuch as the words 'local area' could be extended to cover the whole province.[2] They cannot be interpreted as including areas *outside the province*. The reason is that the Local Government cannot give powers beyond its own local limits and that the necessary limitation, though unexpressed must be read into the section.[3]

It is incumbent upon a Local Government conferring powers under this section to define the local area within which the special Magistrate is to exercise the powers.[4] As to the legality of a trial by a special Magistrate where the order of appointment does not mention the local area, see the cases cited in foot note 4 below.

4. 'Case'—Meaning of.—The word 'case' in this section does not necessarily mean a single charge; it comprises all charges or classes of charges.[1] Thus, where the Government appointed a special Magistrate under this section "to try the *case* relating to the prosecution of Mr.C." it was held that the Magistrate was empowered to try all the charges that may be laid against that person in that prosecution.[2]

5. Appointment to try—Power to commit.—The power to '*try a case*' would necessarily include the power to take cognisance. Therefore, where a Magistrate is appointed under this section to *try a case*, he can *commit* the accused for trial before a Court of Session.[1]

6. Trial by Police Officer.—Sub-S. 4 expressly prohibits a Police Officer from being invested with powers to try cases. Where a District Superin-

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Section 14—Note 2.

(1) (1901) 1901 Pun. R. 24 Cr. p. 59 (73), *Lakmi Chand* v. *Emperor*.

Note 3.

(1) (1901) 1901 Pun. Re. 24, p. 59 (62, 64, 68, 70, 78), *Lakmi Chand* v. *Emperor*.
(1918) 1918 Lah. 196 (197): 1918 P. R. No. 7, *Hira Lal* v. *Emperor* (Following 1901 Pun. Re. 24).
(2) (1918) 1918 Lah. 196 (197): 1918 P. R. No. 7, *Hiralal* v. *Emperor*.
(3) (1901) 1901 Pun. Re. 24, p. 59 (69), *Lakmi Chand* v. *Emperor*) *Per* Clark C.J.).
(4) (1901) 1901 Pun. Re. 24, p. 59 (62, 69, 78), *Lakmi Chand* v. *Emperor* (Non-mention of local area. Held, *per* Clark, C.J., and Robertson and Harris, JJ., that whole province is implied—*Per* Chatterjee, J.—Notification is defective, but irregularity is covered by S. 531—*Per* Reid and Mande, JJ., that the proceedings of Magistrate are *null and void*).

Note 4.

(1) (1927) 1927 Bom. 501 (503, 508), *Jehangir Ardeshir Cama* v. *Emperor*.
(1931) 1931 Bom. 517 (519), *K. R. Bhat* v. *Emperor* ('Case' includes all offences which come to light during investigation).
(2) (1927) 1927 Bom. 501 (503, 508), *Jehangir Ardeshir Cama* v. *Emperor*.

Note 5.

(1) (1931) 1931 Bom. 517 (518, 520), *K. R. Bhat* v. *Emperor*.

S. 14, Notes 6—7.

tendent of Police in charge of the Police of a District who was appointed a special Magistrate tried a case, it was held that the trial was illegal.[1]

7. **Appeal.**—An appeal from an order of a special Magistrate appointed under this section for a whole province, lies to the Sessions Judge within the local limits of whose jurisdiction the special Magistrate holds his Court in disposing of the case.[1]

S. 15.

15*. (1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Benches in absence of special direction.

***(CODE OF 1882—S. 15.)**

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

(CODE OF 1872—Ss. 50 and 51.)

Magistrates' Benches.

50. The Local Government may direct any two or more Magistrates to sit together as a Bench, and may invest such Bench with the powers of a Magistrate of the first, second or third class, and direct it to try such cases, or such classes of cases, only, and within such limits, as it thinks fit.

Power to invest Magistrates sitting as a Bench with certain powers.

Note 6.

(1) (1892-1896) 1 Upp. Bur. Rul., p. 10 (10), *Empress* v. *Tukaung*.

Note 7.

(1) (1918) 1918 Lah. 196 (197): 1918 P. R. 7, *Hiralal* v. *Emperor*.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
POWERS OF BENCHES	3
'CLASSES OF CASES TO BE TRIED'	4
LOCAL LIMITS	5
CHANGE IN CONSTITUTION OF BENCHES—EFFECT ON DECISION	6
JUDGMENTS OF BENCHES	7
APPEALS FROM DECISION OF BENCHES	8
REVISION	9

Other Topics.

Absence of some members of the Bench, effect of—See Note 3, Pt. 5.

A member of the Bench cannot act independently. See Note 3, Pt. 4.

Bench not constituted according to rules—Effect. See S. 16, Note 3, F.N. 4.

Bench with Summary Powers trying ordinarily. See S. 16, Note 2, Pt. 2.

Case partly heard by one Bench—Decision by another, whether regular. See S. 350-A.

Difference of opinion among the members of a bench. See S. 16, Note 4.

Interest of one member in the case. See S. 556.

S. 15, Note 1.

1. Legislative changes.—

There was no section in the Code of 1861 corresponding to this section and sub-Ss. 1 and 2 correspond respectively to Ss. 50 and 51 of the Code of 1872.

Difference between the Codes of 1872 *and* 1882—

(1) The words "direct it to try such cases or such classes of cases" in S. 50 of the Code of 1872 have been substituted by the words "direct it to exercise such powers in such cases or classes of cases, "in sub-S. (1) of S. 15 of the Code of 1882. Under the Code of 1872 it was held that the word 'try' showed that it referred only to *trials* for offences and not to *miscellaneous* matters such as those coming within S. 530 (Corresponding to S. 145 of this Code).[1] In view of the change in the word of the section the above mentioned ruling is no longer law.

(2) The words "and as far as possible shall for the purposes of this Code be deemed to be a Magistrate of such Class" were added at the end of sub-S. (2) in the Code of 1882.

Powers exercisable by such Bench in absence of special directions.

51. In the absence of any special direction as to the powers of any such Bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

(CODE OF 1861—Nil.)

Section 15—Note 1.

(1) (1878) 3 Cal. 754 (755), *Suferuddin v. Ibrahim.*

S. 15, Notes 2—3.

2. **Scope and object of the Section.**—This section empowers the Local Government to direct that two or more Magistrates should "sit together" as a Bench and to confer on such Bench the powers to be exercised by it. The next section provides *inter alia* for the making of rules for the guidance of Magistrates' Benches in regard to the constitution of Benches for conducting trials. Reading the two sections together, it is clear that under this section the power of the Government is to create a *panel* of Magistrates in each place out of whom the Benches under the next section are to be constituted. When a number of Magistrates in a place are directed under this section to "sit together" as a Bench it does not mean that *all* of them should sit together in *Session* and that only when they do so they can exercise the powers conferred on the Bench under this section. The powers can be exercised by any Bench that is *constituted* under the next section out of the Magistrates directed to "sit together" as a Bench under this section.[1] The object of constituting a Bench of Magistrates is that the Magistrates composing the Bench should individually and collectively give their attention and apply their minds to the hearing of the evidence and the determination of the points at issue and arrive at an independent judgment in regard to the merits of the case.[2] Where in a trial before a Bench of two Magistrates, one of them recorded the evidence, while the other was attending to some other case and a joint judgment was delivered with the signatures of both, it was held that such a procedure defeated the very object with which a Bench is constituted and the judgment was set aside.[3]

3. **Powers of Benches.**—Under this section it is open to the local Government to invest a Bench composed of Magistrate of a lower class with all the ordinary powers conferred on a Magistrate of a higher class, and also, if it thinks fit, to invest such Bench with the additional powers conferrable on a Magistrate of such higher class. That is to say, a Bench composed of Magistrates having third class magisterial powers may be invested with the ordinary or additional powers of a second class Magistrate.[1]

The phrase "any powers" refers to the power of any particular class of Magistrates either conferred or conferrable and does not mean any *one* of the powers conferred without the other. Thus it is not competent to the Local Government to invest a Bench of Magistrates with the incidental or ordinary powers of a second class Magistrate without having powers to try second class cases or to invest a Bench with the additional powers of a second class Magistrate without having other powers conferred by the Code on a second class Magistrate.[2] Where a notification of a Local Government issued under this section purported to invest a Bench of Magistrates, individuals of which had third class powers, with the ordinary powers of a second class Magistrate, but did not expressly invest the Bench with jurisdiction to try offences cognisable by a Magistrate of the second class, it was held that the Court could supply the omission in the notification and that the Bench must be taken to have been vested with powers to try offences triable by second class Magistrates.[3]

Note 2.

(1) (1934) 1934 Bom. 176 (177, 178).
(2) (1922) 1922 Oudh 21 (22): 25 Oudh Cas. 182, *Sultan* v. *Shamsher.*
(3) (1922) 1922 Oudh 21 (22): 25 Oudh Cas. 182, *Sultan* v. *Shamsher* (Order of acquittal set aside and case directed to be retried).

Note 3.

(1) (1928) 1928 Sind 1 (5): 22 Sind L. R. 157 (F. B.), *Emperor* v. *Noor Mahomed.*
(2) (1928) 1928 Sind 1 (5, 8): 22 Sind L. R. 157 (F. B.), *Emperor* v. *Noor Mahomed.*
(3) (1928) 1928 Sind 1 (7, 9): 22 Sind L.

A Magistrate who is a member of a Bench cannot act independently unless he is so authorised. For instance, he cannot by himself record a statement under S. 164 *infra*.[4] S. 15, Notes 3—9.

Where a Bench of two Magistrates invested with first class powers, but neither of whom individually had such powers, began the hearing of a case triable by a Magistrate of the first class and at an adjourned hearing only one of them was present, it was held that he was not competent to try the case alone.[5]

4. **'Classes of cases to be tried'.**—*See* notes to S. 16 *infra*.

5. **Local limits.**—The limits of the jurisdiction of the Benches are to be determined by the order of the Local Government made under this section; and the District Magistrate cannot under S. 16, *infra* make rules fixing the territorial jurisdiction of Benches of Magistrates.[1]

6. **Changes in constitution of Benches—Effect on decision.**—*See* notes to S. 350-A *infra*.

7. **Judgments of Benches.**—*See* notes to S. 367 *infra*.

8. **Appeals from decision of Benches.**—*See* notes to S. 407 *infra*.

9. **Revision.**—*See* notes to S. 435 *infra*.

16.* The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:— S. 16.

Power to frame rules for guidance of Benches.

(a) the classes of cases to be tried;
(b) the times and places of sitting;
(c) the constitution of the Bench for conducting trials;
(d) the mode of settling differences of opinion whic may arise between the Magistrates in session.

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*(CODE OF 1882—S. 16.)

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried;
(*b*) the times and places of sitting;
(*c*) the constitution of the Bench for conducting trials;
(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

R. 157 (F. B.), *Emperor* v. *Noor Mahomed* (Aston and De Souza, A. J., Cs. dissenting).

(4) (1902) 29 Cal. 483 (486), *Emperor* v. *Nuri Shakh*.

(5) (1873) 2 Cal. L. R. 348 (349), In the matter of *Baroda Prosunno*.

Note 5.

(1) (1874) 21 Suth. W. R. 45 (46), *Queen* v. *Dwarakanath Mullick*.

S. 16, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
CLASSES OF CASES TO BE TRIED	2
CONSTITUTION OF BENCHES	3
DIFFERENCE OF OPINION	4

Other Topics.

Powers to constitute a Bench is different from the powers which it exercises. See Note 3, Pt. 3.

1. Legislative Changes.—

There was no section in the Code of 1861 corresponding to this section. It corresponds to Ss. 52 and 53 of the Code of 1872.

Section 53 of the Code of 1882 gave power to the District Magistrate to vary or annul from time to time any rules made by himself or his predecessor under S. 52, subject to the orders of the Local Government. But S. 16 of the Code of 1882 provided that the Local Government or subject to its control the District Magistrate may from time to time make rules consistent with this Code.

There has been no change since 1882.

2. Classes of cases to be tried.—It has been expressed in the undermentioned cases[1] that it is not desirable to place before a Bench of Magistrates cases involving difficult questions of fact or law, though the Local Government or the District Magistrate has the power to do so.

Where a rule framed under this section by the Government of Burma provided that the District Magistrate should transfer to a Bench invested with second class powers such cases only as it can try *summarily*, but notwithstanding

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(CODE OF 1872—Ss. 52 & 53.)

52. The Magistrate of the District may frame rules for guidance of Benches.

The Magistrate of the District may, subject to the general orders of the Local Government, make rules for the guidance of Magistrates' Benches in his district.

Such rules shall not be inconsistent with the provisions of this Act, and may deal with the following subjects:—

The classes of cases to be tried;

The times and places of sitting;

The constitution of the Bench for conducting trials;

The mode of settling differences of opinion which may arise between the Magistrates in Session.

Magistrate of District may vary or annul rules made under Section 52.

53. The Magistrate of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

(CODE OF 1861—Nil.)

Section 16—Note 2.

(1) (1876-77) 2 Cal. 23 (32), *The Queen* v. *Bholanath Sen.*
(1925) 1925 Mad. 64 (67): 47 Mad. 716, *Public Prosecutor* v. *Varadarajulu Naidu.*
(1931) 1931 Mad. W. N. 407 (408), *Rangia Chetty* v. *Abhoy Chetty.*
(1928) 1928 Nag. 21 (22), *Pandurung Krishnaji* v. *Emperor.*

this rule a case was transferred to a Bench triable by it, but not summarily and the Bench tried the case in the ordinary manner, it was held that the Bench had the power to try the case,[2] the reason being that the case was within the competence of a second class Bench of Magistrates and the Rule did not lay down directly that the only classes of cases which they are to deal with were cases which they could try summarily. S. 16, Notes 2—4.

An offence under S. 3, sub-S. 12 of the Madras Towns Nuisance Act (III of 1889) falls within Rule 1, Clause 2 of the Rules framed by the Madras Government under this section and is therefore triable by a Bench of Magistrates.[3]

3. Constitution of Benches.—*See* S. 350-A *infra.*

4. Difference of opinion.—The Government of Bengal framed a rule under this section in 1905 providing that when the number of members of a Bench is even and they are equally divided in opinion, the view of the chairman shall prevail. The High Court of Calcutta held that this rule was not inconsistent with the Code and therefore was not *ultra vires*, but that it was highly undesirable.[1] Accordingly a fresh rule was issued in 1906 by the same Government which provides that in such circumstances the case shall be referred back to the District Magistrate or the Sub-divisional Magistrate.[2]

According to the rules made by the Government of the United Provinces, where an even number of Magistrates constituting a Bench are equally divided in opinion, the accused is entitled to an acquittal.[3] The High Court of Allahabad has held that the principle of this rule should be applied even to a case to which this rule has not been expressly made applicable and that a reference by the Bench to the District Magistrate is irregular and is not justified by any of the provisions of this Code.[4]

17*. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with S. 17.

Subordination of Magistrates and Benches to District Magistrate.

***(CODE OF 1882—S. 17.)**

17. All Magistrates appointed under Sections 12, 13, and 14, and all Benches constituted under Section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and every Magistrate

Subordination of Magistrates and Benches to District Magistrate.

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(2) (1911) 12 Cri. L. Jour. 383 (384, 385): (1910) 1 U. B. R. 70, *Nga San Hmi* v. *Emperor.*

(3) (1923) 1923 Mad. 191 (192): 45 Mad. 843, *Ramasami Chetty* v. *Muthuvelu Mudaly.*

Note 4.

(1) (1906) 3 Cri. L. Jour. 409 (415, 417) (Cal.), *Kailash Chandra* v. *Kali Prosunno Roy.*
(1905) 9 Cal. W. N. cclxix (cclxix), *Lal Behari Chukerbutty* v. *Jalukhan.*
(1914) 1914 Cal. 56 (57), *Ulfat Sheikh* v. *Emperor* (Notification of 1905 applies to Faridpur District which forms part of Eastern Bengal and Assam).
(2) (1918) 1918 Cal. 304 (305), *Chand Tarafdar* v. *Shamsher Fakir.*
(3) (1917) 18 Cri. L. Jour. 506 (507) (All.), *Abdul Aziz* v. *Emperor.*
(4) (1915) 1915 All. 96 (97), *Kashinath* v. *Shanker Ram.*

S. 17. this Code as to the distribution of business among such Magistrates and Benches; and

To Sub-divisional Magistrate.

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

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to Sub-divisional Magistrate.

(other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the General control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under Sections 12, 13, 14, and 15, shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
NATURE AND EXTENT OF SUBORDINATION OF MAGISTRATES TO THE DISTRICT MAGISTRATE	2
SUBORDINATION OF SUB-DIVISIONAL MAGISTRATES ..	3
SUBORDINATION OF CANTONMENT MAGISTRATES ..	4
SUBORDINATION OF ADDITIONAL DISTRICT MAGISTRATES	5
SUBORDINATION OF MAGISTRATES TO SUB-DIVISIONAL MAGISTRATES	6
SUBORDINATION OF MAGISTRATES TO SESSIONS JUDGE ..	7
SUBORDINATION OF ASSISTANT AND ADDITIONAL SESSIONS JUDGES	8
DISTRIBUTION OF BUSINESS AMONG MAGISTRATES ..	9
POWER OF ADDITIONAL SESSIONS JUDGE TO GRANT BAIL APPLICATIONS	10

Other Topics.

Jurisdiction of District Magistrate and sub-Divisional Magistrate within the Sub-Division. See Note 6, Pt. 2.

Order by District Judge declaring a person to be a tout—Whether binding on criminal Courts. See Note 7, F.N. 1.

Powers of District Magistrates—Whether can be delegated. See Note 9, Pt. 3.

Subordination of Magistrates to the District Magistrate is both in respect of executive and judicial function. See Note 2, Pt. 1.

Subordination to District Magistrate ceases on transfer to a different post. See Note 9, F.N. 2.

1. Legislative changes.—Originally there was no section in the Code of 1861 corresponding to this section. S. 23-G introduced by the amending Act, of 1869 provided for the subordination of Divisional Magistrates to the Magistrate of the District.

The second para of S. 37 of the Code of 1872 corresponds to Sub-Ss. 1 and 5 of this section and S. 41 of the Code of 1872 corresponds to Sub-S. 2.

Difference between the Codes of 1872 *and* 1882—

1. The power to make rules conferred on the District Magistrate by Sub-S. 1 of this section was first introduced in S. 17 of the Code of 1882.

(CODE OF 1872—S. 37, Para. 2 and S. 41.)

* * * * * *

37. *

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.

Subordination of officers to Magistrate of Division of District.

41. Every Magistrate in a division of a district shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

(CODE OF 1861—Nil.)

S. 17, Notes 1—5.

2. Sub-S. 3 was newly added.

Difference between the Codes of 1882 *and* 1898—

1. In Sub-S. 1 after the words "make rules", the words "or give special orders" were inserted in 1898.

2. Sub-S. 4 of this section was newly inserted in the Code of 1898.

2. **Nature and extent of subordination of Magistrates to the District Magistrate.**—The subordination of a Magistrate to the Magistrate of the District is not only in respect of his *executive*, but is also in respect of his *judicial* functions.[1] Thus the District Magistrate has power:—

1. to act under S. 350, *infra.*
2. to set aside under certain circumstances a conviction recorded by a first class Magistrate.
3. to call for records and proceedings under S. 435, *infra.*
4. to hear an appeal, under S. 406, *infra,* against an order passed by a Magistrate of the first class;
5. to transfer and withdraw appeals under S. 407, *infra;* and
6. to hear appeals from orders passed under S. 514, *infra* or to revise them under S. 515, *infra.*

It is competent to the District Magistrate to supervise the Courts subordinate to him and give general instructions as to procedure, punishments and other matters of discretion. Thus, if he considers that the too frequent appearance of pleaders for the prosecution in petty criminal cases is detrimental to the interests of justice, he may give general instructions to the Subordinate Magistracy on the subject of allowing pleaders to appear for the prosecution.[2] But the subordination of Magistrates does not extend so far as to justify the issuing of orders which may have the effect of fettering or controlling the *judicial* discretion of such subordinate Magistrates which by law vests in them alone.[3]

3. **Subordination of Sub-Divisional Magistrate.**—A Sub-Divisional Magistrate is subordinate to the District Magistrate.[1]

4. **Subordination of Cantonment Magistrates.**—The Cantonment Magistrate is expressly made subordinate to the District Magistrate by S. 7 of the Cantonments Act (XIII of 1889).[1]

5. **Subordination of Additional District Magistrates.**—*See* Note 6, to S. 10, *supra.*

Section 17—Note 2.

(1) (1878-80) 2 All. 205 (207, 212), In the matter of *Gurdayal.*
(1877) 2 Bom. 384 (386), *Empress* v. *Padmanabha.*
(1885) 9 Bom. 100 (102, 108), *Empress* v. *Priya Gopal.*
[See (1877) 1877 Rat. 129 (129).]
(2) (1905) 2 Cri. L. Jour. 43 (43): 1905 P. R. 6, *Rala Ram* v. *Buta.*
(3) (1898) 1898 All. W. N. 154 (155), *Empress* v. *Prithi Pal Singh.*

Note 3.

(1) (1927) 1927 Pat. 111 (112): 6 Pat. 39, *Maini Missir* v. *Emperor.*
(1872) 7 Mad. H. C. R. App. v (v).
[See also (1871) 1871 Rat. Un. Re. Cr. Cas. 50 (50).]

Note 4.

(1) (1896) 1896 Rat. 849 (849), *Empress* v. *Ramji Bapuji.*

S. 17, Notes 6—9.

6. Subordination of Magistrates to Sub-Divisional Magistrates.—A Magistrate attached to a Sub-Division is subordinate to the Sub-Divisional Magistrate of that sub-division.[1] A Magistrate who is subordinate to a Sub-Divisional Magistrate is also subordinate to the District Magistrate. The jurisdiction of the latter is not ousted or excluded by that of the former; their jurisdictions are co-ordinate.[2]

7. Subordination of Magistrates to Sessions Judge.—Sub-S. 5 of this section provides that neither the District Magistrate nor the other Magistrates shall be subordinate to the Sessions Judge except so far as is expressly provided for in the Code.[1] As to such express provisions to the contrary see the following sections:—Ss. 123, 193, 195, 408, 435 and 436.

8. Subordination of Assistant and Additional Sessions Judges.—There is a distinction between the position of an Additional Sessions Judge and that of an Asssistant Sessions Judge. Sub-S. 3 of this section provides that Assistant Sessions Judges shall be subordinate to the Sessions Judge. But there is no provision in the Code as to the subordination of the Additional Sessions Judge.[1]

As to the power of a Sessions Judge to withdraw cases from the files of Assistant and Additional Sessions Judges see notes to S. 528, *infra*.

9. Distribution of business among Magistrates.—The powers of a District Magistrate under this section include the distribution of business among subordinate Magistrates. The section does not empower him to stay proceedings pending before subordinate Magistrates.[1] The power of the District Magistrate to allocate work under this section is confined to allocation of work among Magistrates who are *for the time being* his subordinates. Thus, where a Magistrate is transferred from a District, the Magistrate of that district has no longer any authority to make any arrangement in regard to the work of the Magistrate so transferred.[2]

The District Magistrate cannot delegate his powers of distributing business; the power is confined to him and cannot be exercised by a Magistrate in charge of a sub-division or by any other Magistrate. Therefore, the order of a District Magistrate authorising or directing the senior Honorary Magistrate to distribute work among other Honorary Magistrates is *ultra vires*.[3]

Note 6.

(1) (1918) 1918 Pat. 172 (173), *Munshi Mian* v. *Emperor* (Sub-Divisional Magistrates can direct Deputy Magistrate to hold a local investigation).
[See (1873) 7 Mad. H. C. R. App. xxvi (xxvi).]
(2) (1891) 14 Mad. 399 (400), *Thaman Chetty* v. *Alagiri Chetty*.
(1882) 4 All. 366 (370), *Empress* v. *Kalla*.

Note 7.

(1) (1903) 26 Mad. 596 (597), *Babu Sahib* v. *District Judge of Madura* (District Judge's order—Declaring one to be a tout extended to all criminal Courts in the District. Held, it was in excess of his jurisdiction).
(1927) 1927 Pat. 111 (112): 6 Pat. 39, *Maini Missir* v. *Emperor*.
(1869) 6 Bom. H. C. Cr. 74 (75), *Reg.* v. *Keshavshet*.
[See (1871-74) 7 Mad. H. C. App. xxvii (xxvii).]

Note 8.

(1) (1931) 1931 All. 435 (437), *Doulat Ram Asthana* v. *Emperor*.

Note 9.

(1) (1931) 1931 Pat. 411 (414), *Jagannath* v. *Rajagopalachari*.
(1923) 1923 Mad. 688 (688), *Krishna Rao* v. *Seshassubramania Iyer*.
[But see (1923) 1923 Mad. 595 (595), *Nambia Pillai* v. *Sudalaimuthu*.]
(2) (1897) 19 All. 114 (119), *Balwant* v. *Kishen*.
[See also (1914) 1914 All. 410 (410): 36 All. 513, *Nathimal Mall* v. *Emperor* (Magistrate appointed Chairman of Municipal Board ceases to be subordinate to District Magistrate and latter cannot transfer a case to him).]
(3) (1914) 1914 All. 202 (202): 36 All. 468, *Bal Kishan* v. *Sipahi*.

S. 17, Note 10.

10. Powers of Additional Sessions Judge to grant Bail applications.— The power of an Additional Sessions Judge to *try* cases is conferred by S. 193, *infra* and he can try only such cases as the Local Government directs him to try or the Sessions Judge of the division makes over to him for trial. Power to grant or cancel bail could be conferred on him under Sub-S. 4 of this section. If no such power is conferred the order of an Additional Sessions Judge granting or cancelling bail is without jurisdiction.[1]

D.—Courts of Presidency Magistrates.

S 18.

Appointment of Presidency Magistrates.

18.* (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

(3) *A Presidency Magistrate may be appointed under this section for such term as the Local Government may, by general or special order, direct.*

(4) *The Local Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Local Government may direct.*

(Sub-Sections 3 and 4 have been added by Amending Act, 1923.)

***(CODE OF 1882—S. 18, Para. 1.)**

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

(CODES OF 1872 AND 1861—Nil.)

Note 10.

(1) (1930) 1930 Rang. 335 (336), *Maung Ba* *Maung* v. *Emperor.*

SYNOPSIS.

	Note No.
CHIEF PRESIDENCY MAGISTRATE	1
"APPOINT A SUFFICIENT NUMBER OF PERSONS" ..	2
BENCH OF PRESIDENCY MAGISTRATES ..	3
ADDITIONAL CHIEF PRESIDENCY MAGISTRATE—SUB-S. 4.	4

Other Topics.

Powers of Presidency Magistrates. See S. 20.

1. Chief Presidency Magistrate.—The Court of the Chief Presidency Magistrate is of "equal jurisdiction" to the Court of any other Presidency Magistrate within the meaning of S. 526 *infra*.[1]

As to the powers of a Chief Presidency Magistrate *see* S. 21 *infra*.

2. "Appoint a sufficient number of persons".—Under S. 7 of the Madras City Police Act (III of 1888) the Commissioner of Police is by virtue of his office, a Presidency Magistrate.[1]

3. Bench of Presidency Magistrates.—The powers of a Presidency Magistrate under the Code are conferred by sub-S. (2) on any Bench of Presidency Magistrates. Such a Bench can therefore take action under S. 106 of the Code.[1]

4. Additional Chief Presidency Magistrate—Sub-S. 4.—Where by notification under S. 21, sub-S. (2) the Local Government has declared all Presidency Magistrates to be subordinate to the Chief Presidency Magistrate, it has been held that by virtue of this sub-section (S. 18, sub-S. (2)) the Presidency Magistrates are subordinate to the *Additional* Chief Presidency Magistrate also.[1]

19.* Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench. **S. 19.**

Benches.

***(CODE OF 1882—S. 18, Para. 2.)**

* * * * * * *

18. Any two or more of such persons may (subject ot the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

(CODES OF 1872 AND 1861—Nil.)

Section 18—Note 1.

(1) (1911) 11 Ind. Cas. 795 (796): 35 Mad. 789, Re. *Venkateswara.*

Note 2.

(1) (1932) 1932 Mad. 428 (428), *Devidan Sowcar* v. *Janaki Ammal.*

Note 3.

(1) (1905) 2 Cri. L. Jour. 770 (773) (Bom.), *Hassan* v. *Yaskubar.*

Note 4.

(1) (1934) 1934 Cal. 405 (406): 61 Cal. 467, *Kanayalal* v. *Kanmull.*

S. 19, Note 1.

1. "Subject to the Rules, etc."—*See* S. 21 *infra*.

S. 20, Note 1.

20*. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Local limits of jurisdiction.

SYNOPSIS.

JURISDICTION OF PRESIDENCY MAGISTRATES .. Note No. 1

Other Topics.

Ports—See Note 1, Pt. 3.

Presidency-Town—Definition of. See Note 1.

1. Jurisdiction of Presidency Magistrates.—Section 12, *ante* defines the *local limits* of the jurisdiction of Courts *outside* the Presidency Towns. This section defines the *local limits* of the jurisdiction of Presidency Magistrates. The *description* of offences cognizable by each Court and the *sentences* which may be passed by them are dealt with by Ss. 28 to 35, *infra*. The place of enquiry or trial of offences is dealt with by Ss. 177 to 189, *infra*.

The local limits of the jurisdiction of a Presidency extends under this section to all places—

(1) within the Presidency Town[1] and

(2) within the limits of the *port* of such town and of any navigable river or channel leading thereto, though such place is outside the Presidency Town proper.[2]

The words "Presidency town" are not defined in the Code. They are, however, defined in the General Clauses Act (X of 1897) and that definition

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***(CODE OF 1882—S. 20.)**

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions.

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

(CODES OF 1872 AND 1861—Nil.)

Section 20—Note 1.

(1) (1926) 1926 Bom. 564 (564), *Khodabux* v. *Emperor*.

(2) (1919) 1919 Cal. 1 (2): 47 Cal. 147, *Gunpat Rai Khemka* v. *W. G. Good*.

will apply to this Code also. A "presidency Town" according to that definition means "the local limits for the time being of the ordinary original Civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay as the case may be." S. 20, Note 1.

The limits of *ports* of Presidency Towns are defined by the Indian Ports Act (XV of 1908), and by notifications issued by the Local Government thereunder from time to time. A Presidency Magistrate will therefore have jurisdiction within the limits of the port as so defined.[3]

21* (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate— S. 21.

Chief Presidency Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches;

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session; and

(*e*) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates *including Additional Chief Presidency Magistrates* are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

*(CODE OF 1882—S. 21.)

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force or required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(3) [See (1884) 1884 Rat. 193 (194), *Empress* v. *Jomabhai* (The Presidency Magistrate of Bombay has jurisdiction over the port of Bombay up to High Water mark).]

S. 21, Notes 1—2.

SYNOPSIS.

LEGISLATIVE CHANGES .. .. Note No. 1
CONDUCT AND DISTRIBUTION OF BUSINESS—RULES RELATING TO 2
MODE OF SETTLING DIFFERENCES OF OPINION—RULES RELATING TO 3
SUBORDINATION OF MAGISTRATES 4

Other Topics.

Powers of Transfer. See Note 4, Pts. 2 and 3.
Scope of the Chief Presidency Magistrate's powers. See Note 2, Pt. 1, F.N. 2.
Subordination to the Chief Presidency Magistrate—Nature of. See Note 4, Pt. 1.

1. Legislative Changes.—This section corresponds to Section 9 of the High Court Criminal Procedure Act of 1877 and to Section 21 of the Code of 1882.

Difference between Codes of 1882 *and* 1898.
Sub-section 2 of this section was newly added in 1898.
Amendment after 1898.

In Sub-section 2 the words "including Additional Chief Presidency Magistrates" were inserted by the amending Act 18 of 1923.

2. Conduct and distribution of business—rules relating to.—The powers of a Bench of Presidency Magistrates are conferred by Section 18 *ante* and the Chief Presidency Magistrate has no power under this section either to confer, restrict or enlarge these powers. Thus where a rule was framed under this section directing that only such cases arising under certain specified enactments be made over to the Bench of Honorary Magistrates for disposal and the Bench convicted an accused and took action under Section 106 *infra*, it was held that the order under S. 106 was not void.[1] See also the undermentioned cases.[2]

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
(*b*) the times and places at which Benches of Magistrates shall sit;
(*c*) the constitution of such Benches; and
(*d*) the mode of settling differences of opinion which may arise between Magistrates in Session.

(CODES OF 1872 AND 1861—Nil.)

Section 21—Note 2.

(1) (1905) 2 Cri. L. Jour. 770 (774) (Bom.), *Hasson* v. *Yas Kubar.*
(2) (1926) 1926 Bom. 564 (564), *Khodabux* v. *Emperor* (Under Bombay Rule 3, Chief Presidency Magistrate has power to order any class of cases to be brought to his own Court in the event of pressure of work in other Courts). (1898) 1898 Rat. 968 (969), In re *Olive Durant* (Bombay Rule 9, refers only to division of work and does not justify a Presidency Magistrate in ordering a return of a complaint on the ground that the case may be more conveniently tried by the chief).

3. Mode of settling differences of opinion—rules relating to.—It was held by the High Court of Calcutta in *Henry Wakefield* v. *Haran Sardar*[1] that a rule made under this section directing that, in a Bench composed of two members, the opinion of the Chairman shall prevail, was *ultra vires* in that it was inconsistent with the provisions of this Code and was also arbitrary and not consonant with natural justice. In a later Full Bench decision arising under a similar rule framed under S. 16, *ante* the same High Court has held that such a rule is not *ultra vires*. See notes to S. 16. It is therefore submitted that the decision in *Henry Wakefield's* case must be held to be impliedly overruled by the Full Bench decision.

Where a rule by the Chief Presidency Magistrate of Bombay provided that every member of a Bench shall have a voice in the determination of a case and that when a Bench is equally divided in opinion the Chairman shall have a casting vote, it was held that the judgment of the dissenting Magistrate if any, should form part of the record.[2] The reason is that otherwise, the appellate or revisional court would not be in a position to know whether the judgment is a concurrent judgment of two Judges or is a judgment of the Chairman dissented from by the other members of the Bench.

4. Subordination of Magistrates.—The Governments of Bombay and Calcutta have declared that all Presidency Magistrates (whether sitting singly or as members) of a Bench are subordinate to the Chief Presidency Magistrate in the same manner and to the same extent as ordinary magistrates are subordinate to the District Magistrate under S. 17, *ante*.[1] The Chief Presidency Magistrate has, therefore, power under S. 528 *infra* to withdraw any case from the file of a Presidency Magistrate either to his own file,[2] or to transfer it for enquiry to any other Presidency Magistrate.[3]

The Government of Madras have directed that the subordination of a Presidency Magistrate shall be limited to the purposes of S. 124, sub-S. 1, Section 144, sub-S. 4, S. 192 and S. 528 of the Code.[4]

It has been held by the Calcutta High Court that by virtue of S. 18, sub-S. 4, Presidency Magistrates who are declared to be subordinate to the Chief Presidency Magistrate should be treated as subordinate to the *Additional* Chief Presidency Magistrate also.[5]

Note 3.

(1) (1904) 1 Cri. L. Jour. 842 (843) (Cal.), *Henry Wakefield* v. *Haran Sardar.*
(2) (1927) 1927 Bom. 630 (631, 633), *Emperor* v. *Fardunji Gora.*

Note 4.

(1) (1899) 1 Bom. L. R. 347 (348), In re *Nageshwar Sitaram Fansalkar.*
(1897-98) 2 Cal. W. N. cclxi (n), *Jagendranath Roy Bahadur* v. *J. O. Price.*
(1924) 1924 Cal. 911 (912): 51 Cal. 820, *Mohini Mohan Roy* v. *Punan Chand* (Additional Chief Presidency Magistrate of Calcutta is to be subordinate to the Chief).
(2) (1924) 1924 Cal. 911 (912): 51 Cal. 820, *Mohini Mohan Roy* v. *Punan Chand.*
(3) (1899) 1 Bom. L. R. 347 (348), In re *Nageshwar.*
(4) (1911) 12 Cri. L. Jour. 451 (452) (Mad.), In re *Venkatarama Sastri.*
(5) (1934) 1934 Cal. 405 (406): 61 Cal. 467, *Kanayalal Bengani* v. *Kanmull.*

S. 22.

E.—Justices of the Peace.

22. The Governor-General-in-Council, so far as regards the whole or any part of British India outside the presidency-towns?

Justice of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

22.* Every Local Government, so far as regards the territories subject to its administration * * * * may by notification in the official Gazette appoint such [*persons resident within British India and not being the subjects of any foreign State*] as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification.

Justices of the Peace for the Mufassal.

SYNOPSIS.

JUSTICES OF THE PEACE .. .. .. Note No. 1

Other Topics.

Appointment of Justices of the Peace. See Note 1, F.N. 1 and 2.
Justices of the Peace appointed for places beyond British India. See Note 1, Pt. 4.
Powers of the Justices of the Peace. See Note 1, Pts. 2 and 3.
Scope of the section. See Note 1.

***(CODE OF 1882—S. 22.)**

E.—Justices of the Peace.

22. The Governor-General-in-Council, so far as regards the whole or any part of British India outside the Presidency-towns, and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid), may by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the mufassal.

(CODES OF 1872 AND 1861—Nil.)

S. 22, Note 1.

1. Justices of the Peace.—A Justice of the Peace is an inferior magistrate appointed to preserve the peace in any part of the country. Certain persons are Justices of the Peace *in virtue of their office* (see S. 25) and others, by virtue of being *appointed* as such. Justices of the Peace were first appointed in India by the Royal Charter of 1726 by which Governors and certain Councillors were created Justices of the Peace. The Royal Charter of 1753 replaced that of 1726 with certain changes. Under several subsequent Acts of Parliament various persons were constituted Justices of the Peace.[1] In the year 1869 the power to appoint Justices of the Peace in India was given to the Governor-General-in-Council and the Governors-in-Council, but a distinction was made in respect of appointments to be made for territories *outside* the Presidency Towns and those to be made *for* the Presidency Towns. In respect of the former, originally, only covenanted Civil Servants and other British Subjects and later, only European British Subjects could be appointed Justices of the Peace. In respect of the latter *any* person resident in British India and not being the subject of a foreign state could be appointed a Justice of the Peace. The distinction continued to exist till the year 1923, when by Act XII of that year it was abolished by the repeal of S. 23 of the Code and by the amendment of S. 22 empowering the *Local* Governments to appoint *any* person resident within British India and not being resident of a foreign state to be a Justice of the Peace in *any area* subject to its administration.

As to the powers of a Justice of the Peace, there is no provision in the Code showing what his special duties are as distinguished from a Magistrate in the ordinary sense. Their powers are prescribed by various special and local enactments and also by the terms of their appointment. Thus the justices appointed in 1726 and 1753 by the Charters 13 George 1 and 26 George II had the same powers as the Justices in any County, City or Towns Corporate in England and could hold quarter sessions. *See also* the following enactments.[2] In *Reg* v. *Reay*,[3] the High Court of Bombay observed that the power of a Justice of the Peace in India had never been placed on a clear footing. It was further observed that a Justice of the Peace might still possibly exercise the powers vested in Justices in 1726, but that, as to any further powers, they could only be such as are conferred by Act of Parliament or other competent authority.

Section 22—Note 1.

(1) 13, *Geo. III, C.* 63, *Section* 38.—Governor-General in Council and Judges of the Calcutta Supreme Court were made Justices for Fort Williams and subordinate factories.

33 *George III C.* 52—*Section* 151.—*Governor*-General in Council was empowered to appoint by commission certain persons as Justices of the Peace.

47 *George III, C.* 68—*Sections* 4 *to* 6.—Governors and Councils of Madras and Bombay became Justices of the Peace for the Towns of Madras and Bombay and their subordinate factories.

53 *George III, Ch. C.* 155—*Section* 105.—*Zilla Magistrates were empowered to* act as Justices.

3 *and* 4 *Will. C.* 117—*Section* 1.—Empowered the Governor-General in Council and the Local Governors in Council to appoint Justices for the Presidency Towns.

(2) 18 *George III, C.* 63—*Section* 38.—The Justices could do all things appertaining to their office and for that purpose were required to hold quarter Sessions.

33 *George III, C.* 52—*Section* 151.—The Justices were empowered according to the tenor of their commissions, when called upon they could sit in the Court of the Oyer and Terminer and Goal Delivery or in the Councils of the Governor-General.

47 *George III, C.* 68—*Section* 4.—Justices were empowered to hold quarter Sessions and to be Courts of Record.

9 *George IV, C.* 74.—Justices could try cases of felony and misdemeanor and power of summary conviction in certain cases.

Act IV of 1835.
Act IV of 1843.
Act XVII of 1859.
Act II of 1869.
Act XXI of 1839.
Act VIII of 1867 (Madras).
Act IV of 1902 (Bench).
Act XVIII of 1862.

(3) (1870) 7 Bom. H. C. R. 6 (22, 23), *Reg.* v. *Edward Reay.*

S. 22, Note 1.

Under the Foreign Jurisdiction and Extradition Act, 21 of 1879, the Governor-General in Council could appoint Justices of the Peace for territories outside British India; such Justices to have all the powers conferred by the Code of Criminal Procedure on Magistrate of the first class who are Justices of the Peace and who are European British Subjects.[4]

S. 23.

Justices of the Peace for the Presidency-towns.

23*. Repealed by S. 4 of the Criminal Law Amendment Act XII of 1923.

Justices of the Peace for the Presidency Towns.—This section has been repealed by S. 4 of the Criminal Law Amendment Act, (XII of 1923). It dealt with the appointment of Justices of the Peace in the Presidency Towns. The provisions of this section have been assimilated in S. 22, *supra*. *See* notes to S. 22 above.

S. 24.

Present Justices of the Peace.

24†. Repealed by S. 4 of the Criminal Law Amendment Act XII of 1923.

***(CODE OF 1898—S. 23.).**

23. The Local Government, so far as regards the towns of Calcutta, Madras and Bombay, may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any person resident within British India and not being the subjects of any foreign State whom the Local Government thinks fit.

Justices of the Peace for the Presidency-towns.

(CODE OF 1882—S. 23.)

23. The Governor-General in Council or the Local Government, so far as regards the town of Calcutta, and the Local Government, so far as regards the towns of Madras and Bombay, may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor-General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

(CODES OF 1872 AND 1861.—Nil.)

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†(CODE OF 1898—S. 24.)

24.* (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under S. 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Present Justices of the Peace.

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(4) (1889) 12 Mad. 39 (42), In re *Hayes*.
(1903) 26 Mad. 607 (613, 614), *Adams* v. *Empress*.
(1911) 12 Ind. Cas. 303 (303): 34 Mad. 348, *E. R. Loghan* v. *S. W. Romer*-

S. 25, Note 1.

25.* In virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors and Chief Commissioners, the Ordinary Members of the Council of the Governor-General and the Judges of the High Courts are Justices of the Peace within and for the whole of British India; Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

***Ex-officio* Justices of the Peace.**

1. **Scope.**—This section declares as to who are Justices of the Peace *in virtue of their office*. The Courts are bound to take judicial notice that certain persons are Justices of the Peace.[1]

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(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under S. 23 by the Local Government.

(CODE OF 1882—S. 24.)

Present Justice of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under Section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under Section 23 by the Local Government.

(CODES OF 1872 AND 1861—Nil.)

***(CODE OF 1882—S. 25.)**

Ex-officio Justices of the Peace.

25. In virtue of their respective offices, the Governor-General, the Ordinary Members of the Council of the Governor-General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

(CODES OF 1872 AND 1861—Nil.)

Empress v. *Nobodeep Chander.*

Section 25—Note 1.
(1) (1871) 15 Suth. W. R. 71 (75) (Cr.).

S. 26, Note 1.

F. Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26*. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Local Government only shall not be suspended or removed from office by any other authority.

1. **Suspension and removal of Judges and Magistrates.**—A Magistrate or Judge of a Criminal Court can be removed only by the *Local Government*. A District Magistrate has no power to suspend a Magistrate subordinate to him.[1] Nor can a Magistrate remove himself by resignation. The reason is that a resignation ends the incumbent's connection with the office only on its being accepted by the authorities concerned.[2]

S. 27.

Suspension and removal of Justices of the Peace.

27†. The Local Government may suspend or remove from office any Justice of the Peace appointed by it.

***(CODE OF 1882—S. 26.)**

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

(CODE OF 1872—S. 9.)

Appointment and Removal of Judges and Magistrates.

All Judges of Criminal Courts, other than the High Courts, and Magistrates shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

(CODE OF 1861—Nil.)

†(CODE OF 1882—S. 27.)

Suspension and removal of Justices of the Peace.

27. The Governor-General-in-Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

(CODES OF 1872 AND 1861—Nil.)

Section 26—Note 1.

(1) (1928) 1928 Bom. 390 (400, 406), *In re, Laxminarayan Simmanna Karki.*

(2) (1925) 1925 Mad. 173 (173): 48 Mad. 309, *President, Taluq Board, Hospet* v. *Jutur Chandrappa.*

(1924) 1924 Mad. 396 (397), *A. Sudarsana Rao* v. *J. A. Christian Pillai.*

CHAPTER III.

POWERS OF COURTS.

A—Description of offences Cognizable by each Court.

Offences under Penal Code.

28*. Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried— **S. 28.**

(*a*) by the High Court, or

(*b*) by the Court of Session, or

(*c*) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"SUBJECT TO OTHER PROVISIONS OF THE CODE" ..	2

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*(CODE OF 1882—S. 28.)

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

(CODE OF 1872—S. 7.)

What Courts to try offences.

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

(CODE OF 1861—S. 22, Para 1.)

By what Courts the offences mentioned in the Schedule are triable and within what limits such Courts may pass sentence.

22. The offences mentioned in the Schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said Schedule, be triable by the Courts specified in Column 7 of the said Schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits, (that is to say).

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(3rd Explanatory Note in the Schedule).

* * * * *

3rd.—Offences may be tried by a Court superior to the Court specifically mentioned in Column 7. For example, a Court of Session may try an offence entered in Column 7 as triable by a Magistrate.

S. 28, Note 1

Other Topics.

Offences within and beyond jurisdiction of Magistrates. See Note 1, Pts. 6 to 9. Other Court by which the offence is shown triable. See Note 1, Pts. 2 to 4, Powers of Courts of Session. See Note 1, Pt. 1.

1. Scope of the section.—This and the following sections deal with the *description* of offences cognizable by the several Courts constituted under the Code. Any offence under the Penal Code can, subject to the other provisions of the Code, be tried by the High Court or the Court of Session. But an offence can be tried by any *other* Court only if it is mentioned in the eighth column of the second schedule of the Code as being triable by such Court. In other words, the High Court and the Court of Session have concurrent jurisdiction with the Subordinate Courts over offences triable by the latter.[1] But a Magistrate who is not mentioned in the eighth column of the second schedule as being empowered to try a particular offence, has no jurisdiction to try it.[2] Neither the consent of the parties thereto[3] nor even an Order of the District Magistrate authorising the Magistrate to try the case[4] will confer any jurisdiction on such Magistrate to do so.

The fact that the offence which a Magistrate is not empowered to try includes a minor offence which he is authorised to try cannot give him jurisdiction to try the accused for the former offence.[5] Nor can Magistrates clutch jurisdiction by intentionally ignoring facts of aggravation which make the offence cognizable only by a higher tribunal.[6] He cannot for instance, split up a graver offence into a number of smaller offences and thus give himself jurisdiction.[7] On the other hand, the jurisdiction of a Magistrate to try the accused for an offence triable by him is not ousted merely by the fact that the accused is liable

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Section 28—Note 1.

(1) (1882) 1882 Pun. Re. No. 22, pp. 28 (29), *Empress* v. *Mathur Shah*.
[See also (1881) 8 All. 665 (667), *Empress* v. *Kharja*.]
(1897) 24 Cal. 429 (431), In re *Kayemullah*.
[But see (1888) 1888 All. W. N. 235 (236), In re *Mansukh* (Offences exclusively triable by Magistrates not triable by High Court).]

(2) (1924) 1924 Rang. 12 (12), *Emperor* v. *Nga Thaung Pe* (Offence under S. 381 P. C. is not triable by a Third Class Magistrate.
(1864) 1 Suth. W. R. Cr. 34 (34), *Queen* v. *Shaday* (Deputy Magistrate trying offence exclusively cognisable by Court of Session).
(1925) 1925 Mad. 367 (367), *Rangayya* v. *Somappa* (A Second Class Magistrate cannot try a case under S. 420).
(1898) 1898 Rat. 953 (953), *Queen-Empress* v. *Bhikshi*.
(1890) 1 Weir 210 (210), Re *Venkatasubbier*.
(1867) 7 Suth. W. R. 52 (52), *Mt. Kubree* v. *Jhoonoo*.
(1910) 11 Cri. L. Jour. 185 (186): 1909 U. B. R. 4th quarter Penal Code 29, *King-Emperor* v. *W. C. Das*. (Facts amounting to falsification of accounts (Indian Penal Code, S. 477-A) conviction by Magistrate, First Class for Forgery (Indian Penal Code, S. 465) held, without jurisdiction).
(1867) 7 Suth. W. R. 13 (13), *Queen* v. *Komul Manjee*.
[See however (1872) 18 Suth. W. R. Cr. 8 (9), In re *Tarinee Prasad Banerjee* (The High Court, however, refused to interfere with the decision of a Magistrate who tried such a case).]

(3) (1932) 1932 Oudh 251 (251), Re *Ram Udit*.
(4) (1926) 1926 Cal. 590 (592), *Azizur Rahman* v. *Emperor*.
(1896) 23 Cal. 442 (445), *Raghu Singh* v. *Abdul Wahab*.
(5) (1910) 11 Cri. L. Jour. 639 (640): 31 P. R. 1910, *Lekhraj* v. *Emperor*.
(6) (1911) 12 Cri. L. Jour. 20 (20), *Jamal Mohammad* v. *Moideen Sa Rowthar*.
(1889) 13 Bom. 502 (505), *Queen-Empress* v. *Gundya*.
(1876) 1876 Pun. Re. 2, *Malli* v. *The Crown*.
(1885) 2 Weir 21 (21).
(1888) 12 Mad. 54 (55), In re, *Madurai*.
(1892-1896) U. B. R. Vol. I, p. 231 (231), *Queen-Empress* v. *Nyan Nyein*.
(1929) 1929 Notes 10 (C), *Jwala Prasad* v. *Crown*.
(1901) 1 U. B. R. 328 (328), *King-Empeor* v. *Nga Po Saw* (Magistrates should not give themselves jurisdiction by trying cases under S. 363 which really fall under S. 366).
(7) (1900-01) 5 Cal. W. N. 372 (373), *Otaruddi Manjhi* v. *Kafiluddi*.

S. 28, Notes 1—2.

to be charged for an offence not triable by him.[8] Whether in so trying he adopts a proper course is a different question. No doubt it will be improper on the part of the Magistrate intentionally to ignore circumstances which show that an offence beyond his jurisdiction was in fact committed as well as an offence within his jurisdiction. Thus if a Second Class Magistrate should ignore the violence used in committing *theft* and, instead of sending the accused before a First class Magistrate to be tried for *robbery*, tries the case for theft, the action would be improper but his proceedings could not be void for want of *jurisdiction*.[9]

The jurisdiction of a Court to hear a case depends on the allegations with which its help is sought. The statement of a complainant in a criminal case and the statement of the plaintiff in a Civil case has to be accepted for the purpose of jurisdiction.[10]

As to the jurisdiction of summary Courts under Ordinance II of 1921, see the undermentioned case.[11]

2. "Subject to other provisions of the Code."—The jurisdiction which is conferred by this section on a Magistrate to try an offence which is shown in the eighth column of the second schedule to be triable by him is a qualified one, and is subject to other provisions of the Code. Thus under S. 207 the Magistrate should not try but should commit the case to the Court of Session or the High Court where he is of opinion that it ought to be tried by such Court. Similarly S. 254 provides that the Magistrate shall try an accused person only for an offence which, in his opinion, can be adequately punished by him.[1]

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(8) (1888) 1 Weir 449 (450), In re *Suiji Dass* (Magistrate, having jurisdiction to try a prisoner for an offence under S. 394, has not his jurisdiction taken away by the mere fact that the prisoner might also have been charged under S. 397).
(1901) 24 Mad. 675 (677, 678), *King-Emperor* v. *Ayyam*.
(1868) 1 Weir 448 (449).
(1933) 1933 Mad. W. N. 550 (551), *Chinnaswamy Nadar* v. *Emperor* (The fact that the case of rioting was counter to another murder case which might be committed to the Sessions is no reason for treating the rioting case also as a P. R. (Preliminary Register) case and committing to the Sessions).
(1928) 1928 Mad. 585 (585, 586), *Abdul Sathar* v. *Emperor*.
(1922) 1922 Mad. 223 (224): 45 Mad. 29, *Venkatrayar* v. *Venkatarayar* (Complaint under S. 467. Trial and discharge under S. 463 not illegal).
(1927) 1927 Mad. 307 (308), *Kattuva Rawthar* v. *Suppan*.
(1908) 7 Cri. L. Jour. 215 (216) (Mad.), *Narayana Naicken* v. *Tahsildar of Conjeevaram* (Following 2 Weir 482 —**Second Class Magistrate** convicting for criminal misappropriation while evidence discloses criminal breach of trust not triable by him—*Held* conviction not bad).
(1913) 14 Cri. L. Jour. 640, In re *Mohideen Batcha Sahib*.
(1930) 1930 Mad. W. N. 770 (771), *Picha Kudumban* v. *Servaikara Thevan*.
(1871) 2 Weir 20 (21), High Court Proceedings, 12th July, 1871, No. 1190.
[But see (1866) 6 Suth. W. R. 49 (49), *Shamboo Roy* v. *Ajail Aheer* (Magistrate has no *power* to convict for *theft* where evidence shows offence of dacoity).]
(9) (1925) 1925 Rang. 45 (47): 2 Rang. 455, *Dawson* v. *King-Emperor*.
(10) (1925) 1925 All. 290 (291): 47 All. 64, *Emperor* v. *Raghunandan*.
[But see (1930) 1930 Mad. W. N. 770 (771) *Picha Kudumban* v. *Servaikara Thevan* (Where the offence complained of was one under S. 430, I. P. Code, but the Bench tried the accused for a lesser offence under S. 426, I. P. Code, and it appeared that they had jurisdiction to try the latter and not the former offence. *Held*, that the proceeding was not void).]
(11) (1922) 1922 Mad. 499 (500): 45 Mad. 922, *Erada Padinharedil* v. *Emperor* (A summary Court appointed under Martial Law Ordinance has no jurisdiction to try offences committed outside the martial law area).

Note 2.

(1) (1892) 16 Bom. 580 (585), *Queen-Empress* v. *Abdul Rahiman*.
(1866) 6 Suth. W. R. Cr. 90 (91), *Omrit Ram* v. *Nonao Ram*.

S. 29.

29*. (1) Subject to the provisions of Section 447, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws.

(2) When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code by which such offence is shewn in the eighth column of the second schedule to be triable.

29. (1) Subject to the *other provisions of this Code,* any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws.

(2) When no Court is so mentioned, it may be tried by the High Court or *subject as aforesaid* by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

***(CODE OF 1882—S. 29.)**

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

Offences under other laws.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that——

(*a*) no Magistrate of the *first class* shall try any such offence which is punishable with imprisonment for a term which may *exceed seven years;*

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may *extend to three years; and*

(*c*) no Magistrate of the *third class* shall try any such offence which is punishable with imprisonment for a term which may *extend to one year.*

(CODE OF 1872—S. 8.)

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

Offences under local and special laws.

A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three years' imprisonment.

SYNOPSIS.

SCOPE OF SECTION .. .. .. Note No. 1

Other Topics.

"By such Court"—Instances of. See Note 1, Pt. 1, F.N. 1.

Where no Court is mentioned. See Note 1, Pt. 2.

1. Scope of section.—Section 28, *ante* prescribes the Courts by which offences under the *Penal Code* can be tried. This section prescribes the Courts by which offences under *other laws* can be tried. In the case of such offences, if a Court is specified in the particular enactment by which the offence is created, as having jurisdiction to try the offence, it is only such Court that can try the offence.[1] If no such Court is specified in the enactment creating the offence, it can be tried by the High Court or by any Court specified in this behalf in the second schedule to the Code.[2]

(CODE OF 1861—S. 21.)

Of the Jurisdiction of the Criminal Courts.

Offences cognizable by Criminal Courts.

21. The Criminal Courts of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV of 1860) or under any special or local law (except offences which are by any such law made punishable by some other authority therein specially mentioned), and in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act.

Section 29—Note 1.

(1) (1913) 14 Cri. L. Jour. 637 (638) (Mad.), *Lakshminarasayya* v. *Narasimachary* (Presidency Magistrate has no jurisdiction to try a person accused of an offence under *Section* 103 of the Presidency Towns Insolvency Act).

(1917) 1917 Lah. 138 (139): 1917 Pun. Re. No. 38, *Samaila* v. *Emperor* (Order under S. 3 (1) of the Defence of India Act, 1915, Special Tribunal).

(1928) 1928 Cal. 339 (341), *Ishan* v. *Manmatha* (Offence under S. 20 of the Calcutta Rent Act must be tried by the President of the Calcutta Improvement Tribunal).

(1910) 11 Cri. L. Jour. 476 (477) (All.), *Mohamad Alam* v. *Emperor* (Bengal Regulation VI of 1825: Collector only).

(1909) 10 Cri. L. Jour. 393 (395): 32 Mad. 303, *Emperor* v. *Chota Singh* (Presidency Magistrate's jurisdiction under the Prisons Act, S. 52).

(1897) 19 All. 465 (466), *Queen-Empress* v. *Schade* (Thus, an offence under S. 9 of the Opium Act must be tried by a Magistrate; a Sessions Judge has no jurisdiction over the offence and the Magistrate has no power to commit the case to the Court of Session).

(1886) 1886 All. W. N. 289 (289), *Empress* v. *Deokinandan* (Cantonment Rules—Conviction under).

(1884) 7 Mad. 347 (348), *Empress* v. *Krishna* (Offences falling under clauses (*c*) and (*d*) of S. 82 of the Indian Registration Act cognizable by a Second Class Magistrate).

(1882) 1882 All. W. N. 52 (53), *Empress* v. *F. Todd* (Cantonment Rules—Conviction under).

(1869-70) 5 Mad. H. C. R. 277 (279), *Regina* v. *Donoghue* (Offences under Madras Act I of 1868, *e.g.*, supplying liquor without licence must be tried by a Magistrate and not by the High Court).

(1922) 65 Ind. Cas. 439 (439) (Lah.), *Gobind Ram* v. *Emperor* (Offences under S. 7 of the Stage Carriages Act XVI of 1861).

(1879) 1879 Pun. Re. No. 7, Cr. p. 12 (16), *Empress* v. *Moti Ram* (Offences under Ss. 8 and 9 of Stage Carriages Act XVI of 1861).

(1869) 1869 Pun. Re. No. 3, p. 2 (3) (Charge under S. 32, Arms Act, XXXI of 1860).

(1874) Rat. 80 (80), *Reg* v. *Basappa*.

(1870) 7 Bom. H. C. R. 59 (60), *Reg.* v. *Hira*.

(2) (1901) 14 C. P. L. R. 176 (176), *Emperor* v. *Mangtia*.

(1905) 2 Cri. L. Jour. 532 (533) (Cal.), *Empress* v. *Mohunt Ram Dass* (Offences under Bengal Tenancy Act: Trial as Summons Case).

(1870) 1870 Pun. Re. Cr. No. 12, p. 21 (23) *Musst. Surdaree* v. *Crown*.

(1919) 1919 Bom. 173 (174): 43 Bom. 888, *Emperor* v. *Dhondya* (Offence under S. 130, Railways Act—Triable by Magistrate).

(1919) 1919 Mad. 24 (25): 42 Mad. 69, In re *Kandaswamy Pillai* (Offence under Defence of India Rules—Triable by ordinary Courts).

S. 29, Note 1.

The jurisdiction conferred by the section is expressly made subject to the other provisions of the Code. Similarly, it is subject to the provisions of the law under which the offence is alleged to have been committed. Thus, the Railways Act does not specially mention any Courts as competent to try offences under it and consequently, under this section, the jurisdiction to try such offences lies in the Courts mentioned in the second schedule to the Code. These Courts include, *inter alia*, Magistrates of the third class. But, under S. 133 of the Railways Act, no Magistrate whose powers are less than those of a Second Class Magistrate can try any offence under the Act. Hence, a Third Class Magistrate cannot try any offence under the Railways Act though such offence may be within his jurisdiction if the matter were governed solely by this section and the second schedule.[3]

S. 29-A.

29-A. *No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such.*

Trial of European British subjects by second and third class Magistrates.

SYNOPSIS.

SCOPE OF THE SECTION .. .. .. Note No. 1

1. **Scope of the section.**—Under the Code of 1861, only the High Court had jurisdiction over European British Subjects.[1] The Codes of 1872 and 1882 gave certain Magistrates power to try offences against such persons.[2] Under S. 443 of the Code as it stood before the Amending Act (12 of 1923) no Magistrate, unless he was a Justice of the Peace and, (except in the case of a District Magistrate or Presidency Magistrate) unless he was a Magistrate of the first class and an European British Subject, could inquire into or try any charge against an European British Subject.[3] That section has now been repealed and, under the present section, no second or third class

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(1928) 1928 Sind 43 (44): 22 Sind L. R. 141, *Ali Mohamad* v. *Emperor* (Offence under Wakf Act).
(1923) 1923 Rang. 139 (140), *Emperor* v. *Rambahadur Rai*.
(1887) 2 Weir 25 (25), Re *Enumulla* (Offences under S. 82, Registration Act, being punishable with imprisonment up to three years are not triable by Second Class Magistrate).
(1879) 1 Weir 660 (660), Arms Act 1878, Offences under S. 19 (*i*) not triable by Second Class Magistrates].
(1882) 2 Weir 23 (24) (Third Class Magistrates cannot try offences under S. 20, Treasure Trove Act, 1878).
(1881) 1881 Pun. Re. No. 34, *Empress* v. *Halim*.
(1871) 8 Bom. H. C. R. 115 (117), *Reg.* v. *Ajam Dulla* (Offence of undue exaction of money under S. 16 of Regulation XVII of 1827 being one punishable with imprisonment for seven years is exclusively triable by Court of Session).
(3) (1897-1901) 1 U. B. R. 374 (374), *Queen-Empress* v. *Mikin*.
(1879) Weir 3rd Ed. 584 (585).

Section 29-A—Note 1.

(1) [See the following cases:—
(1870) 7 Bom. H. C. C. 6 (21, 28), *Reg.* v. *Edward Reay*.
(1869) 6 Bom. H. C. R. (Cr.) 14 (15), *Reg.* v. *Dixon*.
(1871) 3 N.-W.P. 128 (128), *The Hearn*.
(1870) 5 Mad. H. C. App. 25 (26).
[See however (1873) 2 Weir 578 (578, 579).]
(1869-70) 5 Mad. H. C. 277 (279, 280), *Reg.* v. *Donoghur* (There was an express provision giving such jurisdiction).]
(2) [See the following cases:—
(1874) 22 Suth. W. R. (Cr.) 54 (61), *Queen* v. *Gerald Mears*.
(1871-74) 7 Mad. H. C. R. App. 32 (32) (Magistrate should be an European British subject).]
(3) *It was held in the following case that the District Magistrate of the Court of the Civil and Military Station of Bangalore had jurisdiction to try offences by European British Subjects:—*
(1911) 12 Cri. L. Jour. 42: 34 Mad. 346, In re *W. B. Lawrence*.

Magistrate can inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees, when the accused is an European British Subject who claims to be tried as such. As to when the accused should put forward his claim to be an European British Subject; and the effect of not so claiming, see Ss. 528-A and 528-B, *infra*. S. 29-A, Note 1.

29-B. *Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by S. 8, sub-S. (1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.* S. 29-B, Notes 1—2.

Jurisdiction in the case of juveniles.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"OTHER THAN ONE PUNISHABLE WITH DEATH OR TRANSPORTATION FOR LIFE"	2
"MAY BE TRIED"	3
"OR IN ANY AREA IN WHICH THE SAID ACT HAS BEEN REPEALED"	4

1. **Scope of the section.**—This section was newly added by the Amending Act 18 of 1923. The reasons for so introducing it in the Code have thus been stated in the statement of objects and reasons for that Act:—

"The existing procedure of committal to a Court of Sessions is lengthy and often involves the prolonged detention of juvenile offenders as under-trial prisoners, although the offences generally committed by them seldom require to be so severely punished as to necessitate the intervention of a Sessions Court, the sentence or order eventually passed being often incommensurate with the time and energy expended upon a committal and sessions trial". Offences committed by juvenile offenders are therefore made triable by the judicial officers specified in the section instead of by the Sessions Court, unless the offences are so serious as to be punishable by death or transportation for life.

2. **"Other than one punishable with death or transportation for life."** —This section empowers the Magistrates referred to therein to try *any* offence (other than one punishable with death or transportation for life) although, such offence *apart from* this section would be beyond their competence to try.[1]

Jalal.

Section 29-B—Note 2.

(1) (1934) 1934 Bom. 211 (212), *Emperor* v.

S. 29-B, Notes 2—4.

An offence under S. 304 of the Penal Code is one punishable with transportation for life and cannot therefore be tried by the Magistrate in charge of the Central Children Court who is specially empowered under S. 8 of the Reformatory Schools Act 1897.[2]

3. "**May be tried**".—The words "may be tried" are permissive and a Magistrate *other* than one of those specified in the section before whom a juveline offender is brought, has a discretion to direct that the accused be dealt with under this section by one of the Magistrates specified therein or to deal with the case himself.[1] In the latter case however, he should have *jurisdiction* under Ss. 28 or 29 *ante* to try such case. Thus an offence under S. 130 of the Railways Act (9 of 1890) which is punishable under that section only with *whipping* and which is not specified to be triable by any Magistrate, in the second schedule of the Code can be tried under the provisions of S. 29, sub-S. 2 only by the High Court, or, under this section by the Magistrate therein specified.[2]

4. "**Or in any area in which the said act has been....repealed**".—See the Madras Children Act 1920, and the undermentioned cases.[1] See also the following cases[2] as to how youthful offenders are to be dealt with under other Acts.

S. 30.

30*. In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death.

Offences not punishable with death.

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*(CODE OF 1882—S. 30.)

30. In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in Section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

Offences not punishable with death.

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(2) (1932) 1932 Cal. 487 (487, 488): 59 Cal. 856, *Lakhi Sahu* v. *Emperor*.

Note 3.

(1) (1931) 1931 Bom. 198 (199), *Emperor* v. *Natvarlal*.
(1934) 1934 Bom. 211 (212), *Emperor* v. *Jalal*.
[See also (1932) 1932 Mad. W. N. 1076 (1076), *Majji Appalaswamy*, In re.]
(2) (1928) 1928 Lah. 909 (909), *Emperor* v. *Mt. Jannat*.

Note 4.

(1) (1932) 1932 Mad. 213 (214), *Pichiguntla Katti* v. *Emperor*.
(1932) 1932 Mad. W. N. 1076 (1076), *Appalaswamy*, In re.
(2) (1915) 1915 Mad. 841 (841), *Kanukayya* v. *Emperor* (A Second Class Magistrate not empowered to act under S. 8 of the Reformatory Schools Act, 1897, must refer his case to the District Magistrate).
(1933) 1933 Rang. 275 (276), *Emperor* v. *Khin Maung* [Case under the Burma Prevention of Crime (Young Offenders) Act, 1930].
(1932) 1932 Bom. 489 (490), *Mathuradas* v. *Emperor* [Case under Bombay Bor-

SYNOPSIS.

	Note No.	S. 30, Notes 1—2.
LEGISLATIVE CHANGES	1	
SCOPE AND OBJECT	2	
"AS A MAGISTRATE"	3	
PROCEDURE	4	
"ALL OFFENCES NOT PUNISHABLE WITH DEATH" ..	5	
REVISION	6	

Other Topics.

Appeals. See S. 408 (b).
Deputy Commissioner. See Note 3, Pt. 4.
District Magistrate or Magistrate of the First class. See Note 1.
Magistrate must purport to act as such. See Note 3, Pt. 1.
Magistrate trying under this section cannot try the approver. See Note 3, Pts. 1 and 2.
Power of District Magistrate. See Note 5.
Sentences which may be passed by various Courts. See Ss. 31 to 37.
What cases District Magistrates should not try. See Note 5, Pt. 7.

1. Legislative Changes.—Under the Code of 1861, Ss. 445-A and B, a full power Magistrate could try a case committed to him, as a Court of Session. But since the Code of 1872 a Magistrate specially empowered has power to try cases only as a Magistrate and not as a Court of Session.[1]

The Codes of 1872 and 1882 permitted the conferment of special powers only to District Magistrates. The Code of 1898 allows of other First Class Magistrates being invested with such powers.

2. Scope and object.—The object of conferring special powers on District Magistrates is to accelerate proceedings at the trial by avoiding the delay consequent on commitment to the Sessions Court. It is also intended to afford relief to those who have to attend as witnesses in the Court.[1] As to the sentence that can be passed by specially empowered Magistrates, *see* S. 34.

(CODE OF 1872—S. 36.)

Powers with which Dy. Commissioners and chief executive officers of District may be invested.

In the territories subject to the Lieutenant Governor of the Punjab, and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the District in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate. Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation.

(CODE OF 1861—Nil.)

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stal Schools Act (XVIII of 1929)].

(1932) 1932 Sind 175 (177): 26 S. L. R. 295, *Issa* v. *Emperor* (Do.).

Section 30—Note 1.

(1) (1878) 5 N.-W.P. 219 (220), *Queen* v. *Poorun*.

Note 2.

(1) (1903) 7 Cal. W. N. 457 (460), *Amir Khan* v. *Emperor*.

S. 30, Notes 3—5.

3. **"As a Magistrate".**—The section makes it clear that the cases tried by the specially empowered Magistrate shall be tried by him *as a Magistrate*. Hence if he tenders pardon under S. 337 he is precluded from trying the case himself.[1] Nor can a committal be made to him.[2] Where a case was committed under the Code of 1861 to a full power Magistrate as Sessions case, but at the time of the receipt of the case by the Magistrate the new Code of 1872 came into force and deprived the Magistrate of the power to try cases as a Court of Session, it was held that the Magistrate had no power to ignore the order of committal and deal with the case under S. 36.[3]

A Magistrate of the First class who is holding a preliminary enquiry into a case triable by a Court of Session has jurisdiction either to commit it to a Court of Session or to discharge the accused. He cannot make over the case to a District Magistrate specially empowered under S. 30. Where, however, no prejudice had been caused to the accused by reason of his having been convicted by a District Magistrate instead of by the Sessions Court, the conviction was maintained.[4]

The fact that a case described in the eighth column of Sch. II as one triable by a Court of Session is tried by a Magistrate specially empowered, does not however alter its nature or make it a case "triable by a Magistrate" within the meaning of S. 250. Hence a Magistrate trying such a case cannot award compensation. The words "triable by a Magistrate" occurring in S. 250, must mean triable under S. 28 of the Code by a Magistrate.[5]

4. **Procedure.**—The Court of the District Magistrate exercising enhanced powers is nevertheless not constituted a Court of Session thereby, but remains that of a Magistrate and the procedure for the trial is regulated by Chap. XXI and not by Chap. XXIII.[1]

A Magistrate acting under this section has no power to try an accused person summarily.[2]

5. **"All offences not punishable with death".**—This section must be read as qualifying Ss. 28 and 29 of the Code. All offences not punishable with death may be tried by Magistrates empowered under this section notwithstanding that under Ss. 28 and 29 they are triable by the Courts specified in the 8th column of the second schedule of the Code.[1] Thus a person accused under S. 120-B of the Penal Code of being a party to a criminal conspiracy to commit an offence punishable with death, can, according to the second schedule be tried only by a Court of Session. This section will enable a Magistrate empowered

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Note 3.

(1) (1906) 4 Cri. L. Jour. 44 (46) (Cal.), *Paban Singh* v. *Emperor*.
[See also (1925) 1925 Nag. 119 (119), *Kishore* v. *Emperor*.]
(2) (1873) 1873 Pun. Re. 17, p. 19 (20), *Crown* v. *Pirum Ditta*.
(3) (1873) 5 N.-W.P. 219 (220), *Queen* v. *Poorun*.
(4) (1903) 7 Cal. W. N. 457 (460), *Amir Khan* v. *Emperor*.
(5) (1902) 1902 Pun. Re. 26, p. 74 (75), *Ram Ditta* v. *Qadu*.
(1910) 11 Cri. L. Jour. 396 (396) (Lah.), *Ramzan* v. *Mt. Rajam*.

Note 4.

(1) (1904) 1 Cri. L. Jour. 1063 (1065): 1904 Pun. Re. 15, *Jaloo* v. *Emperor*.
(1916) 1916 Nag. 97: 12 Nag. L. R. 94, *Yado* v. *Emperor*.
(2) Colm. Dig. Cr. 42 of 1876, *Police* v. *Mahbir*.
(1879) 1879 Pun. Re. 25, pp. 75 (75), *Fazlu* v. *Empress*.

Note 5.

(1) (1926) 1926 Nag. 374 (375), *Devaji* v. *Emperor*.
(1912) 1912 Pun. L. R. 228, *Ujagar Singh* v. *Emperor*.

under it, to try the case provided no murder has taken place in pursuance of the conspiracy.[2] S. 30, Notes 5—6.

Where a case is *prima facie* one of murder a Magistrate specially empowered under this section has no power to try it.[3] Where there is evidence which, if believed, would sustain a charge of murder, it is undesirable that the Magistrate should, under this section, try the case for a minor offence.[4]

There is a conflict of opinion as to whether an offence of culpable homicide not amounting to murder is one that can be tried by a Magistrate empowered under this section. According to the Chief Court of Punjab it is not, the reason being that the Criminal Procedure Code does not contemplate a charge under the first part of S. 304 independently of a charge under S. 302 (murder) inasmuch as culpable homicide is *prima facie* murder unless the accused is able to show that he comes within any of the exceptions to S. 300.[5] The Judicial Commissioner's Court of Peshawar has, on the other hand, held that there is no want of *jurisdiction* in the specially empowered Magistrate trying an offence under the first part of S. 304 though the *proper thing* to do is to commit the case to the Sessions Court and not to try the case himself.[6]

Cases on the border line of jurisdiction and cases of great difficulty ought to be committed rather than be tried by the Magistrate under this section.[7] As a general rule the cases which a Magisrate empowered under S. 30 should refrain from trying are *firstly*, those in which a sentence more severe than he could inflict under S. 34, *infra*, appears to be called for and *secondly*, those cases in which the issues are so complex, or the difficulty of ascertaining the true facts or of correctly applying the law to them so considerable as to make a trial before a Sessions Judge with the aid of assessors more appropriate than a trial before a Magistrate under this section.[8]

Where a Sessions Judge is of opinion that a Magistrate empowered under S. 30 has tried a case which he was not competent to try, he should send the case to the High Court for an order that the accused be committed for trial to the Court of Session.[9]

Though a case may be triable by a specially empowered Magistrate he is not precluded from committing it to a Court of Session if there are good reasons for his doing so.[10]

6. Revision.—A Court of a Magistrate exercising enhanced powers and trying cases triable by a Court of Session is nevertheless not a Court of co-ordinate jurisdiction but is inferior to a Sessions Court and subject to its revisional powers.[1] A Magistrate who is not a District Magistrate, but is invested

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(2) (1925) 1925 Lah. 157 (158), *Hussain* v. *Emperor*.
(3) (1928) 1928 Lah. 868 (869), *Emperor* v. *Manga*.
(1908) 8 Cri. L. Jour. 263 (264): 1908 Pun. Re. 14, *Hazara Singh* v. *Bisher Singh*.
[See also (1882) 5 C. P. L. R. 38, *Empress* v. *Atmaram*.]
(4) (1884) 10 Cal. 85 (86), *Empress* v. *Paramananda*.
(5) (1891) 1891 Pun. Re. No. 8, p. 8 (9), *Gurdit Singh* v. *Empress*.
(1893) 1893 Pun. Re. No. 1, p. 20, *Mangal Singh* v. *Empress*.
(6) (1922) 69 Ind. Cas. 454 (456) (Pesh.), *Mir Alam* v. *Emperor*.
(1922) 69 Ind. Cas. 459 (459) (Pesh.), *Emperor* v. *Sardar*.
(7) 1 Bur. L. R. 158, *Nga Khan*, In re (Attempting to wage war against the Queen. Case not to be tried as dacoity by District Magistrate].
(8) (1893-1900) L. B. R. 219 (219), *Saw Kadu* v. *Empress*.
(9) (1926) 1926 Lah. 575 (575), *Emperor* v. *Shamira*.
(10) (1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman*.

Note 6.

(1) (1904) 1 Cri. L. Jour. 1063 (1065): 1904 Pun. Re. 15, *Jalloo* v. *Emperor*.

S. 30, Note 6. with enhanced powers, is nevertheless subordinate to the District Magistate in the same way and to the same extent as any other Magistrate of the first class in the same district, and his orders are open to revision by the District Magistrate under Ss. 436 and 437.[2]

B—Sentences which may be passed by Courts of various classes.

S. 31. **Sentences which High Courts and Sessions Judges may pass.**

31.* (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

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*(CODE OF 1882—S. 31.)

B.—Sentences which may be passed by Courts of various classes.

31. A High Court may pass any sentence authorized by law.

Sentences which High Courts and Sessions Judges may pass.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

(CODE OF 1872—Ss. 15, 17 and 18.)

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division:

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges, who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

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(2) (1916) 1916 Nag. 97: 12 Nag. L. R. 94, *Yado v. Emperor.*

SYNOPSIS.

		Note No.
I	LEGISLATIVE CHANGES	1
II	"ANY SENTENCE AUTHORISED BY LAW"	2
	(1) SOLITARY CONFINEMENT AND WHIPPING	3
	(2) TRANSPORTATION	4
	(3) IMPRISONMENT	5

S. 31, Note 1.

Other Topics.

Appeal from Assistant and Additional Sessions Judge. See Ss. 408, 410.
Confirmation of sentence of death. See S. 374.
Commutation lawful. See Note 4, Pts. 1 to 3.
European British subject. See S. 34-A.
Reference and Revision by Additional Sessions Judge. See S. 438 (2).
Transportation in default of fine. See Note 4, Pt. 3.

1. Legislative Changes.—Under the Code of 1872 an assistant Sessions Judge had no power to award a sentence of transportation or to commute a sentence of imprisonment to one of transportation.[1] Both under the Codes of 1872 and 1882 a sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge was subject to confirmation by the Sessions Judge and even when an Assistant Sessions Judge passed sentences under

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Any sentence of more than three years imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

(CODE OF 1861—S. 22, Paras. 1, 2 and 3.)

By what Courts the offences mentioned in the schedule are triable and within what limits such Courts may pass sentence.

22. The offences mentioned in the schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said schedule, be triable by the Courts specified in Column 7 of the said schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits, (that is to say).

Powers of Court of Session.

The Court of Session. Death (subject to confirmation by the Sudder Court). Transportation, imprisonment of either description for a period not exceeding fourteen years, including such solitary confinement as is authorized by law, or fine to an unlimited amount, or both transportation and fine or imprisonment and fine, in cases in which both punishments are authorized by the Indian Penal Code. In cases in which, according to the Indian Penal Code, forfeiture of property may be adjudged, the Court of Session may adjudge such forfeiture in addition to the sentence.

Assistant Sessions Judges in Bombay.

In the Presidency of Bombay it shall be lawful for a Sessions Judge to delegate cases for trial by an Assistant Sessions Judge; and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits:—Imprisonment of either description for a term not exceeding seven years (including such solitary confinement as is authorized by law), or fine, or both. If the sentence be one of imprisonment for a term exceeding three years, it shall be passed subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals against the proceedings of his Assistants, and may confirm and amend (but not so as to enhance), or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate. S. 35 aggregating to more than three years the aggregate of sentences was deem-

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Queen-Empress v. *Balkrishna*.

Section 31—Note 1.

(1) (1879) Rat. Un. Re. Cr. Cas. 144 (144).

S. 31, Notes 1—4.

ed to be a single sentence, for purposes of confirmation.[2] When a sentence was referred to the Sessions Judge for confirmation he had no power to enhance it.[3]

Under Act IV of 1862 (repealed by Act X of 1872) a Sessions Judge could pass a sentence of death.[4] Now, however, death sentences passed by a Sessions Judge are operative only on confirmation by the High Court.[5]

2. **"Any sentence authorised by Law".**—The punishment of penal servitude is applicable only to Europeans and Americans and its infliction on others is illegal.[1] The punishment of forfeiture formerly provided by Ss. 61 and 62 of the Penal Code has now been done away with by the repeal of those sections. Even when such a punishment was provided for it was held that it could be imposed only in rare cases of an exceptionally atrocious character.[2]

3. **Solitary confinement and whipping.**—Solitary confinement cannot be awarded for an offence not punishable under the Penal Code but under a Local Act.[1] Nor can it be awarded where the substantive punishment awarded does not include imprisonment but only fine.[2] Cumulative sentences of solitary confinement are contrary to the intention of S. 73 of the Indian Penal Code.[3] (See S. 73 of the Penal Code).

If a sentence of whipping is passed under S. 3 of the Whipping Act no other punishment can be awarded,[4] but in respect of offences falling under S. 4 of the said Act whipping may be awarded either in addition to or in lieu of any other punishment.[5] An offender who does not come under Ss. 3, 4 or 5 of the Whipping Act cannot be punished with whipping.[6]

4. **Transportation.**—Under S. 559 of the Penal Code transportation can be substituted for imprisonment by the Court which sentences the offender. As to conditions under which this could be done see S. 59 of the Penal Code and the undermentioned cases.[1] Under Sec. 59 of the Penal Code transportation cannot be given for an offence under a special or Local Act[2] and the section does not authorise the substitution of transportation for imprisonment when the imprisonment is awarded not as a substantive sentence but in *default*

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(2) (1876) 1 Bom. 223 (224), *Reg.* v. *Rama Bhivgowda.*
(3) (1880) 4 Bom. 239 (240), *Imperatrix* v. *Ramaprema.*
(4) (1870) 14 Suth. W. R. Cr. 76 (76), *Queen* v. *Busti Singh.*
(5) (1895) Rat. 806 (814).

Note 2.

(1) (1896) 19 Mad. 483 (485), *Empress* v. *Duma Baidya.*
(2) (1906) 4 Cri. L. Jour. 371 (372): 29 All. 25, *Emperor* v. *Amritlal.*
(1908) 7 Cri. L. Jour. 349: 1908 Pun. Re. 7, *Maghar Singh* v. *Emperor.*

Note 3.

(1) (1870) 1870 Pun. Re. No. 20, p. 35 (36), *Harnarain* v. *The Crown.*
(1924) 1924 Lah. 667 (667), *Emperor* v. *Nazir Singh.*
(2) (1882) 1882 Pun. Re. No. 9, p. 13 (13), *Bunsi* v. *Empress.*
(3) (1923) 1923 Rang. 197 (198): 1 Rang. 306, *Emperor* v. *Nga Sein Po.*
(4) (1892) 16 Bom. 357 (358), *Empress* v. *Dagadu.*
(1925) 1925 Mad. 183 (184), *Varadarajulu* v. *Emperor.*
(5) (1922) 1922 All. 245 (246): 44 All. 538, *Badri Prasad* v. *Emperor.*
(6) (1928) 1928 Oudh 111 (111): 1 Luck. 668, *Jagannath* v. *Emperor.*

Note 4.

(1) (1865) 3 Suth. W. R. Cr. 44 (44), *Queen* v. *Tonooram.*
(1907) 6 Cri. L. Jour. 290 (291): 4 L. B. R. 65, *Sen Da* v. *Emperor.*
(1901) 1901 Pun. Re. No. 27, p. 87, *Salar Baksh* v. *Emperor.*
(1866) 1866 Pun. Re. No. 68, p. 69, *Crown* v. *Sunda.*
(1864) 1864 Suth. W. R. 35 (35) (Cr.) (Gap.).
(1866) 5 Suth. W. R. Cr. 44 (44), *Queen* v. *Shonaullah.*
(1919) 1919 All. 327 (327), *Alla-ud-din* v. *Emperor.*
(1866) 5 Suth. W. R. Cr. 16 (17), *Queen* v. *Mohanundo Bhundary.*
(1903) 1903 Pun. Re. 31, p. 77 (77), *Arura* v. *Emperor.*
(1875) 1 All. 43 (45) (F. B.), *Queen* v. *Naida.*
(1921) 1921 P. C. 24 (25): 44 Mad. 297: 48 Ind. App. 35 (P. C.), *Chinnayya Dhora* v. *Emperor.*
(2) (1901) 11 Mad. L. Jour. 127 (128), *Muthuramalingam* v. *Muthalagu.*

of payment of a fine.[3] If a Court awards transportation under S. 75 of the Penal Code it must be for life[4] but read with S. 59 it may commute a sentence of imprisonment to one of transportation for not less than 7 years but not exceeding 10 years.[5] S. 31, Notes 4—5.

5. **Imprisonment.**—Punishment by imprisonment under the Penal Code means that the offender shall go to jail. As to the propriety of passing a sentence of imprisonment till the rising of the Court see Note 4 to S. 32 *infra*.

An order directing that any period undergone as an under-trial prisoner should be considered as part of the sentence, is illegal.[1] Under S. 75 of the Penal Code on a second conviction a sentence of imprisonment for more than double the prescribed term is illegal.[2] S. 64 of the Penal Code prohibits only the running of a term of imprisonment in default of fine concurrently with a previously awarded term of imprisonment and it is not strictly illegal to order that a term of imprisonment subsequently ordered should run concurrently with a term of imprisonment being undergone at the time in default of payment of a fine. But such an order is opposed to the spirit of S. 64 and should not be passed.[3]

An order sending an offender to a reformatory school cannot be passed in default of fine but only where the offender is sentenced to imprisonment or transportation.[4]

32.* (1) The Courts of Magistrates may pass the following sentences, namely:— S. 32.

Sentences which Magistrates may pass.

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class.	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law; Fine not exceeding one thousand rupees; Whipping.
(*b*) Courts of Magistrates of the second class.	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees;
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

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*(CODE OF 1882—S. 32.)

Sentences which Magistrates may pass. 32. The Courts of Magistrates may pass the following sentences, namely:—

(3) (1882) 5 Mad. 28 (29), *Kunhussa* v. *Queen.*
(4) (1882) 1882 Pun. Re. No. 38, p. 64, *Empress* v. *Ismail.*
(5) (1902) 1 Low. Bur. Rul. 292 (293), *Tha Zan* v. *Crown.*
(1893-1900) 2 Low. Bur. 482 (482).
(1915) 1915 Lah. 76: 1915 Pun. Re. 14, *Mohd. Shariff* v. *Crown.*
Note 5.
(1) (1923) 1923 Lah. 104, *Danga Khan* v. *Emperor.*
(1893-1900) 2 Low. Bur. Rul. 42 (42).
(1908) 7 Cri. L. Jour. 453 (453): 4 L. B. R. 152, *Emperor* v. *Tha Hnun.*
(2) (1882) 1882 Pun. Re. No. 38, p. 63 (64), *Empress* v. *Ismail.*
(3) (1931) 1931 Rang. 51 (51), *Emperor* v. *Ibrahim.*
(4) (1911) 12 Cri. L. Jour. 244 (244) (Rang.), *Nga P Tok* v. *Emperor.*

S. 32.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
GENERAL PRINCIPLES AS TO PUNISHMENTS	3
IMPRISONMENT	4
SOLITARY CONFINEMENT	5
FINE	6
WHIPPING	7
"MAY PASS ANY LAWFUL SENTENCE"	8

Other Topics.

Compensation out of fine. See Note 6, Pt. 9.

Discretion in passing sentence. See Note 3, Pt. 3.

Fine—Means of the accused. See Note 6. Pt. 5.

Fine under special Law. See Note 6, F.N. 2.

Imprisonment by Presidency or First Class Magistrate. See Note 2, Pt. 8.

Nature of sentence should be defined. See Note 3, Pt. 33.

Order for daily fine. See Note 6, Pt. 4.

Penal Code, S. 75. See Note 2, Pts. 2 and 3.

Second Class Sub-Divisional Magistrate—Powers of, under S. 106. See Note 2, Pt. 9.

Solitary confinement in respect of several offences. See Note 5, Pt. 11.

Solitary confinement in summary trials. See Note 5, Pt. 10.

(*a*) Courts of Presidency Magistrates and of Magistrates of the First Class.	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees: Whipping:
(*b*) Courts of Magistrates of the Second Class.	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the Third Class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

(CODE OF 1872—S. 20.)

Sentences which Magistrates may pass.

The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows:—

Magistrates of the First Class may pass the following sentences:—

S. 32, Note 1.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872—

At the time when the Code of 1861 was passed, whipping was not a punishment which could be awarded under the Penal Code.[1] Subsequently, however, the Whipping Act (VI of 1864) was passed and the punishment of whipping was thereby recognised in certain cases; such punishment was to be considered as one of the penalties prescribed by the Penal Code.[2] Under S. 8 of the Act VI of 1864 a Magistrate of the District, a Subordinate Magistrate of the first class or a specially empowered Magistrate could pass a sentence of whipping.[3] The Code of 1872 introduced the provision as to whip-

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Powers of Magistrates, First Class.

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);
Fine to the extent of one thousand rupees;
Whipping.

Magistrates of the Second Class may pass the following sentences:—

Powers of Magistrates, Second Class.

Imprisonment not exceeding six months (including such solitary confinement as is authorized by law);
Fine not exceeding two hundred rupees;
Whipping.

Magistrates of the Third Class may pass the following sentences:—

Powers of Magistrates, Third Class.

Imprisonment not exceeding one month;
Fine not exceeding fifty rupees.

A Magistrate of the third class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence; combining any of the sentences which he is authorized by law to pass.

(CODE OF 1861—S. 22, Paras, 4 to 8.)

The Magistrate of the District or other officer authorized to exercise the powers of a Magistrate. Imprisonment of either description not exceeding the term of two years, including such solitary confinement as is authorized by law, or fine to the extent of one thousand rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

Powers of the Magistrate of the District.

Subordinate Magistrates or Officers authorized to exercise any of the powers of a Magistrate:—

First Class.—Imprisonment of either description not exceeding six months, or fine not exceeding two hundred rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

Powers of Subordinate Magistrates, First Class.

Second Class.—Imprisonment of either description not exceeding one month, or fine not exceeding fifty rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

Powers of Subordinate Magistrates, Second Class.

No sentence of solitary confinement, under Section 73 of the Indian Penal Code, shall be passed by any Court inferior to an Officer exercising the powers of a Magistrate.

Section 32—Note 1.

(1) (1869) 4 Mad. H. C. R. App. lxiv (lxiv).
(2) (1871) 15 Suth. W. R. 89 (91), *Monirud-deen Shamadar* v. *Goor Chundar Shamadar.*
(3) (1868) 9 Suth. W. R. 41 (41, 42), *Nassir* v. *Chundar.*

S. 32, Notes 1—2.

ping in S. 20 thereof and S. 8 of the Act VI of 1864 was repealed. According to S. 20 of the Code of 1872, a sentence of whipping could be passed by a Magistrate of the first class or second class.

2. A sentence of *solitary confinement* could, under the Code of 1861, be only passed by an officer exercising powers not less than that of a Magistrate—corresponding to First Class Magistrate under the Code of 1872. Under the latter Code, even a Second Class Magistrate had such power.

3. The powers given to the *Magistrate of the District, or officer exercising the powers of a Magistrate* (which meant the *full* powers of a Magistrate), a Subordinate Magistrate of the *first class* and a Subordinate Magistrate of the *second class* under the Code of 1861, were conferred on Magistrates of the first class, second class and third class respectively under the Code of 1872.

Differences between the Codes of 1872 *and* 1882—

Under sub-S. 3 of S. 32 of the Code of 1882 a Second Class Magistrate could pass a sentence of whipping only when he was *specially empowered in that behalf* by the Local Government.[4]

Change made in 1898—

The words "if specially empowered" were added after the word "whipping" in sub-S. 1 (b) to conform to sub-S. 3 of the Code of 1882.

Change made in 1909—

Sub-S. 3 and the words "whipping, if specially empowered" in sub-S. 1 (b) were repealed by the Whipping Act IV of 1909. A Second Class Magistrate cannot now pass a sentence of whipping.

2. Scope of the Section.—This section lays down the extent of the *punishment* which a Magistrate by his ordinary jurisdiction, is competent to inflict[1] and Ss. 36 and 37 *infra* deal with the ordinary and additional powers of Magistrates under the Code in other respects. A Magistrate cannot exceed the limit prescribed by the section and pass a sentence which he is not authorised to pass.[2] Thus he cannot sentence a person under S. 75 of the Penal Code as being a previous offender and award an enhanced punishment exceeding the limits of his power under this section.[3] Even a request on the part of the accused will not enable him to do so.[4] Nor can a Magistrate acting under S. 395 *infra* inflict any sentence exceeding his limit.[5] Similarly a Magistrate even though specially empowered under S. 30 cannot, when exercising *his ordinary powers*, pass a sentence greater than that allowed by this section.[6] Again an Appellate Court, in varying a sentence, is bound by the limitations imposed by this section on the trial

(4) (1883) 7 Bom. 303 (304), *Emperor* v. *Bhagranta*.

Note 2.

(1) (1868) 9 Suth. W. R. 41 (41), *Nassir* v. *Chundar*.
(2) (1871) 1871 Rat. 49 (49), *Reg.* v. *Vithya*.
(1863) 1 Bom. H. C. R. 87 (88), *Reg.* v. *Arjun*.
(1864) 2 Bom. H. C. R. 126 (127), *Reg.* v. *Ganu Ladu*.
(1929) 1929 Rang. 279 (279): 7 Rang. 358, *Nga Mya* v. *Emperor*.
(3) (1865) 1 Weir 86 (86).
(1893-1900) L. B. R. 78 (78), *Queen-Empress* v. *Nga Tun Tha*.
(1870) 6 Mad. H. C. R. App. ii (iii).
(1894) 1894 Rat. 688, *Gulab*.
(1904) 1 Cri. L. Jour. 607 (608, 609) (Bom.), *Emperor* v. *Davil Narsu*.
(1905) 2 Cri. L. Jour. 749 (750): 1 N. L. R. 137, *Ghasia Teli* v. *Emperor*.
(4) (1869) 3 Beng. L. R. App. 50 (52), In re *Krishnanand*.
(5) (1902) 2 Weir 449 (449), *Petitioner Karat Ahmad*.
(6) (1933) 1933 Bom. 58 (59): 34 Bom L. R. 1676, *Emperor* v. *Ramachandra Ganesh*.

Court. Thus where the Appellate Court affirmed the conviction passed by a Magistrate of the second class but changed the sentence from one of three months simple imprisonment to one of fine of *four* hundred rupees, the sentence was held to be illegal.[7] The *High Court,* however, has under S. 439 *infra* power to enhance the sentence beyond the power of the trying Magistrate the limit of such enhancement being the sentence that could be passed by a Presidency Magistrate or a Magistrate of the first class not specially empowered under S. 30.[8] S. 32, Notes 2—3.

The provisions of this section do not affect the powers of a Magistrate under S. 106 to bind over a person to keep the peace for a period exceeding that for which he can pass a sentence of imprisonment under S. 32. Thus a Second Class Magistrate, who is also a *Sub-Divisional Magistrate*, is not limited by this section from binding over a person to keep the peace for a period of six months only but can go as far as S. 106 allows even though the order carries with it an alternative sentence of imprisonment if the security is not furnished.[9]

3. **General principles as to punishments.**—The mere fact that, under this section a Magistrate can award a punishment *not exceeding* a certain limit, does not mean that the maximum punishment prescribed by Law should follow *automatically* upon the conviction.[1] Such punishment should be awarded only in extreme cases.[2] The Magistrate should exercise a judicial discretion in each case and pass an adequate sentence after taking into consideration all the pertinent circumstances of the case,[3] such as

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(7) (1924) 1924 All. 130 (130): 45 All. 594, *Mohd. Yakub* v. *Emperor.*
(8) (1915) 1915 Sind 33: 9 Sind L. R. 82, *Emperor* v. *Kamal.*
(9) (1915) 1915 All. 15: 37 All. 230, *Emperor* v. *Raja.*

Note 3.

(1) (1929) 1929 Lah. 29 (30): 10 Lah. 524, *Kehr* v. *Emperor.*
(1928) 1928 Nag. 188 (189): 24 Nag. L. R. 110, *Sitaram Kunbi* v. *Emperor.*
(2) (1929) 1929 All. 919 (924), *Ganga Sayar* v. *Emperor.*
(1867) 8 Suth. W. R. Cr. 3 (3), *Queen* v. *Mussamat Bhoodeea.*
(3) (1930) 1930 Sind 58 (59), *Murido* v. *Emperor.*
(1930) 1930 All. 279 (279), *Emperor* v. *Maiku* (Sentence in each case should be proportionate to the nature and gravity of the crime).
(1931) 1931 Cal. 448 (450): 58 Cal. 392, *Emperor* v. *Yar Mohd.*
(1930) 1930 Lah. 867 (870), *Om Prakash* v. *Emperor* (Measure of punishment must consequently vary from time to time according to the prevalence of a particular form of crime and other circumstances).
(1918) 14 Cri. L. Jour. 606 (607).
(1930) 1930 Mad. W. N. 74 (76), *In re Shanmuga Kudumban.*
(1931) 1931 Mad. W. N. 265 (266), *Kandaswamy Nayakar* v. *Emperor* (Deterrent sentence may be given while popular feeling seems high and should be reviewed in a calmer reason with regard to the precise offence committed by each person).
(1921) 1921 Mad. 303 (303), *In re Bhyni Rajayye.*
(1927) 1927 Nag. 49 (50), *Emperor* v. *Akosh Kunbi.*
(1927) 1927 Nag. 221 (221), *Mt. Nanhi Goud* v. *Emperor.*
(1918) 1918 L. B. 60 (61): 9 L. B. R. 167, *Po Nyein* v. *Emperor.*
(1911) 12 Cri. L. Jour. 448 (449): 1911 U. B. R. 87, *Nga Tha Kin* v. *Emperor.*
(1917) 1917 U. B. 2 (Rang.), *Kesavier* v. *King-Emperor.*
(1929) 1929 Sind 253 (255), *Sanwaldas Kundam Das* v. *Emperor.*
(1909) 10 Cri. L. Jour. 239 (243): 2 Sind L. R. 27, *Emperor* v. *Huzari.*
(1930) 1930 Sind 225 (240), *Mohd. Yusif* v. *Emperor.*
(1933) 34 Cri. L. Jour. 271 (273) (Nag.), *Emperor* v. *Dukhala.*
(1926) 1926 Jour. 179 (179), *Anant Prasad Ray* v. *Emperor.*
(1931) 1931 Lah. 97 (97), *Sham Lal* v. *Emperor.*
(1889) 16 Cal. 310 (323), *The Government of Bengal* v. *Umesh Chunder* (Good character of accused is an extenuating circumstance).
[See (1872-1892) Low. Bur. Rul. 332 (332), *Queen-Empress* v. *Nyo Ke.*
(1934) 1934 Pat. 114 (116), *Kedar Nath Sahay* v. *Emperor* (Money extracted for charitable institutions but pocketed by Collector himself—No reduction of sentence).
(1931) 1931 Lah. 523 (524), *Ghauns* v. *Emperor* (Deceased using abusive and

S. 32, Note 3.

youth, age, sex, illness, motive, drunkenness, insanity or ignorance of law of the accused.[4] The fact that the offence, was a first offence,[5] or was committed

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provocative language—Accused giving only one blow—Sentence of five years' rigorous imprisonment considered excessive and reduced to three years).
(1867) 8 Suth. W. R. 18 (19), *Kalachand* v. *Boida* (A deliberate attempt of pervert justice by fabricating false statement—Sentence of three years held to be not too severe).
(1927) 1927 Mad. 66 (67): 50 Mad. 479, *Peddamalla Reddi*, In re (Offence under S. 294-A, Indian Penal Code—Lottery not carried out—Sentence reduced).]
[See also (1893-1900) Low. Bur. Rul. 352 (352), *Naga Po Thaung* v. *Queen-Empress*.
(1897-1901) 1 U. B. R. 318 (319), *Queen-Empress* v. *Nga Seik*.
(1918) 1918 Nag. 50 (51), *Local Government* v. *Pyare Lal*.
(1866) 6 Suth. W. R. Cr. 59 (59), In re *Ram Golam Singh*.
(1925) 1925 Nag. 74 (76), *Soosalal* v. *Emperor*.
(1927) 1927 Cal. 693 (701), *Satyaranjan Bakshi* v. *Emperor* (The object of the Crown in instituting proceedings of this nature is not to take vindictive action).
(1921) 1921 Pat. 63 (65, 66), *Mata Ho* v. *Emperor* (Do.).
(1928) 1928 All. 150 (154), *Emperor* v. *Badan Singh*.
(1910) 11 Cri. L. Jour. 421 (422): 1910 Pun. Re. No. 16, *Sant Singh* v. *Emperor* (Technical offence, nominal sentence is always quite sufficient).
(1924) 1924 All. 200 (201), *Nihal Mohd.* v. *Emperor*.
(1930) 1930 Lah. 100 (100), *Harnam Das* v. *Emperor*.
(1933) 1933 Lah. 311 (311), *Altaf Hussain Shah* v. *Emperor*.
(1933) 1933 Oudh 269 (272), *Chhote Lal* v. *Emperor*.
(1933) 1933 Lah. 481 (481), *Ghulam Mohd.* v. *Emperor*.
(1917) 1917 Mad. 899 (899), *Blamboyil Kutta Sheri Ahmad*, In re.
(1916) 1916 Lah. 269 (269), *Waris* v. *Emperor*.
(1916) 1916 All. 175 (175), *Badri Prasad* v. *Emperor* (Savage sentences are unjustifiable).
(1926) 1926 Bom. 255 (255), *Framji Bomanji Banaji* v. *Emperor*.
(1924) 1924 Cal. 18 (44), *Billinghurst* v. *Blackburn*.]
(4) (1926) 1926 Mad. 1165 (1166): 50 Mad. 474, *Mayandi Thevan* v. *Emperor*.
(1929) 1929 Mad. 841 (842): 53 Mad. 80, *Karuppa Tevan* v. *Emperor*.
See also the following cases:—
Youth and Sex.
(1933) 1933 Cal. 1 (2, 3) (F.B.), *Prodyot Kumar Bhattacharjya* v. *Emperor*.
(1933) 1933 Cal. 140 (140), *Zaman* v. *Emperor*.
(1907) 6 Cri. L. Jour. 411 (413), *Pindi Das* v. *Emperor*.
(1930) 1930 Lah. 424 (425), *Tirathram* v. *Emperor*.
(1928) 1928 Lah. 531 (532), *Amir* v. *Emperor*.
(1929) 1929 Lah. 64 (66), *Thakar Singh* v. *Emperor*.
(1930) 1930 Mad. 972 (973): 53 Mad. 861, *Kolanda Nayakar* v. *Emperor*.
(1922) 1922 Nag. 66 (66), *Kacharia Mahar* v. *Emperor*.
(1926) 1926 Nag. 461 (463): 22 Nag. L. R. 104, *Madho* v. *Emperor*.
(1930) 1930 Lah. 50 (51), *Gehna Sardara* v. *Emperor*.
(1915) 1915 Mad. 542 (545), *Muniandi* v. *Emperor*.
(1917) 1917 Mad. 667 (668), *Emperor* v. *Muthiah Chetti*.
(1918) 1918 L. B. 58 (59), *Chit Tha* v. *Emperor*.
(1928) 1928 Notes 9 (e) (10), *Mohd. Sultan* v. *Emperor*.
Old Age.
(1931) 1931 Bom. 70 (73): 55 Bom. 220, *Emperor* v. *Sakina Bai Badruddin Lukman*.
(1930) 1930 Lah. 874 (875), *Sham Das* v. *Emperor*.
Illness.
(1904) 1 Cri. L. Jour. 477 (477): 2 Low. B. R. 209, *King-Emperor* v. *Appalswamy*.
Motive.
(1924) 1924 Lah. 654 (656), *Pirthe* v. *Emperor*.
(1923) 1923 Oudh 180 (181), *Chintaman* v. *Emperor*.
(1932) 1932 Cal. 651 (652), *Kailash Chandra* v. *Emperor*.
(1928) 1928 Pat. 159 (160): 6 Pat. 471, *Rekha Rai* v. *Emperor*.
Drunkenness.
(1923) 1923 Cal. 460 (462), *Emperor* v. *Tincouri Dhopi*.
(1917) 1917 Lah. 226 (230): 1917 Pun. Re. No. 28, *Pal Singh* v. *The Crown*.
(1923) 1923 Lah. 294 (294), *Jaimal Singh* v. *Crown*.
(1926) 1926 Lah. 232 (233): 7 Lah. 50, *Sheru* v. *Emperor*.
(1911) 12 Cri. L. Jour. 477 (478), *Nyo Hla Aung* v. *Emperor*.
Insanity.
(1866) 1866 Pun. Re. No. 56, page 63 (63), *Notaram* v. *The Crown*.
(1866) 1866 Pun. Re. No. 109, page 106 (107), *Buhsh* v. *Mt. Oomar*.
(1893-1900) L. B. R. 249 (250), *Nga Po Tha* v. *Empress*.
(1914) 1914 U. B. R. 31: 1915 U. B. R. 28, *Nga Kam Hla* v. *Emperor*.
(1933) 1933 Rang. 144 (146), *Nga Kam Tha* v. *Emperor*.
Ignorance of law.
(1933) 1933 Cal. 332 (333), *Rabindranath Dhar* v. *Emperor*.
(1920) 1920 Lah. 379 (379): 1 Lah. 440, *Must. Nandi* v. *Crown*.
(1929) 1929 Lah. 601 (603), *Joga Singh* v. *Emperor* (Young age, minor part played and influence of bad company were considered as extenuating circumstances).
(1933) 1933 Lah. 718 (720), *Mt. Sardaram* v. *Emperor* (Illiterate woman causing death of child urged by wicked superstition—Lesser penalty should be imposed).]
(5) *First offence.*
(1933) 1933 All. 438 (440): 55 All. 557, *Emperor* v. *Mohd. Ali Khan*.
(1930) 1930 Lah. 424 (425), *Tirath Ram* v. *Emperor*.
(1930) 1930 Lah. 306 (309), *Anand Kishore* v. *Emperor*.

S. 32, Note 3.

on sudden provocation,[6] or in excess of the right of self-defence,[7] or that the accused has made a confession[8] or in cases of defamation or abuse, has made an immediate apology[9] or the fact that in cases of rape or abduction, the woman was a consenting party[10] or was unchaste[11] is a mitigating circumstance to be considered in awarding punishment. On the one hand the theory of deterrent punishment should not be loosely put into practice except where there is a danger of a wide breach of the peace or security.[12] Thus in cases where a gang of desperate men or an unlawful assembly, threatens to defy the law, the heaviest possible sentence should be passed.[13] Similarly the following crimes should also be punished with a deterrent sentence.

(*a*) Arson.[14]
(*b*) Crimes relating to coins.[15]
(*c*) Burglary.[16]
(*d*) Crimes of violence on women.[17]
(*e*) Illegal traffic in drugs[18] or liquor.[19]
(*f*) Extortion by a police officer.[20]
(*g*) Sodomy.[21]
(*h*) Theft in a railway train.[22]

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(6) *Sudden provocation.*
(1927) 1927 All. 105 (106), *Abdul Alim* v. *Emperor.*
(1928) 1928 Lah. 913 (914), *Gaman* v. *Emperor.*
(1916) 1916 Oudh 138 (138), *Puran* v. *Emperor.*
(1929) 1929 Lah. 791 (793), *Shera* v. *Emperor.*
(1930) 1930 Lah. 171 (172), *Khamin* v. *Emperor.*
(1930) 1930 Lah. 311 (312), *Bhartu* v. *Emperor.*
(1932) 1932 Lah. 302 (303), *Hari Singh* v. *Emperor.*
(1931) 1931 Mad. W. N. 134 (136).
(1917) 1917 Low. B. 91 (91), *Emperor* v. *Nga Myat Kaing.*
(1933) 1933 Lah. 165 (166), *Muhammad Zaman* v. *Emperor.*
(1933) 1933 Lah. 126 (126), *Hira Singh* v. *Emperor.*
(1909) 9 Cri. L. Jour. 245 (246): 1 Sind L. R. 1, *Emperor* v. *Behram Walad Chaker.*

(7) *Excessive use of right of self-defence.*
(1914) 1914 Lah. 178 (178), *Giyan Singh* v. *Crown.*
(1924) 1924 Lah. 61 (62), *Mata Singh* v. *Crown.*
(1932) 1932 Lah. 344 (345), *Mustafa* v. *Emperor.*
(1916) 1916 Low. B. 63, *Tun* v. *Emperor.*

(8) (1923) 1923 Nag. 251 (254), *Manjoo* v. *Emperor.*
(1916) 1916 U. B. 1 (1), *Emperor* v. *Nga Saing.*

(9) (1928) 1928 All. 321 (325), *Mohd. Nazir* v. *Emperor.*

(10) (1927) 1927 Lah. 91 (91), *Changi* v. *Emperor.*
(1932) 1932 Lah. 208 (204), *Pritam Singh* v. *Emperor.*
(1911) 11 Cri. L. Jour. 597 (597) (Lah.), *Rasul Khan* v. *Emperor.*
(1914) 1914 Lah. 101 (102), *Lalkhan* v. *Emperor.*
(1926) 1926 Lah. 176 (176): 7 Lah. 35, *Gahra* v. *Emperor.*
(1924) 1924 Oudh 335 (336): 27 Oudh Cas. 32, *Idu* v. *Emperor.*

(11) (1927) 1927 Lah. 772 (772), *Ibrahim* v. *Emperor.*
(1911) 12 Cri. L. Jour. 500 (501), *Ram Chand* v. *Emperor.*

(12) (1922) 1922 Pat. 267 (268, 269), *Gossain* v. *Emperor.*

(13) (1911) 12 Cri. L. Jour. 260 (265) (Lah.), *Ghulam Mustafa* v. *Emperor.*
(1927) 1927 Oudh 151 (154), *Wajidali* v. *Emperor.*
(1929) 1929 Pat. 502 (503), *Jaigi Uraon* v. *Emperor.*

(14) (1924) 1924 All. 781 (782), *Khanjan* v. *Emperor.*
(1931) 1931 Oudh 116 (119): 6 Luck. 539, *Ghafoor Khan* v. *Emperor.*

(15) (1927) 1927 Lah. 220 (221), *Emperor* v. *Sardara Singh.*

(16) (1932) 1932 Lah. 258 (258), *Emperor* v. *Sardara.*

(17) (1929) 1929 Lah. 584 (585), *Kala* v. *Emperor.*

(18) (1927) 1927 Oudh 132 (134): 29 Oudh Cas. 374: 1 Luck. 301, *Ali Abbar* v. *Emperor.*
(1926) 1926 Sind 193 (193): 20 Sind L. R. 70. *Emperor* v. *Mustabi.*
(1927) 1927 Sind 112 (112), *Emperor* v. *Budho.*
(1933) 34 Cri. L. Jour. 180 (181) (Lah.), *Emperor* v. *Dharam Singh.*
(1926) 1926 Sind. 176 (176): 20 Sind L. R. 1, *Emperor* v. *Gulab.*
(1916) 1916 Lah. 345 (345), *Lehna Singh* v. *Emperor.*
[But see (1932) 1932 Lah. 10 (10), *Mehtab Din* v. *Emperor.*]

(19) (1921) 60 Ind. Cas. 658 (659): 1916 Pun. Re. 19, *Emperor* v. *Budha.*
[But see (1892) 5 C. P. L. R. 44 (44), *Empress* v. *Sumer and Pangat.*]

(20) (1897-1901) 1 Upp. B. R. 320 (324).

(21) (1933) 1933 Sind 87 (88), *Saleh Sumer* v. *Emperor.*

(22) (1912) 13 Cri. L. Jour. 531 (531) (Bom.), *Emperor* v. *Ananda Laxman.*

S. 32, Notes 3—4.

On the other hand an accused person is not entitled to get off merely because he is a person of high position and one who has done good service for the Government in the past[23] or because he belongs to a particular caste or community.[24]

A sentence of two years' imprisonment on a juvenile offender will be improper when his adult co-accused with three previous convictions, is awarded only one year's imprisonment.[25] A sentence of solitary confinement, is salutary in the case of old offender convicted of offences against property but is not suitable for persons convicted of culpable homicide not amounting to murder, committed in a moment of grave and sudden provocation.[26] Whipping is not a proper sentence in the case of an accused of some position.[27] But it is more appropriate than a fine[28] in the case of a juvenile offender or a sentence of imprisonment.[29] Cases of petty offences are more appropriately punished by fine than by imprisonment[30] and where it is possible to inflict a fine or a sentence of whipping, short terms of imprisonment should be avoided.[31] Imprisonment, for offences outside the Penal Code, should be given only as a last resort in cases of contumacy.[32]

A Magistrate who pronounces a sentence must define precisely the nature of the sentence intended, as well as the period of detention. Generally the sentence ought to be self-contained like a decree of a civil Court, so that the functionary who has to execute it should have nothing to do but to obey the direction given, without making an inquiry on his own account.[33] Where the Court awards the maximum punishment, it should give the reason therefor.[34]

4. Imprisonment.—Imprisonment may be rigorous or simple. But where the nature of the imprisonment is not specified when the sentence is passed, it must be taken to be simple[1] and where the Magistrate uses the phrase "I

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(23) (1927) 1927 Oudh 319 (320): 1 Luck. 220, *Qabul Ahmad* v. *Emperor.*
(1928) 1928 All. 150 (156), *Emperor* v. *Badam Singh.*

(24) (1932) 1932 Lah. 500 (501), *Lachhmi Narain* v. *Emperor.*

(25) (1922) 1922 Bom. 169 (170): 46 Bom. 429, *Abdul* v. *Emperor.*
[See also (1932) 1932 Sind 143 (144), *Undhram* v. *Emperor* (Other things being equal the same offence should receive the same punishment).]

(26) (1892) 5 C. P. L. R. 48 (50), *Empress* v. *Sonhar.*

(27) (1907) 5 Cri. L. Jour. 217 (218), *Baghel Singh* v. *Emperor.*

(28) (1872-1892) 1 Low. B. R. 221 (221), *Nga Ya Baw.*

(29) (1884) 1884 Pun. Re. No. 3, page 4 (4), *Jiwan* v. *Empress.*
(1934) 1934 Rang. 123 (124): 6 Rang. 291, *Emperor* v. *Shwe Bein.*

(30) (1879) 1 Weir 894 (895).
(1911) 12 Cri. L. Jour. 435 (435) (Lah.), *Chet Singh* v. *Crown.*
(1930) 1930 Pat. 241 (242): 9 Pat. 113, *Narayan Maharana* v. *Emperor.*
(1931) 1931 Pat. 342 (343), *Ananda Parthi* v. *Emperor.*
(1872-1892) Low. B. R. 537 (537), *Queen-Empress* v. *Ma Kye U.*
(1900) 1 Pun. L. R. 52 (53).
(1916) 1916 Bom. 98 (98): 41 Bom. 149, *Emperor* v. *Mohd. Nathu.*
(1924) 1924 Bom. 453 (453), *Emperor* v. *Gala Mana.*

(31) (1872-1892) Low. Bur. 423 (423).

(32) (1931) 1931 Mad. 777 (778), *Uppalapati Bulti Nagayya* v. *Emperor.*
(1913) 14 Cri. L. Jour. 293 (295): 9 Nag. L. R. 68, *Sheikh Moti* v. *Emperor.*

(33) (1901) 24 Mad. 13 (15, 16), *Queen-Empress* v. *Rama.*
(1893) 15 All. 208 (209), *Empress* v. *Narain.*
(1869) 1869 Pun. Re. No. 33, page 63 (63), *Rajada* v. *Crown.*
[See also (1869) 5 Mad. H. C. App. 5 (5).]

(34) (1926) 1926 Lah. 239 (240), *Harnam Singh* v. *Emperor.*

Note 4.

(1) (1872) 18 Suth. W. R. 3 (3), *Government* v. *Radhoo.*
(1907) 11 Cal. W. N. 740 (741), *Sheikh Amir Ali* v. *Matho* (A case under the insolvency law).

S. 32, Notes 4—5.

pass sentence under Ss. 326 and 148'' or whatever the section may be, it must be interpreted to mean that the Magistrate intended to pass concurrent sentences.[2]

A Magistrate has no jurisdiction in awarding a sentence to direct that any portion of the period during which the accused had been detained in custody, as an under-trial prisoner should be computed as part of the sentence.[3] But in estimating what should be the proper sentence, the Court can take into consideration the period of such detention.[4] A sentence of imprisonment until the rising of the Court is good and fulfils the requirements of the law.[5] It has however been held in the undermentioned case[6] of the Madras High Court that punishment by imprisonment means that the offender shall go to *Jail*, that imprisonment till the rising of the Court is a clear evasion of the intention of the statute but that possibly in rare cases where the offence is obviously technical a Court may be justified in taking the extreme step of evading the statute which it is appointed to administer.

It is not competent for a Magistrate to award imprisonment for several periods with interval between each period[7] or to order the accused to suffer imprisonment in a Police lock-up.[8]

A sentence of recurring terms of imprisonment for every breach of an order to pay maintenance, in anticipation of breach, is illegal.[9]

5. **Solitary Confinement.**—S. 73 of the Penal Code provides that whenever a person is convicted of an offence for which, *under that Code* the Court has power to sentence him to rigorous imprisonment, the Court may order the offender to be kept in solitary confinement for the period specified in that section and S. 74 of that Code. The punishment of solitary confinement cannot therefore be awarded for offences not under the Penal Code; but under a Special or Local Act in the absence of a provision therein for imposing such a punishment. Thus it has been held that no solitary confinement can be ordered in cases of convictions under:—

(1) The Arms Act.[1]
(2) The Excise Act.[2]
(3) The Criminal Tribes Act.[3]
(4) The Post Offices Act.[4]
(5) The N.-W. Frontier Rules.[5]

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(2) (1924) 1924 All. 492 (492), *Sohan Abir* v. *Emperor*.
(1923) 1923 Lah. 104 (105), *Dangar Khan* v. *Emperor*.
(3) (1897) 1897 Rat. Un. Re. Cr. Cas. 892 (893), *Sadu*.
(1907) 5 Cr. L. Jour. 217 (217, 218), *Baghel Singh* v. *Emperor*.
(1919) 1919 Lah. 29 (30): 1919 Pun. Re. 27, *Emperor* v. *Asghar Ali*.
(1893-1900) L. B. R. 42 (42).
(1908) 7 Cr. L. Jour. 453 (453): 4 Low. Bur. 152, *Emperor* v. *Hmun*.
(4) (1910) 11 Cr. L. Jour. 9 (10) (Cal.), *Emperor* v. *Nakul Kabiraj*.
(5) (1907) 5 Cr. L. Jour. 217 (217, 218), *Baghel Singh* v. *Emperor*.
[See also (1906) 8 Cr. L. Jour. 494 (496) (Bom.), *Emperor* v. *Bayne*.]
(6) (1929) 1929 Mad. 226 (226), *Kunhi Bawa* v. *Emperor*.
(7) (1927) 1927 Lah. 62 (62, 63), *Rur Singh* v. *Emperor*.
(8) (1914) 1914 L. B. 156 (157): 7 Low. B. R. 62, *Emperor* v. *Po Thin*.
(9) (1870) 5 Mad. H. C. R. App. xxxiv (xxxiv).

Note 5.

(1) (1866) 1866 Pun. Re. No. 120, p. 120, *Crown* v. *Gholam Hoosain*.
(1929) 1929 Lah. 667 (667), *King-Emperor* v. *Nazir Singh*.
(2) (1889) 1889 Pun. Re. No. 17, page 65 (66), *Empress* v. *Gurdit Singh*.
(1893-1900) L. B. R. 554 (555), *Empress* v. *Nga Kun Ba*.
(3) (1924) 1924 All. 319 (320): 46 All. 114, *Emperor* v. *Bidha*.
(1889) 1889 Pun. Re. No. 17, page 66 (67), *Emperor* v. *Gurdit Singh*.
(4) (1870) 1870 Pun. Re. No. 20, page 35 (36), *Hurnarain* v. *The Crown* (Act XVI of 1866).
(1879) 1879 Pun. Re. No. 24, page 73 (74), *Emperor* v. *Mukh Ram*.
(5) (1875) 1875 Pun. Re. No. 4, page 6 (6), *Crown* v. *Manawar*.

S. 32, Notes 5—6.

(6) The Opium Act.[6]

Again solitary confinement can be awarded only as part of a *substantive sentence* of imprisonment and not when such imprisonment is awarded in *default* of payment of fine,[7] or in default of furnishing security.[8] It can, however, be awarded in lieu of whipping under S. 395 *infra*.[9]

A solitary confinement may be ordered even in cases where the trial is a *summary* one.[10] As to extent and the mode of inflicting a sentence of solitary confinement, *see* Ss. 73 and 74 of the Penal Code and the following cases.[11]

6. **Fine.**—The maximum amount of fine for the payment of which the Court may sentence an offender is Rs. 1,000-0-0.[1] This is so in the case of all offences under the Penal Code. In the case of offences under any other law, the same Rule will apply except where it is otherwise provided by such law. See S. 5 *ante* and the following cases.[2] The power to punish with fine for *separate* offences is however not affected by this section even though the aggregate fine imposed in respect thereof exceed Rs. 1,000.[3] *See* S. 35 *infra*.

An order for payment of a daily fine, in anticipation, for offences not yet committed is illegal.[4]

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(6) (1901) 14 C. P. L. R. 39 (40), *Empress* v. *Baldeo*.
(7) (1869) 1869 Pun. Re. No. 20, page 37 (38), *Crown* v. *Umar Singh*.
(1873) 1873 Pun. Re. No. 26, page 34 (36), *Crown* v. *Jita*.
(1882) 1882 Pun. Re. No. 9, page 13 (13), *Bunsi* v. *Emperor*.
(1887) 1887 Pun. Re. No. 53, page 142 (143), *Emperor* v. *Jamdad*.
(8) (1914) 36 All. 495 (496), *Kundan Lal* v. *Emperor*.
(1927) 1927 All. 472 (473), *Emperor* v. *Phakkar*.
(9) (1899) 1899 Pun. Re. No. 14, page 38 (39), *Empress* v. *Gaman*.
(10) (1884) 6 All. 83, *Emperor* v. *Annukhan*.
(11) (1895) 15 All. W. N. 82 (82), *Empress* v. *Achraj*.
(1896) 1896 All. W. N. 132 (132), *Empress* v. *Gami*.
(1869) 3 Beng. L. R. 49 (50), *Nyan Suk Methcr*.
(1866) 1866 Pun. Re. No. 38, page 44 (44), *Himta* v. *Sohila Singh*.
(1866) 1866 Pun. Re. No. 79, page 85 (85), *Hussain Ali Khan* v. *Mohd. Buksha*.
(1877) 1877 Pun. Re. 11, page 26 (26), *Crown* v. *Nihala*.
(1877) 1877 Pun. Re. No. 13, page 29 (29, 30), *Crown* v. *Khusal and Budha*.
(1878) 1878 Pun. Re. No. 7, page 16 (16, 17), *Crown* v. *Fatta*.
(1880) 1880 Pun. Re. No. 4, page 10 (11), *Empress* v. *Gulab Din*.
(1881) 1881 Pun. Re. No. 36, page 92 (94), *Khark Singh* v. *Empress*.
(1897) 1897 Pun. Re. No. 7, page 17 (18), *Ibrahim* v. *Queen-Empress*.
(1913) 1913 Pun. L. R. 161.
(1905) 2 Cri. L. Jour. 707 (708): 1905 Pun. Re. 37, *Abdulla Jan* v. *Emperor*.
(1870) 1 Weir 35 (35).
(1892) 5 C. P. L. R. 17 (17), *Emperor* v. *Jiman*.
(1892) 5 C. P. L. R. 23 (23), In re *Ratiram*.
(1893-1900) Low. B. R. 596 (597), *Queen-Empress* v. *Nga Po Thaing* [L. B. R. (1893-1900) 213, overruled].
(1892-1896) 1 U. B. R. 146 (146).
(1897-1901) Upp. Bur. 247 (247), *Queen-Empress* v. *Nga Kaing*.
(1923) 1923 Rang. 197 (198): 1 Rang. 306, *Emperor* v. *Nga Sein*.

Note 6.

(1) (1867) 7 Suth. W. R. 37 (37), In re *Abdoor Rahman*.
(2) (1867) 7 Suth. W. R. 29 (29), *Queen* v. *Surroop* (Case under Excise Act XXI of 1856. Fine exceeding Rs. 1,000 legal).
(1921) 1921 Pat. 232 (232), *Mangan Dass* v. *Rahim Bux* (Opium Act (I of 1878) Fine exceeding Rs. 1,000 legal.
(1872) 9 Bom. H. C. R. 343 (344), *Queen* v. *Narayan Ganga Ram* (Opium Regulation XXI of 1827. Fine exceeding Rs. 1,000 legal).
(3) (1913) 14 Cri. L. Jour. 105 (106, 107): 35 All. 173, *Dinanath* v. *Emperor*.
(1893) 20 Cal. 676 (681), *Empress* v. *Moore*.
(4) (1898) 22 Bom. 766 (767), In re *Limbaji Tulsiram*.
(1902) 24 All. 309 (311), *Emperor* v. *Wazir Ahmad*.
(1914) 1914 All. 204 (204), *Ramnath* v. *Municipal Board Muttra*.
(1918) 1918 All. 266 (266): 40 All. 569, *Amir Hasan* v. *Emperor*.
(1926) 1926 All. 204 (204), *Ramzan* v. *Municipal Board, Benares*.
(1927) 1927 All. 131 (131): 49 All. 245, *Husain* v. *Notified Area, Mahoba*.
(1932) 1932 All. 109 (110), *Hurmat* v. *Emperor*.
(1898) 22 Bom. 841 (842, 843), *Empress* v. *William Plumner*.
(1919) 1919 Bom. 28 (28): 43 Bom. 836, *Byramji Pudumji* v. *Emperor*.
(1926) 1926 Bom. 526 (526, 527), *Emperor* v. *Dharala Mungal*.
(1872) 18 Suth. W. R. 44 (44), *The Queen* v. *Komodinee Kanthi*.
(1873) 20 Suth. W. R. 64 (65), *Chairman* v. *Aneesuddeen*.

S. 32, Note, 6.

In fixing the amount of fine within the limits prescribed under this section, the Court should have regard to the nature of the offence and the means of the accused to pay the fine imposed.[5] In cases of offences of an aggravated nature a sentence of imprisonment is more suitable than one of fine.[6]

Impositions of fines should be avoided where a death sentence[7] or any substantial term of imprisonment[8] is given. It is only suitable in the following cases :—

1. Where the Court considers that the justice of the case will be met by inflicting a fine but at the same time considers that a term of imprisonment in addition will serve as a salutary lesson to the accused.

2. Where it is desired to compensate the complainant; or

3. Where the accused has profitted financially by his misdeed.[9]

The above rule, however, is inapplicable to a conviction under an Ordinance, which specifically enacts that a fine shall be imposed along with a substantial term of imprisonment.[10]

(1874) 21 Suth. W. R. 31 (32), *Queen* v. *Tarinee Churan.*
(1876) 25 Suth. W. R. 6 (7), *Kristodhone Dutt* v. *Chairman of the Municipal Commissioner, Calcutta.*
(1900) 27 Cal. 565 (566), *Ramkrishna Biswas* v. *Mohendranath Mozmdar.*
(1868) 1 Beng. L. R. O. C. 41 (44), In the matter of *Sagar Dutt.*
(1903) 7 Cal. W. N. 853 (858), *Nonilal Sait* v. *Corporation of Calcutta.*
(1906) 10 Cal. W. N. cxxxvi (136), *Syed Akanji* v. *Emperor.*
(1911) 15 Cal. W. N. cxi (cxi).
(1905) 2 Cri. L. Jour. 144 (147) (Cal.), *Harendranath* v. *Chairman.*
(1910) 11 Cri. L. Jour. 540 (540): 37 Cal. 671, *Nilmani* v. *Emperor.*
(1903) 1903 Pun. Re. No. 13, page 33 (34, 35), *Crown* v. *Gurditta.*
(1911) 12 Cri. L. Jour. 371 (372) (Lah.), *Emperor* v. *Sitaram.*
(1926) 1926 Lah. 248 (248): 7 Lah. 168, *Aisha* v. *Crown.*
(1893) 16 Mad. 230 (233), *Empress* v. *Keerammal.*
(1895) 1 Weir 747 (747), *Devatswamy.*
(1917) 1917 Nag. 65 (68): 14 Nag. L. R. 157, *Radhakishan* v. *Municipal Committee, Amraoti.*
(1918) 1918 Nag. 121 (122), *Mohd. Yacub* v. *The Secretary, Municipal Committee, Nagpur.*
(1924) 1924 Nag. 66 (66), *Babu Rao* v. *Municipal Committee.*
(1932) 1932 Nag. 116 (117), *Abdul Razak* v. *Municipal Committee, Nagpur.*
(1908) 7 Cri. L. Jour. 454 (456): 11 Oudh Cas. 122, *Mahadeo Prasad* v. *Municipal Board, Lucknow.*
(1925) 1925 Pat. 322 (323), *Pancham Sao* v. *Emperor.*
(1872-92) 1 Bur. 421 (421), In re *Nga Paw Hi.*
(1892-1896) 1 U. B. R. 132 (132), *Queen* v. *Nga Bwin.*
(1929) 1929 Sind 50 (51): 23 Sind L. R. 125, *Hussain Haji* v. *Emperor.*
(1929) 1929 Sind 52 (52): 23 Sind L. R. 222, *Jethanand* v. *Emperor.*

[See also (1907) 6 Cri. L. Jour. 319 (320) (Cal.), *Ramautar* v. *Arrah.*]

(5) (1897-1901) 1 Upp. Bur. R. 244 (246), *Empress* v. *Vengalaswamy.*
(1878) 1878 Pun. Re. No. 18, page 45 (46), *Crown* v. *Subban.*
(1929) 1929 All. 919 (924), *Gangasagar* v. *Emperor.*
(1891) 1891 Rat. 556 (556), *Empress* v. *Bhilya* (Heavy fine should not be inflicted on poor persons on suspicion of influential support).
(1925) 1925 Bom. 526 (526), *Emperor* v. *Basappa Rachappa Hundekar.*
(1931) 1931 Cal. 633 (634), *Jugal Kishore Dhar* v. *Emperor.*
(1911) 12 Cri. L. Jour. 435 (435) (Lah.) *Chet Singh* v. *Emperor.*
(1913) 14 Cri. L. Jour. 522 (523): 1913 Pun. Re. 18, *Ghuha* v. *Crown.*
(1932) 1932 Lah. 194 (194), *Emperor* v. *Gulam Nabi.*
(1879) 1 Weir 894 (895).
(1928) 1928 Pat. 59 (60), *Dhanu Raut* v. *Emperor.*
(1872-1892) L. B. R. 483 (484, 485). 1 Bur. S. R. 483 (483).
(1926) 1926 Jour. 132 (2) (132), *Dip Chand* v. *Emperor.*
(1929) 1929 Notes 11 (*b*) (11), *Sohan* v. *Crown.*

[See also (1932) 1932 Cal. 465 (467), *The Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Ludur Chandra Das.*]

(6) (1924) 1924 Lah. 81 (82), *Abdulla* v. *Emperor.*
(1929) 1929 All. 919 (924), *Ganga Sagar* v. *Emperor.*
(1930) 1930 All. 279 (279), *Emperor* v. *Maiku.*
(1932) 1932 Lah. 194 (194), *Emperor* v. *Gulam Nabi.*
(7) (1913) 14 Cri. L. Jour. 522 (523) (Lah.).
(8) (1931) 1931 Cal. 710 (711), *Islam* v. *Emperor.*
(9) (1931) 1931 Cal. 710 (711), *Islam* v. *Emperor.*
(10) (1933) 1933 Cal. 333 (335), *Devendranath Mazumdar* v. *Emperor.*

S. 32, Note 7.

7. **Whipping.**—See also note 1 above.

Whipping as a punishment is only awardable for offences under the *Penal Code* and not for offences under *any other law*,[1] unless the offender is a juvenile offender and the Governor-General in Council has specified in the *Gazette of India* such offence as being one in which whipping may be awarded as a punishment. As to instances when whipping is to be awarded see the Whipping Act IV of 1909 and the following cases.[2]

Note 7.

(1) (1883) Rat. 190 (190), *Empress* v. *Daya* (Bombay Abkari Act).
(1893-1900) L. B. R. 567 (568), *Nga Kyi Sein* v. *Empress* (Opium Act).
(1800) 1 Weir 845 (846) (Madras District Police Act III of 1895).

(2) *Whipping must be in lieu of other punishment and not in addition to it, for a single offence.*
(1924) 1924 All. 455 (456): 46 All. 174, *Empress* v. *Kishan Singh.*
(1905) 2 Cri. L. Jour. 105 (106), *Gajja* v. *King-Emperor.*
(1866) 3 Bom. H. C. R. 38 (38), *Reg.* v. *Surya.*
(1867) 4 Bom. H. C. R. 5 (5), *Reg.* v. *Babit.*
(1868) 5 Bom. H. C. R. 24 (25), *Reg.* v. *Muliya.*
(1868-69) 5 Bom. H. C. R. 83 (84), *Reg.* v. *Genu Bin.*
(1870) 7 Bom. H. C. R. 68 (68), *Reg.* v. *Changa.*
(1892) 16 Bom. 357 (358), *Empress* v. *Dagadu.*
(1898) 1898 Rat. 971 (971), *Empress* v. *Yakobo.*
(1902) 4 Bom. L. R. 929 (930): 26 Bom. 899, *Emperor* v. *Jagannath.*
(1864) 1 Suth. W. R. 24 (24), *Queen* v. *Kantiram.*
(1865) 2 Suth. W. R. 63 (63), *Queen* v. *Tonao Koch.*
(1865) 3 Suth. W. R. Cr. L. 2 (2), *Queen* v. *Madaree Chowkeedar.*
(1865) 3 Suth. W. R. 36 (36), *Queen* v. *Janghoo.*
(1864) 3 Suth. W. R. 38 (38) (Gap), *Queen* v. *Abdul Khidmutga.*
(1865) 4 Suth. W. R. Cr. L. 12 (12), In re *Rajah Anundnath.*
(1865) 4 Suth. W. R. 20 (20), *Queen* v. *Amarut.*
(1869-70) 5 Mad. H. C. R. App. 1 (1),
(1889) 1 Weir 933 (933), Re *Lalamiyan.*
(1880) 1 Weir 934 (934).
(1881) 1 Weir 935 (935), Re *India.*
(1925) 1925 Mad. 183 (184), *Varadarajulu* v. *Emperor.*
(1893) 6 C. P. L. R. 34 (35), *Emperor* v. *Thuskn.*
(1928) 1928 Oudh 111 (111), *Jagannath* v. *Emperor.*

Whipping for an offence not specified in the Act is illegal.
(1866) 3 Bom. H. C. R. 37 (37), *Reg.* v. *Yella.*
(1925) 1925 All. 591 (592), *Darbari* v. *Emperor.*
(1897-1901) 1 U. B. R. 354 (354), *Queen-Empress* v. *Nga Tun.*
(1928) 1928 Rang. 112 (112): 6 Rang. 48, *Po Thaung* v. *Emperor.*
(1929) 1929 Rang. 203 (207): 7 Rang. 329 (F.B.), *Emperor* v. *Mung Pu Kai.*

Whipping on a first conviction of rape is illegal.
(1864) 2 Suth. W. R. Cr. L. 2 (3), *Queen* v. *Nuzee.*

Conversion of a sentence of imprisonment into one of whipping is illegal.
(1897) Rat. 906 (907), *Empress* v. *Abdulla.*

Whipping in addition to imprisonment, on proof of previous conviction is illegal, where such conviction was in foreign territory.
(1881) 1881 Pun. Re. No. 4, Cr., p. 4 (4), *Empress* v. *Mathla.*
(1872) 1872 Pun. Re. No. 22, p. 31 (32), *Crown* v. *Durrab.*
(1905) 2 Cri. L. Jour. 749 (750): 1 Nag. L. R. 137, *Ghasia Teli* v. *Emperor.*

Whipping, in addition to punishment, on proof of previous conviction, where previous conviction was not for same specific offence is illegal.
(1870) 5 Mad. H. C. R. App. xxxviii (xxxix).
(1864) Weir 3rd Ed., 688 (688).
(1873) 7 Mad. H. C. R. App. 29 (30).
(1869) 1869 Pun. Re. No. 35, p. 64 (65).
(1866) 1866 Pun. Re. No. 101, p. 100 (101), *Maksud Shah* v. *Dad.*
(1866) 1866 Pun. Re. 121, p. 121 (121), *Queen* v. *Jowind Singh.*
(1901) 14 C. P. L. R. 16 (16), *Empress* v. *Tit Rao.*
(1872-1892) L. B. R. 338 (338), *Empress* v. *Abdul Masjid.*
(1914) 1914 L. B. 145 (146): 7 L. B. R. 63, *Emperor* v. *Po Han.*

Whipping in addition to other punishment, on proof of previous conviction, is illegal, were offence under trial was not committed after previous conviction.
(1870) 7 Bom. H. C. R. 70 (71), *Reg.* v. *Kusa.*
(1866) 3 Bom. H. C. R. 38 (38), *Reg.* v. *Surya.*
(1901) 25 Bom. 712 (713): 3 Bom. L. R. 419 (F.B.), *Emperor* v. *Babya Bhiva.*
(1870) 4 Beng. L. R. A. Cr. 5 (6), *Queen* v. *Udai Patnaik.*
(1875) 1875 Pun. Re. No. 16, p. 22 (23), *Kalu Beg* v. *Crown.*
(1882) 1882 Pun. Re. No. 39, p. 65 (65), *Govind* v. *Empress.*
(1885) 1885 Pun. Re. No. 8, p. 19 (19), *Empress* v. *Sewak.*
(1885) 1885 Pun. Re. No. 9, p. 20 (20), *Empress* v. *Jandu.*
(1881) 1 Weir 931 (932).
(1900) 13 C. P. L. R. 171 (171), *Sheo Ram.*

No whipping in default of fine.
(1866) 1866 Pun. Re. No. 5, p. 6 (6), *Budhu* v. *Bahu.*

Imprisonment in addition to whipping on conviction of an offence, not of the Penal Code but some other law is illegal.
(1934) 1934 Rang. 123 (123): 6 Rang. 291, *Emperor* v. *Shwe Bein* (Burmah Young Offenders Act).

S. 32. Note 8.

8. "May pass any lawful sentence.—A Magistrate may under this section and subject to its limitations pass any *lawful sentence* which he is authorised by law to pass.

The following are some sentences which are not lawful for any Magistrate to pass:—

(1) An order for security for good behaviour *as part* of a sentence for an offence without any proceedings being taken under Ss. 107 to 110.[1]

(2) A sentence of *fine only* under S. 193 (false evidence)[2] or S. 390 (Robbery)[3] or S. 420 (Cheating)[4] or S. 211 (false charge)[5] or S. 309 (attempt to commit suicide)[6] or S. 325 (grievous hurt)[7] or S. 344 (wrongful confinement)[8] or S. 380 (Theft in dwelling house) or S. 456 (Lurking house trespass)[9] of the Penal Code.

(3) A sentence of imprisonment for an offence under S. 302 Penal Code.[10]

(4) Transportation for 15 years for an offence under S. 304 Penal Code.[11]

(5) Order of confiscation for an offence under S. 188 Penal Code.[12]

(6) Mere order of refund of the money taken, on a conviction for an offence under S. 161 (Bribery) Penal Code.[13]

(7) A sentence of transportation in default of fine.[14]

(8) Imprisonment in default of fine for a period exceeding one fourth of the maximum period for which the imprisonment can be awarded for the offence.[15]

(9) A double sentence of fine and imprisonment for an offence punishable with fine or imprisonment but not with both.[16]

(10) A conditional sentence on a woman, of imprisonment, for failure to reside with her husband.[17]

Note 8.

(1) (1878) 1 All. 666 (668), *Empress* v. *Partab*.
(1883) 9 Cal. 215 (217), *Tamiz Mandal* v. *Umid Karigar*.
(2) (1866) 1866 Pun. Re. No. 30, p. 29 (29), *Crown* v. *Zabid Ramzan*.
(1878) 2 Shome 26, *Queen* v. *Khodai*.
(3) (1922) 1922 All. 245: 44 All. 538, *Emperor* v. *Badri Prasad*.
(4) (1929) 1929 All. 260 (260), *Emperor* v. *Durga*.
(5) (1862-1865) 1 Bom. H. C. 34 (34), *Rama Bin* v. *Rabhaji*.
(6) (1862-1865) 1 Bom. H. C. 4 (4), *Reg.* v. *Chanvioya Kom Shidram*.
(7) (1865) 2 Suth. W. R. Cr. 32 (32), *Queen* v. *Sharoda Peshagur*.
(1865) 2 Suth. W. R. Cr. 33 (34), *Queen* v. *Menasoodin*.
(1869) 11 Suth. W. R. 39 (39), *Queen* v. *Bhooban Mohan*.
(1866) 1866 Pun. Re. No. 28, p. 28 (28), *Crown* v. *Ramdyal*.
(1914) 1914 Mad. 280 (280): 19 Mad. 488, In re *Soogoor Basanna Gowd*.
(1927) 1927 Nag. 49 (50), *Emperor* v. *Akosh Kumbi*.
(1933) 1933 Pat. 179 (179), *Ramchandur Rai* v. *Ram Belas Tewari*.
(1872-1892) 1 L. B. R. 221 (221).
(8) (1862-65) 1 Bom. H. C. R. 39 (39), *Bahirji bin* v. *Krishnaji*.
(9) (1866) 1866 Pun. Re. No. 80, p. 85 (86), *Bisram Das* v. *Shunkur*.
(10) (1911) 12 Cri. L. Jour. 145 (146) (Mad.), In re *Duraiswamy Tevan*.
(11) (1866) 1866 Pun. Re. No. 58, p. 66 (66), *Crown* v. *Noor Hussun*.
(12) (1872) 1872 Pun. Re. No. 13, p. 18 (19), *Crown* v. *Imam*.
(13) (1871) 16 Suth. W. R. Cr. 74 (74).
(14) (1880) 1880 Pun. Re. Cr. 17, p. 29 (30), *Empress* v. *Nuran*.
(15) (1871) 16 Suth. W. R. 42 (42), *Jehan Bukah Petitioner*.
(16) (1894) Rat. 686 (687), *Empress* v. *Tukaram Valad Dayaram*.
(1880) 1880 Pun. Re. No. 25, p. 42 (42), *Empress* v. *Gokal*.
(17) (1866) 1866 Pun. Re. No. 40, p. 45 (46), *Jhundoo* v. *Ahmed Deen*.

S. 33.

Power of Magistrates to sentence to imprisonment in default of fine.

33.* (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default:

Provided that—

Proviso as to certain cases.

(*a*) the term is not in excess of the Magistrate's powers under this Code;

(*b*) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under S. 32.

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***(CODE OF 1882—S. 33.)**

Power of Magistrate to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine *as is* authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 32.

S. 33. Note 1.

Other Topics.

Alternative sentence of imprisonment does not affect power of Magistrate. See Note 5, Pt. 9.
Imprisonment in default for offences under other Acts. See Note 6, Pt. 2.
Imprisonment in default of fine in summary trial. See Note 8, Pt. 2.
Imprisonment whether to be proportional to fine. See Note 6, Pts. 7 and 8.
May be in addition to substantive sentence. See Note 10, Pt. 1.
No transportation in default of payment of fine. See Note 5, Pt. 1.
Power of District Magistrate specially empowered. See Note 9, Pt. 4.
Shall not exceed one fourth. See Note 6, Pt. 5.

1. **Legislative Changes.**—In S. 309 of the Code of 1872 the third para read thus:—"Where a person is sentenced to fine only the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under

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(CODE OF 1872—S. 20, Expln. and S. 309.)

20. *Explanation*:—A Magistrate may award imprisonment in default of payment of fine, in addition to the full term of imprisonment which, under this section, he is competent to award.

309. In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of sections sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine.

Imprisonment in default of payment of fine.

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine.

Proviso as to cases decided by a Magistrate.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act.

(CODE OF 1861—Section 45.)

45. In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Sections 64 and 65 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine.

Imprisonment in default of payment of fine.

Provided that in every such case decided by a Magistrate, the period of imprisonment awarded in default of payment of the fine shall, in no case, exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Proviso.

S. 33, Notes 1—2.

this act." It was held that the section was intended to override S. 65 of the Penal Code.[1]

There was no express clause in the Code of 1882 nor is there any such clause in this Code referring to cases where the Magistrate sentences a person to fine only. But para. 1 in the Code of 1882 and sub-Ss. 1 and 2 of the present Code cover such cases too, and restrict the sentence awardable by the Magistrate to such sentence as is authorised by law.

2. **Scope.**—Imprisonment in default of payment of fine is a punishment not imposed on account of the offence committed but on account of the failure of the accused to pay the fine which the Court has ordered him to pay. It is, in short, a punishment for contempt of Court and the accused continues to be liable to pay the fine for 6 years notwithstanding the imprisonment.[1]

S. 33 only relates to cases in which imprisonment in default is *authorised by law*.[2] Ss. 63 to 70 of the Penal Code authorise the award of imprisonment in default of payment of fine in cases of offences punishable under the Penal Code. Under S. 25 of the General Clauses Act the sections have been made applicable to all fines imposed under any Act, Regulation, Rule or Bye-law unless they contain any *express* provision to the contrary.[3]

The mere existence of a *special procedure* in an Act for the recovery of fines will not negative the power to award imprisonment unless the applicability of Ss. 63—70 of the Penal Code is expressly excluded in the said Act.[4]

Section 33—Note 1.

(1) (1877) 1 Mad. 277 (278) (F.B.), *Reg.* v. *Muhammad Sahib*.

Note 2.

(1) (1872-92) L. B. R. 483 (484), *Emperor* v. *Nga Chin*.
(2) (1894) 21 Cal. 979 (985), *Ramjeevan* v. *Durga*.
(3) (1902) 1 L. B. R. 150 (151), *Crown* v. *Maung Yan*.
(1893-1900) L. B. R. 385 (385), *Emperor* v. *Ab Hein*.
(1870) 7 Bom. H. C. Cr. 76 (77), *Reg.* v. *Sangapa bin Bashiapa* (Indian Income Tax Act).
Cr. Rg. 4—6—75, *Mahibat Rambhai* (Indian Income Tax Act).
(1875) Rat. 91 (92), *Gulabchand* v. *Khushal* (District Municipal Act VI of 1873, Bombay).
(1896) 23 Cal. 421 (423), *Empress* v. *Aswini* (Village Chowkidari Act VI of 1870, Bengal).
(1872) 1872 Pun. Re. No. 6 Cr., p. 11 (11), *Crown* v. *Polu* (Excise Act of 1871).
(1892) 1 Weir 652 (653), In re *Giridborosan* (Act I of 1886).
(1932) 1932 Cal. 63 (63): 58 Cal. 1293, *U. K. Mittra* v. *Corporation of Calcutta*.
(1872-1892) L. B. R. 410 (410), *Empress* v. *Nga Kywe* (The Forest Act).
(1926) 1926 Sind 144 (144): 20 Sind L. R. 31, *Emperor* v. *Radho* (Punishment under Gambling Act).
[See also (1870) 5 Mad. H. C. R. App. xxiii (xxiv), Proceedings, 1st June, 1870.
(1895) 18 Mad. 490 (492), *Queen-Empress* v. *Rappel*.]
[But see (1872-92) 1 Burma 473 (473), *Nga Tha Gaung* v. *Empress* (Case before the General Clauses Act of 1897).]
The following cases before the Act of 1897 *will no longer be good law*:—
(1868-69) 5 Bom. H. C. R. 44 (45), *Reg.* v. *Chenappa*.
(1869) 6 Bom. H. C. Cr. 14 (15), *Reg.* v. *Dixon*.
(1904) 6 Bom. L. R. 357 (358), *Emperor* v. *Puna Laxman Bhil* (Bombay Village Police Act).
(1870) Rat. Un. Re. Cr. Cas. 40 (41), *Maya Devjii* (S. 3, Act XXXI of 1850).
(1871) Rat. 58 (59) (Act XXVI of 1850).
(1885) Rat. Un. Rep. Cr. Cas. 221 (221), *Empress* v. *Virain* (Act III of 1867, Bombay).
(1878) 1878 Pun. Re. No. 30, pp. 73 (73), *Crown* v. *Beni Prasad* (Passed before Act I of 1868).
(1884) 1884 Pun. Re. No. 40, p. 93 (94), *Chandi* v. *Emperor*.
(1886) 1886 Pun. Re. No. 3 Cr., p. 4 (5), *Crown* v. *Ditto*.
(1881) 4 Mad. 335 (335), *Queen* v. *Amirtam*.
(1869-1870) 5 Mad. H. C. R. 21 (21).
[But see (1870) 14 Suth. W. R. 70 (70), *Empress* v. *Nodiachand*.
(1895) 1 Weir 909 (909, 910), *Empress* v. *Rappel*.]
(4) *The following cases to the contrary are not good law after the Act X of* 1897:—
(1866) 3 Mad. H. C. R. App. 9 (ix).
(1871-74) 7 Mad. H. C. R. App. 22 (22).
(1871) 6 Mad. H. C. R. App. 37 (37).
(1871) 6 Mad. H. C. R. App. 40 (40).
(1871-74) 7 Mad. H. C. R. App. 22 (22).
(1888) 1 Weir 753 (754).

S. 33, Notes 2—5.

Sec. 33 does not make it *imperative* on a Court to award imprisonment in default of payment of fine.[5] It should, however, as a rule be awarded in cases where the Court is competent to award it, as otherwise the only procedure left open for the recovery of the fine would be that laid down in Ss. 386 and 387, Criminal Procedure Code.[6]

3. Court of any Magistrate.—The word "Magistrate" in this section is not qualified as it is in S. 35-B by the addition of the words "other than a Magistrate acting under S. 34"; hence the section applies also to Magistrates specially empowered under S. 34.[1]

4. Fine.—The excess charge and fare referred to in S. 113 of Act IX of 1890, cannot be said to be a *fine*, though recoverable as such. Hence imprisonment cannot be awarded in default of payment of such charge or fare.[1] Where an Act provides for the award of compensation (*i.e.*, Cattle Trespass Act) the mere fact that compensation may be levied as a fine does not authorise the Court to order imprisonment in default of payment thereof. The ordinary mode of levying fines is prescribed in S. 386 of the Code.[2] This section does not apply to compensation ordered under S. 250 of the Code.[3] That section however itself now prescribes for the passing of an order of imprisonment simultaneously with the order for compensation. (*See* S. 250, Cr. P. C.) Court Fees ordered to be paid under S. 31 of the Court Fees Act though recoverable as fines are not fines within the meaning of this section.[4]

There is no distinction between the word "Penalty" in the Bombay District Municipalities Act VI of 1873 and the word "fine" in the Penal Code. So imprisonment may be awarded in default of payment of the penalty.[5]

5. Imprisonment.—Only *Imprisonment* can be awarded in default of payment of fine. *Transportation* cannot be awarded[1] nor whipping.[2] A Court cannot order that a juvenile offender be sent to the Reformatory School in default of payment of fine as under S. 8 of the Reformatory Schools Act a youth cannot be sent to a reformatory school unless a substantive sentence of imprisonment or transportation has been passed on him.[3]

Where the kind of imprisonment which the offender may be sentenced to for the offence as a substantive punishment is simple, the imprisonment that may be awarded in default of payment of fine can only be simple and not

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(5) (1878) 1878 Pun. Re. No. 30, p. 73, *Crown* v. *Beni Prasad*.
(6) (1892-1896) 1 U. B. R. 18 (18), *Empress* v. *M. E. Gywe*.

Note 3.

(1) (1893-1900) L. B. R. 281 (281), *Nga Paw* v. *Empress*.

Note 4.

(1) (1894) 18 Bom. 440 (441), *Empress* v. *Kutrappa* (Section 113, Railways Act).
(1899) 1 Bom. L. R. 166 (166), *Empress* v. *Crowson* (Following 18 Bom. 440).
(1898) 20 All. 95 (95), *Empress* v. *Rampal*.
(1909) 10 Cri. L. Jour. 519 (520): 5 N. L. R. 151, *Emperor* v. *Bullakhi*.
(1897) 20 Mad. 385 (386), *Empress* v. *Kutrapa* (S. 113, Railways Act).
(2) (1879) 1 Weir 711 (711).
(1890) 1 Weir 712 (712), In re *Chetti Venkiah*.
(1896) 19 Mad. 238 (239), *Empress* v. *Lakshmi Nayakan*.
(1894) 22 Cal. 139 (143), *Paryag* v. *Arju*.
(1900) 27 Cal. 992 (992), *Bhagirathi Naik* v. *Gangadar*.
(1930) 1930 Nag. 149 (149): 26 Nag. L. R. 158, *Ramdularey* v. *Manohar*.
(1872-1892) L. B. R. 515 (515), *Empress* v. *Mi Min Kaung*.
(3) (1894) 21 Cal. 979 (985), *Ram Jeevan* v. *Durga Charan*.
(4) (1894) 1 Weir 724 (724), Re *Para Muniyan*.
(5) (1893) 18 Bom. 400 (401), Re *Lakmia*.

Note 5.

(1) (1882) 5 Mad. 28 (29), *Kunhussa* v. *Queen-Empress*.
(1880) 1880 Pun. Re. No. 17, p. 30, *Empress* v. *Nuran*.
(1867) 7 Suth. W. R. Cr. 31 (31), *Queen* v. *Simonto Kotal*.
(2) (1866) 1866 Pun. Re. No. 5, p. 6 (6), *Budhu* v. *Bahu*.
(3) (1911) 12 Cri. L. Jour. 244 (244) (Rang.), *Nga Po Tok* v. *Emperor*.

S. 33, Notes 5—6.

rigorous.[4] When the offence was punishable with fine only it was formerly not clear what the description of the imprisonment should be in default of payment of such fine; some cases holding in favour of simple imprisonment[5] others maintaining that there was nothing in S. 67 of the Penal Code against the imprisonment being rigorous.[6] The amendment of S. 67, Penal Code, by Act VIII of 1882 has made it clear that the imprisonment can only be simple.[7] When an offence is punishable with imprisonment of either description the imprisonment in default of payment of fine may be of either description.[8]

When rigorous imprisonment may be awarded in default of payment of fine (*viz.*, according to S. 66, Penal Code) the Court cannot order that a portion of the term of imprisonment be spent in solitary confinement under S. 73, of the Penal Code, because that section seems to refer only to imprisonment awarded as a substantive part of the sentence and not to alternative imprisonment awarded in default of payment of fine.[9]

6. Authorised by Law.—The words "allowed by law" which were used in the Code of 1872 were construed to mean not merely allowed by law as the full substantive penalty for the offence (as held in 1 Mad. 277) but allowed by all the provisions of law taken together.[1]

These provisions are to be found in the Penal Code, Ss. 63 to 70, which by the General Clauses Act I of 1868, and now by the General Clauses Act X of 1897 are made applicable to all fines imposed under the authority of any Act unless such Act contains an express provision to the contrary.[2]

Hence it is not only necessary that the imprisonment awarded should not be in excess of the Magistrate's powers but they should also be in conformity with the provisions of the Penal Code. If the offence is punishable with fine only, S. 65, Penal Code, should be referred to for determining the limit to the imprisonment that may be awarded in default of payment of the fine.[3] But if the offence is punishable with imprisonment and fine or imprisonment or fine S. 65 and not S. 67 determines the term of imprisonment awardable.[4] Under S. 65 the term of imprisonment that may be awarded in default of payment of fine may not exceed one fourth the term of imprisonment which is the maximum fixed for the offence. *Vide* S. 65 of the Penal Code and the undermentioned cases.[5]

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(4) (1868) 5 Bom. H. C. R. Cr. 43 (43), *Reg.* v. *Bechar Khushal*.
(1866) 5 Suth. W. R. 76 (76), *Queen* v. *Jogeshur Roy*.
(1867) 7 Suth. W. R. Cr. 31 (31), *Queen* v. *Srimonto Kotal*.
(1897-1901) 1 U. B. R. 363 (364), *Empress* v. *Nga In*.

(5) (1878) 1 Bur. 57 (58), *Nga Shwe Phaw*.
(1868) 5 Bom. H. R. 45 (45), *Reg.* v. *Santu* (S. 290, I. P. Code).

(6) (1882) 5 Mad. 157 (157), *Queen* v. *Yellamandu*.

(7) (1878) 1 Bur. 279 (280), *Nga Shwe Nyo*.
(1872-1892) L. B. R. 410 (410), *Empress* v. *Nga Kywi*.
(1872-1892) L. B. R. 434 (435), *Empress* v. *Nga Tha Dun*.
(1882) 1 Weir 239 (239), In re *Mala Obigadu*.

(8) (1872-1892) L. B. R. 434 (435), *Empress* v. *Nga Tha Din*.

(9) (1878) 1878 Pun. Re. 26, pp. 34 (35), *Crown* v. *Jita*.
(1869) 1869 Pun. Re. No. 20, pp. 37 (38), *Umer Singh*.

Note 6.

(1) (1887) 10 Mad. 166 (n) (166) (F.B.) (Overruling 1 Mad. 277).

(2) (1877) 1 All. 461 (462 and 464) (F.B.), *Empress* v. *Darba*.

(3) (1868) 10 Suth. W. R. 30 (30), *Chunder Pershad Singh*.

(4) (1901) 1 L. B. R. 150 (151-152), *Maung Yan We*.
(1899) 22 Mad. 238 (239, 240), *Empress* v. *Yakoob Sahib*.
(1892) 1 Weir 652 (653).

(5) (1887) 10 Mad. 166 (n) ((F.B.), (Overruling 1 Mad. 277).
(1887) 10 Mad. 165 (167) (F.B.), *Empress* v. *Venkatasagadu*.
(1877) 1 All. 461 (463, 465), *Emperor* v. *Darba*.
(1868) 5 Bom. H. C. 61 (62), *Reg.* v. *Vithobasoma*.
(1900) 2 Bom. L. R. 1081 (1081),

S 33, Notes 6—8.

Where the accused were sentenced under S. 58 of the Excise Act to a fine of Rs. 100 and in default to 3 months' imprisonment and in addition (they being previous offenders) were sentenced under S. 74 to 6 months' imprisonment (the maximum term awardable), it was held that the two sentences must be regarded as separate. Standing by itself the sentence of 3 months' imprisonment in default of payment of fine was a legal one and could not be affected by the fact that the additional imprisonment prescribed for the offence was limited to 6 months.[6]

Imprisonment under this section should not only be such as is authorised by law but should be passed with due regard to the requirements of the case. It should however, bear a reasonable proportion to the amount of the fine[7] but this requirement was not regarded as essential in another case, where it was observed that what the fine should be in each case must depend on circumstances which have nothing to do with the amount of fine imposed.[8]

7. **Refund of fine.**—A Court has no power to order the refund of fine realised. So when an accused paid a sum towards the fine inflicted, but that fact not having been communicated by the Magistrate to the jailor the prisoner suffered the whole term of imprisonment ordered in default of payment, it was held that the Magistrate had no power to order a refund but that any application for that relief should be made to the Government.[1]

8. **Proviso (a): In excess of powers.**—The provisos were enacted to limit the Magistrate's powers. So though S. 65 of the Penal Code authorises the awarding of imprisonment in default of fine to the extent of one fourth of the maximum term prescribed for the offence the Magistrate, will, under this section not be competent to award even this term if it is in excess of his ordinary powers.[1]

In cases of imprisonment awarded as a process for enforcement of payment of fine the rule of S. 262 of this Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to *substantive* sentences of imprisonment.[2]

Empress v. *Venkata Bin Timmana*.
(1873) Rat. Un. Re. Cr. Cas. 68 (69), *Ali Matya*.
(1898) Rat. 979 (979), *Bhikare*.
(1871) 16 Suth. W. R. 42 (42), *Jehan Buksh and another*.
(1866) 1866 Pun. Re. No. 81, p. 86 (86), *Pahra Ram* v. *Crown*.
(1866) 1866 Pun. Re. No. 88, p. 92 (92), *Myu* v. *Crown*.
(1921) 1921 Lah. 236 (236), *Ghastimal* v. *Emperor*.
(1866) 3 Mad. H. C. App. ix (ix).
(1894) 1 Weir 31 (32), Re *Tirumalai*.
(1925) 1925 Oudh 100 (109), *Nuruddin* v. Emperor.
(1872-1892) L. B. R. 333 (333), *Empress* v. *Nga Chet Kyi*.
(1872-1892) L. B. R. 364 (364), *Empress* v. *Kyun Bon Aung*.
(1897-1901) 1 U. B. R. 220 (220), *Empress* v. *Nga Po Sin*.
(1897-1901) 1 U. B. R. 221 (222, 223), *Empress* v. *Nga Un Hla*.
(1893-1900) Low Bur. R. 385 (385), *Empress* v. *Ah Hein*.
(1881) 1881 Weir 3rd edn. 704 (705, 706), High Court Proceedings 18th May, 1881.
Oudh S. C. 175 *Kalva*.
(1926) 1926 Sind 144 (144): 20 Sind L. R. 31, *Emperor* v. *Radho*.
(1872-1892) Low. Bur. R. 486 (486), *Empress* v. *Nga Son Gaung* (Not good law).
(1877) 1 Mad. 277 (278) (F. B.), *Reg.* v. *Mohd. Sahib* (No longer good law).

(6) (1881) 6 Cal. 575 (578-579), *Ramachandra Shah* v. *Emperor*.
(7) (1872-1892) L. B. R. 353 (353), *Empress* v. *Nga Cho*.
(8) 1 Bur. L. R. 483 (484), In re *Nga Chin*.

Note 7.

(1) (1866-67) 4 Bom. H. C. R. Cr. 37 (38), *Emperor* v. *Natha Mula*.

Note 8.

(1) (1877) 1 All. 461 (465) (F.B.), *Empress* v. *Darba*.
S. C. 28 Oudh, *Crown* v. *Sheo Ambar Singh*.
(2) (1889) 6 All. 61 (61), *Emperor* v. *Asgarali*.

S. 33, Notes 9—10.

9. Proviso (b): **Limits to imprisonment in default where substantive sentence is ordered.**—Where the offence is punishable with imprisonment and fine and the Magistrate sentences the offender to both punishments and orders further that he is to undergo a term of imprisonment in default of the payment of the fine. There is in addition to the restriction found in S. 65 of the Penal Code to the term awardable, this further restriction imposed on a Magistate by S. 33 of the Code, namely that the imprisonment in default cannot exceed one-fourth of the period which the Magistrate is competent to inflict as a substantive sentence.[1] Thus a Subordinate Magistrate who is not empowered to pass a sentence of more than 6 months' imprisonment cannot award a term of more than one and-a-half months' imprisonment in default of payment of fine.[2]

Under the Code of 1872, S. 36, if a Magistrate with special powers passed a sentence of imprisonment exceeding 3 years he had to get the sanction of the Sessions Judge. Hence without sanction he had no power to pass a sentence in default of payment of fine for a period longer than 9 months.[3] The necessity for sanction having been done away with a Magistrate with special powers is now enabled to sentence a person under this section for a period of 1 year and 9 months.[4]

10. **Sub-S. 2.**—The Sentence of imprisonment which a Magistrate may award in default of payment of fine may be in addition to the maximum substantive sentence of imprisonment awardable by him under S. 32. So the proviso to S. 35 which limits the aggregate punishment that a Magistrate may inflict to twice the amount which he is in his ordinary jurisdiction competent to inflict does not affect his power of awarding over and above that maximum a term of imprisonment in default of payment of fine.[1]

S. 34.

34.* The Court of a Magistrate, specially empowered under S. 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

Higher powers of certain District Magistrates.

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*(CODE OF 1882—S. 34.)

34. The Court of a District Magistrate specially empowered under Section 30, may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

Higher powers of certain District Magistrates.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Note 9.

(1) (1901) 1 L. B. R. 150 (151, 152), *Maung Yan We.*

(2) (1879) 1879 Pun. Re. No. 24 (74), *Empress* v. *Mukhram.*
(1866) 6 Suth. W. R. 51 (51), *Phoolan* v. *Satram.*

(3) (1879) 1879 Pun. Re. No. 9, Cr. pp. 25 (26), *Chand Mal* v. *Emperor.*

(4) (1885) 1885 Pun. Re. No. 35, pp. 78 (79), *Karam Chand* v. *Empress.*
(1893-1900) 1893-1900 L. B. R. 281 (281), *Nga Paw* v. *Empress.*

Note 10.

(1) (1868) 9 Suth. W. R. 41 (47), *Nassir* v. *Chunder.*

SYNOPSIS.

S. 34, Note 1.

	Note No.
LEGISLATIVE CHANGES	1
"EXCEPT A SENTENCE. . . ."	2
APPEAL	3

Other Topics.

Any sentence authorised by law. See S. 33, and Note 2.

1. **Legislative Changes.**—

(1) Under the Codes of 1872 and 1882 the sentences which a specially empowered Magistrate could pass did not include transportation. It was nevertheless held that this omission did not prevent such a Magistrate from acting under S. 59, Penal Code, and converting a sentence of imprisonment to one of transportation in accordance with the provisions of that section.[1] The present section leaves no room for doubt as a sentence of transportation not exceeding 7 years has been included among the sentences which a specially empowered Magistrate could pass.

(2) Under the previous Codes any sentence of imprisonment exceeding 3 years passed by a specially empowered Magistrate was subject to confirmation by the Sessions Judge.[1-a] The present section has done away with the necessity for confirmation. This renders absolute the undermentioned decisions relating to confirmation by the Sessions Court.[2]

(CODE OF 1872—S. 36.)

Powers with which Deputy Commissioners and Chief Executive officers of District may be invested.

36. In the territories subject to the Lieutenant-Governor of the Punjab, and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other Chief officer charged with the executive administration of the District in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate. Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation.

(CODE OF 1861—Nil.)

Section 34—Note 1.

(1) (1868) 9 Suth. W. R. 6 (7, 10), *In re Boodhooa.*
(1880) 1880 Pun. Re. No. 17, p. 30 (Cr.), *Empress* v. *Nuran.*

(1-a) [See (1873) 1873 Pun. Re. No. 8, pp. 3 (4), *Crown* v. *Shamier* (The infliction of a fine also with alternative imprisonment or of whipping or of both, in addition to a substantive sentences of three years imprisonment, does not require the confirmation of Sessions Judge).]

(2) (1876) 25 Suth. W. R. Cr. 18 (18), *Queen* v. *Sham Soonder* (No appeal till confirmation).

S. 34. Note 2.

2. "**Except a sentence. . . . . ".**—Seven years is the maximum sentence which a Magistrate empowered under S. 30 is empowered to pass.[1] S. 75 of the Penal Code does not override the provisions of this section and enable a Magistrate acting hereunder to sentence a person to a longer term than 7 years.[2]

The limitation in S. 439, Cl. (3) of the Code that in enhancing a sentence the High Court shall not inflict a greater punishment than that which might have been inflicted by a Presidency Magistrate or a Magistrate of the first class, does not apply to sentences passed by Magistrates acting under S. 34. It has been held nevertheless that in such cases sentences passed by the High Court under its powers of enhancement should not ordinarily exceed one of 7 years rigorous imprisonment which a Magistrate acting under S. 34 is empowered to pass. If the Court considers that 7 years will not meet the ends of justice, the usual course would be to set aside the trial and order the case to be committed to sessions.[3]

It has been held that if a case is referred under S. 349 to a Magistrate specially empowered, the latter cannot exercise his powers under S. 34[4] but can order a re-trial before himself and in that re-trial he could exercise such powers if he finds the accused guilty.[4-a]

(1881) 1881 Pun. Re. No. 16, pp. 24 (27, 28), *Empress* v. *Pir Buksh* (Sessions Judge had power to annul sentence and acquit).

(1887) 1887 Pun. Re. No. 58, pp. 153 (155), *Sohan* v. *Empress* (Sessions Judge should acquit where no evidence to support conviction).

(1882) 1882 Pun. Re. No. 5, pp. 5 (5), *Empress* v. *Puran Singh* (No reference by Sessions Judge possible till confirmation).

(1873) 1873 Pun. Re. Cr. No. 3 (4), *Crown* v. *Shamla* (Sentence requiring confirmation was only the substantive sentence of imprisonment).

(1882) 1882 Pun. Re. No. 18, pp. 22 (22), *Bhagat Singh* v. *Empress* (Sentence above three years requiring confirmation meant only substantive sentence not imprisonment in lieu of fine).

(1884) 1884 Pun. Re. Cr. No. 43, pp. 98 (100), *Hunar* v. *Empress* (Additional Sessions Judge had no power to confirm in Code of 1882).

(1885) 1885 Pun. Re. 35, pp. 78 (79), *Karam Chand* v. *Empress* (Under S. 33, Magistrate acting under S. 34 could pass sentence of 1|4 of 7 years in lieu of fine and not merely 1|4 of 3 years).

(1886) 1886 Pun. Re. No. 14, pp. 23 (25), *Bahadur* v. *Empress* (Sentence of transportation too was subject to confirmation).

(1883) 1883 Pun. Re. No. 8, pp. 10 (10), *Deo Dit* v. *Empress* (Sessions Court must consider appropriateness of sentences).

(1872-1892) 1872-1892 L. B. R. 516 (516), *Kyaw Zam* v. *Empress* (Sessions Court must weigh evidence itself).

(1893-1900) L. B. R. 258 (259), *Nga Pan E.* v. *Queen-Empress* (Power to order or make further enquiry must be exercised by Sessions Judge in proper cases).

(1882) 1882 Pun. Re. No. 25, pp. 31 (33), *Rehman* v. *Empress* (Under Code of 1872, aggregate sentence not considered a single sentence for purpose of confirmation).

(1893-1900) 1893-1900 L. B. R. 268 (269), *Nga U* v. *Queen-Empress* (Aggregate sentence under S. 35 deemed single sentence for purpose of confirmation).

(1898) 1898 Pun. Re. No. 3, pp. 6 (7), *Queen-Empress* v. *Batora.*

(1879) 1879 Pun. Re. 12, pp. 34 (36), *Crown* v. *Kammu.*

Colm. Dig. Cr. 56 of 1876, *Police* v. *Muna Lal* (Sessions Judge cannot order re-trial).

Colm. Dig. Cr. LXII of 1876, *Police* v. *Parmu* (Sessions Judge cannot change sentence of imprisonment to transportation).

Colm. Dig. Cr. XVI of 1874, *Police* v. *Rambaksh* (Sessions Court no power to enhance sentence).

(1874) 1874 Pun. Re. 15, pp. 26 (26), *Harria* v. *Crown* (To modify means to reduce).

(1878) 2 All. 53 (53, 54), *Empress* v. *Nadua* (Appeal forum after confirmation).

Note 2.

(1) (1930) 1930 Sind 211 (214): 24 S. L. R. 252, *Baksho* v. *Emperor.*

(2) (1872) 1872 Pun. Re. No. 31, pp. 41 (41), *Bahadur Khan* v. *The Crown.*

(3) (1923) 1923 Lah. 600 (600), *Sewa Singh* v. *Ranja.*

(1925) 1925 Lah. 318 (318), *Dalip Singh* v. *Emperor.*

(4) (1907) 6 Cri. L. Jour. 289 (290): 4 L. B. R. 53, *Nga Pya* v. *Emperor.*

[See also Colm. Dig. Cr. LXVIII of 1877, *Police* v. *Mahbub Khan.*]

(4-a) (1881) 1881 Pun. Re. No. 10, pp. 10 (11), *Empress* v. *Begu.*

S. 34, Notes 2—3.

In order that a Magistrate may pass a sentence under S. 34, he must purport to act under the powers conferred by S. 30. Where he does not purport to act under such powers a sentence in excess of his ordinary powers is illegal. Merely describing the Magistrate on the heading of his judgment as invested with such powers is not sufficient.[5]

3. **Appeal.**—Under the Code of 1872 appeals from all sentences of Magistrates specially empowered lay to the High Court. Under the Code of 1882 those sentences which required confirmation were to be presented before the High Court, others were maintainable before the Sessions Court itself.[1] But even under the Code of 1872 it was held that the appeal would lie to the High Court only if the Magistrate purported to act under his enhanced powers. Where there is nothing to show that he did so act, and the offence was triable by a Magistrate with ordinary powers and the sentence one which such ordinary Magistrate might have passed it was held that the appeal lay to the Court of Session.[2] The present rule, as found in S. 408 is that if a Magistrate acting under S. 34 passes sentences of transportation or of imprisonment exceeding 4 years, appeals of all or any of the accused convicted at such trial shall lie to the High Court.

If a Magistrate acting under S. 349 exercises powers under S. 34 (which S. 349 debars him from duty) the sentence is *ultra vires* and even if it exceeds 4 years an appeal therefrom will lie only to Sessions Court and not to High Court.[3]

Sentences which Courts and Magistrates may pass upon European British subjects.

S. 34-A.

34-A.* *Notwithstanding anything contained in sections* 31, 32 *and* 34—

(a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine; and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.

***(CODES OF 1898 AND 1882—Ss. 446 and 449.)**

Sentences which may be passed by provincial Magistrates.

446. Notwithstanding anything contained in Section 32 or Section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees, or both.

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(5) (1908) 7 Cri. L. Jour. 461 (461) (Lah.), *Mahi* v. *Crown.*
(1934) 1934 Lah. 361 (361), *Emperor* v. *Sukhdeo Raj* (Magistrate exercising power under S. 30, but not signing as such—Sentence in excess of powers as first class Magistrate is illegal).

Note 3.

(1) (1883) 9 Cal. 513 (514), *Rongai* v. *Empress.*
(1900) 1900 Pun. Re. No. 12, pp. 28 (29), *Empress* v. *Jain Singh.*
(1881) 1881 Pun. Re. No. 23, pp. 51 (53), *Tulsi Ram* v. *Empress.*
(1877) 1877 Pun. Re. No. 8, pp. 19 (21), *Bahadur* v. *Crown.*
(1879) 1879 Pun. Re. No. 33, pp. 95 (95), *Mohammad Newas* v. *Empress.*
(1880) 1880 Pun. Re. No. 36, pp. 89 (90), *Jaytumal* v. *Empress.*
(2) (1875) 1875 Pun. Re. No. 10, p. 14 (14), *Nathu* v. *Crown.*
(3) (1907) 6 Cri. L. Jour. 289 (290): 4 L. B. R. 53, *Nga Pya* v. *Emperor.*

S. 34-A, Note 1.

1. **Legislative Changes.**—This section corresponds to Ss. 74 and 76 of the Code of 1872 and Ss. 446 and 449 of the Codes of 1882 and 1898. Under the 1872 Code Magistrates' jurisdiction over European British subjects permitted of their sentencing them to not more than three months' imprisonment or fine of Rs. 1,000 or both. A sentence of one year's imprisonment passed by a Magistrate on a European British subject under the Code of 1872 was therefore held to be illegal.[1] Sessions Judges were authorised to sentence such persons to a term not exceeding one year or fine or both. The Code of 1882 made no alteration in the punishment awardable by Magistrates (other than District Magistrates) and Sessions Court. But it gave District Magistrates twice the powers of ordinary Magistrates, by permitting them to award imprisonment extending to 6 months' and fine amounting to Rs. 2,000 or both.

Sentences which may be passed by Court of Session.

449. Nothwithstanding anything contained in Section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

(CODE OF 1872—Ss. 74, 76.)

Magistrates of the First Class, being European British subjects and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

When such Magistrate may try, and extent of his jurisdiction.

If the offence complained of is a Magistrate's case, and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence; and, on conviction, may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

Jurisdiction of Court of Session.

76. Sessions Judges or Additional Sessions Judges, and, when specially empowered in that behalf by the Local Government, Assistant Sessions Judges who are European British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any sentence warranted by law, not exceeding one year's imprisonment, or fine, or both.

When Sessions Judge finds his powers inadequate.

If, at any stage of the proceedings, the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before such High Court.

(CODE OF 1861—Nil.)

Section 34-A—Note 1.

(1) (1882) 4 All. 141 (144), *Empress* v. *Berrill.*

S. 34-A, Note 1.

The amendment to the Code of 1898 by the introduction of S. 34-A gives Sessions Judges powers to pass sentences of death, penal servitude, imprisonment with or without fine and fine. The term of imprisonment to which Magistrates of the first class (including District Magistrates) may sentence European British subjects has been extended to 2 years, but the amount of fine leviable by them has been fixed at Rs. 1,000.

As regards the powers of Second or Third Class Magistrates over European British subjects, these powers are restricted by S. 29-A to offences punishable with fine not exceeding Rs. 50.

Under the Code of 1898 the privileges which a European British subject as such enjoyed when tried for an offence by a District Magistrate were firstly that the Magistrate's powers of punishment were much restricted and secondly that he (the accused) could claim trial by jury.[2]

S. 34-A is concerned with the former privilege. As regards other provisions relating to European British subject the law has undergone considerable modification as to which, *see* Ch. XXXIII.

It was provided under the old Codes that when a Sessions Judge was of opinion that he could not adequately punish a European British subject he could transfer the case to the High Court. This provision however was held inapplicable to the Court of the Resident of Aden. The Aden Court Act of 1864 requires that he should try European British subjects himself.[3]

S. 34-A was added by S. 7, Criminal Law Amendment Act XII of 1923.[4]

At the same time as this amendment was introduced the definition of High Courts given in S. 4, sub-S. 1-j was amplified so as to include the Court of the Judicial Commissioner, Central Provinces for the purpose of trial of European British subjects.[5]

S. 35.

35.* (1) When a person is convicted at one trial of two or more offences, the Court may, *subject to the provisions of Section* 71 *of the Indian Penal Code*, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court

Sentence in cases of conviction of several offences at one trial.

*(CODE OF 1882—S. 35.)

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Sentence in cases of conviction of several offences at one trial.

(2) (1905) 2 Cri. L. Jour. 17 (19): 27 All. 397, *George Powell* v. *Emperor.*

(3) (1905) 2 Cri. L. Jour. 75: 29 Bom. 575, *Emperor* v. *Robert Comley.*

(4) (1933) 1933 Nag. 136 (139): 29 Nag. L. R. 251, *Rego* v. *Emperor.*

(5) (1933) 1933 Nag. 136 (139): 29 Nag. L. R. 251, *Rego* v. *Emperor.*

S. 35. may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:—

Maximum term of punishment.

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34) the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, the *aggregate of consecutive* sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:

Maximum term of punishment.

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under Section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

(CODE OF 1872—S. 314.)

314. When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

Sentence in cases of simultaneous conviction of several offences.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Explanation—Separable offences which come within the provisions of section 71 of the Indian Penal Code are not distinct offences within the meaning of this section. (*Repealed.*) S. 35.

Illustration.

A breaks into a house with intent to commit theft and steals property therein. *A* has not committed distinct offences. (*Repealed.*)

SYNOPSIS.

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SCOPE OF THE SECTION	1
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"SUBJECT TO THE PROVISIONS OF S. 71 OF THE INDIAN PENAL CODE"	4
"MAY SENTENCE"	5
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Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

Provided also that, if the case be tried by a Magistrate (other than a Magistrate acting under section thirty-six), the punishment shall not in the aggregate exceed twice the amount of punishment which he is, by his ordinary jurisdiction, competent to inflict.

(CODE OF 1861—S. 46.)

Sentence in cases of conviction of two or more offences.

46. When a person shall be convicted at one time of two or more offences punishable under the same or different sections of the Indian Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code which such Court is competent to inflict; such penalties when consisting of imprisonment to commence the one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Provided

S. 35 Notes 1—2.

Other Topics.

Appeal. See Note 16.
Different Trials. See Note 2, and Note 10, F.N. 2.
Relation between Ss. 35 and 235 of this Code and S. 71 of the Penal Code. See Notes 2 and 4.

1. **Scope of the section.**—It is a general principle of Law that whenever an offence is proved against any person, a conviction must necessarily follow it, except where there are specific provisions to the contrary.[1] Every conviction again must be followed by a sentence of punishment except as expressly provided otherwise (See note 5 *infra*). S. 71 of the Penal Code provides such an exception, and in cases falling within that section there can be only *one* punishment, though there may be *several* convictions. In cases not falling within that section the general rule will prevail.

Where a sentence is passed on a conviction for an offence, the general principle of Law is that it should take effect *immediately*.[2] Where there are *several* sentences for *different* convictions against the same person, a different rule has been enacted by the Code, namely, that such sentences should run *consecutively*, the one, after the expiration of the other, unless the Court directs that they should run *concurrently*.[3] This rule is found in this section and in S. 397 *infra*. This section enacts the said rule in respect of cases where at *one trial*, a person is convicted of several offences and is sentenced to several punishments. S. 397 enacts the rule in respect of cases where a person *already undergoing a sentence* for a previous conviction is again sentenced to punishment.[4]

Ss. 234 and 235 *infra* deal with the question as to when and how far several offences can be tried at *one trial*.

The object and effect of this section is to regulate and in some cases, to increase, subject to the provisions of S. 71 of the Penal Code, the length of the punishment that the Courts are competent to inflict.[5]

2. **"One trial".**—Ss. 234 and 235 *infra* deal with the question as to when and how far *several* offences can be tried at *one trial*. The rules as to the *assessment of punishment* must be sought for in S. 71 of the Penal Code and this section.[1-a]

It is only when an accused person is convicted at *one trial* of two or more offences, that the provisions of this section will apply.[1] Where a person accused of *several* offences is *separately tried* and convicted for each of such offences, this section has no application and the aggregate punishment which

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Proviso.

that in no case shall the person be sentenced to imprisonment for a longer period than fourteen years; and provided also, that if the case be tried by a Magistrate, the punishment shall not in the aggregate exceed twice the extent of punishment which such Magistrate is by his ordinary jurisdiction competent to inflict.

Section 35—Note 1.

(1) (1888) 10 All. 58 (66), *Queen-Empress* v. *Wazir Jan.*
[See also (1868) 5 B. H. C. R. 3 (5), *Reg.* v. *Murar Trikane.*]
(2) See note 2 to S. 397, *infra*.
(3) See note 2 to S. 397, *infra*.
(4) See S. 397, *infra*.
(5) (1934) 1934 Rang. 338 (339): 12 Rang. 419, *Emperor* v. *Mi Hlwa.*

Note 2.

(1-a) (1875) 1 Bom. 214 (215), *Reg.* v. *Tukaya.*
(1886) 10 Bom. 493 (496), *Queen-Empress* v. *Sakharam Bhau.*
(1888) 12 Mad. 36 (38), *Queen-Empress* v. *Nirichan.*
(1) See the cases cited in footnotes 2 and 3, *infra*.
[See also (1902) 5 Bom. L. R. 26 (27), *Emperor* v. *Kanji Jaysingh.*]

can be awarded is not limited to twice the amount which the Magistrate is, by his ordinary jurisdiction competent to inflict; but he can, for *each* offence inflict the punishment which he is ordinarily competent to inflict.[2] Similarly, in the case mentioned above, an aggregate sentence of more than 14 years is not prohibited, as is provided for in the first *proviso*, to this section.[3]

3. **Section applies only when there are convictions for two or more offences.**—This section applies only when an accused person has been convicted at one trial of two or more offences.[1] Thus, where a convicted person is liable to be punished under the provisions of S. 75, Indian Penal Code, a separate sentence cannot legally be passed against him on account of the previous conviction recorded against him.[2] The reason is that S. 75 of the Indian Penal Code does not constitute an offence, but only imposes a liability to enhanced punishment.[3]

4. **"Subject to the provisions of S. 71 of the Indian Penal Code."**—A commits two offences, the one being the *object* of the other. For example, A commits criminal trespass on certain property with intent to commit theft, and also commits theft therein. The former is an offence under S. 457 of the Penal Code and the latter, under S. 380 thereof. Is S. 71 applicable to such cases and can separate sentences be passed in respect of such offences under this section? On a plain construction of S. 71[1] of the Penal Code it would

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(2) (1880) 3 All. 305 (311, 312, 315) (F.B.), In the matter of *Daulatia*.
(1881) 1881 All. W. N. 23 (23), *Empress* v. *Thakur*.
(1879) 2 Weir 30 (31), High Court proceedings 5th June, 1879.
(1880) 2 Weir 31 (32), High Court proceedings 7th December, 1880, No. 2506.
(1886) 1886 Pun. Re. No. 14, Cr. p. 23 (25), *Bahadur* v. *Empress* (The circumstance that the separate trials were contemporaneous and terminated on the same day is wholly immaterial).
(3) (1867) 7 Suth. W. R. 1 (2), *Queen* v. *Puban*.

Note 3.

(1) See the cases cited in footnote 2, *infra*.

[See also (1903) 5 Bom. L. R. 26 (27), *Emperor* v. *Kanji Jaysingh*.]
(2) (1916) 1916 Mad. 829, *Muthurakka Thevan*, In re.
(1869) 5 Mad. H. C. R. App. iii (iii), High Court proceedings 2nd November, 1869.
(1888) 1888 Rat. 417 (418), *Queen-Empress* v. *Narayan*.
(1894) 1894 Rat. 688 (688), *Queen-Empress* v. *Gulab*.
(1865) 1 Weir 36 (36), High Court proceedings 27th April, 1865.
(1889) 11 All. 393 (394, 395), *Queen-Empress* v. *Khalak*.
(3) (1869) 5 Mad. H. C. R. App. iii (iii), High Court proceedings 2nd November, 1869.
(1865) 2 Weir 36 (36), High Court proceedings 27th April, 1865.

Note 4.

(1) [71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence made up of several offences.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a*) *A* gives *Z* fifty strokes with a stick. Here *A* may have committed the offence of voluntarily causing hurt to *Z* by the whole beating, and also by each of the blows which make up the whole beating. If *A* were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

S. 35, Note 4.

seem to be clear that it does not apply to such cases. The first paragraph thereof cannot apply as it cannot be said that the theft forms *part* of the offence of criminal trespass *with intent to commit* theft. The second paragraph has obviously no application. Nor will the last paragraph apply inasmuch as theft, when combined with criminal trespass to commit theft, is not punishable under any single section of the Penal Code.[2]

There has, however, been a conflict of opinion on the question raised above due mainly to the addition and removal of certain illustrations to this section as well S. 235 and their corresponding provisions in the earlier Codes.

Up to the year 1882, S. 71 of the Penal Code did not contain the present second and third paragraphs thereof. Nor were there any provisions in the Code of Criminal Procedure, 1861, correspoding to those paragraphs. In cases of the kind under discussion, it was held by the High Court of Calcutta, under general principles of law, that the offender should be punished as guilty of a single offence, the one being regarded as evidence of the intention which is an element in the other.[3] The High Court of Bombay held, on the other hand, that the offender could be convicted and sentenced *separately* for each of the offences provided the aggregate amount of punishment awarded on the two charges did not exceed that which the case warranted for the graver offence.[4]

The Code of 1872 newly introduced S. 454 corresponding to a combination of the present S. 235 and the second and third paragraphs of S. 71 of the Penal Code, and contained *inter alia* the following paragraph and illustration:—

"3. If several acts of which one or more than one would, by itself, constitute an offence, form, when combined, an offence under the provisions of any law in force for the time being, by which offences are defined and punished, a person who does them may be charged with every offence which he may have committed, *but he must not receive* for such offences, collectively, a punishment more severe than that which might have been awarded, by the Court trying him for anyone of such offences, or for the offence formed by their combination.

Illustration.

To paragraph 3.

(*a*) *A* commits house-breaking by day with intent to commit adultery, and commits in the house so entered, adultery with *B's* wife. *A* may be separately. . . . . convicted of offences under Ss. 454 and 497 of the Indian Penal Code, but the Court which tries him may not inflict a severer sentence than if it had convicted him under S. 392 or 394 only."

(*b*) But if, while *A* is beating *Z*, *Y* interferes, and *A* intentionally strikes *Y*, here, as the blow given to *Y* is no part of the act whereby *A* voluntarily causes hurt to *Z*, *A* is liable to one punishment for voluntarily causing hurt to *Z*, and to another for the blow given to Y.]

(2) (1886) 10 Bom. 493 (497), *Queen-Empress* v. *Sakharam*.

(3) (1864) 1 Suth. W. R. Cr. L. 5 (5).
(1865) 2 Suth. W. R. 63 (63), *Queen* v. *Tonnokoch*.
(1866) 5 Suth. W. R. 49 (49), *Queen* v. *Chytun Bowra*.
(1867) 8 Suth. W. R. 31 (31), *Queen* v. *Sahrae*.
(1866) 6 Suth. W. R. 48 (49), *Jogun Pullee* v. *Nobo Pillee*.
(1866) 6 Suth. W. R. 92 (92), *Mussahur Daoudh*, In re.
(1865) 3 Suth. W. R. Cr. L. 2 (2), *Queen* v. *Madaree*.
(1865) 3 Suth. W. R. 19 (19), *Queen* v. *Mt. Mina*.
(1865) 2 Suth. W. R. 20 (20), *Queen* v. *Mt. Mina*.
(1864) 1 Suth. W. R. Cr. L. 3 (3).
(1866) 1866 Pun. Re. No. 80, p. 86 (86), *Bisram Das* v. *Shunkar*.
[See also (1865) 2 Suth. W. R. 29 (29), *Queen* v. *Bassoo Rannah*.]
(1864) 1864 Suth. W. R. (Gap.) 31 (31), *Queen* v. *Tincouree*.]

(4) (1872) 9 Bom. H. C. R. 172 (175) (F.B.), *Reg.* v. *Anvarkhan* (Overruling 1 Bom. H. C. R. 87 and approving of 5 Bom. H. C. R. 88).
(1868) 5 Bom. H. C. R. 84 (n).

S. 35, Note 4.

In view of the above illustration it was held under the Code of 1872, that the case under discussion fell within the third paragraph of S. 454, but there was a difference of opinion as to whether both the offences were to be treated as *one combined* offence and punished with *one* sentence, or whether they should be treated as separate offences and punished with separate sentences subject to the rule that the aggregate sentence was not more than might have been inflicted for either offence.[5]

In the Code of 1882, the provisions of S. 454 of older Code, in so far as the *joinder and trial* of charges were concerned, were re-enacted in S. 235. The provisions as to punishment were taken over to the Penal Code and introduced as the second and third paragraphs of S. 71. The illustration above referred to was also omitted as an illustration to paragraph of S. 235 corresponding to the third paragraph of S. 454.

The result of the omission was that the case under discussion was held generally not to fall under S. 71 of the Penal Code as amended,[6] though there was a difference of opinion as to whether the Court would exercise a *proper discretion* in awarding heavy sentences for both the offences.[7]

In 1898 a new Explanation and an illustration was added to S. 35 as follows:—

Explanation.—Separable offences which comes within the provisions of S. 71 of the Indian Penal Code are not distinct offences within the meaning of this section.

Illustration.

A breaks into a house with intent to commit theft and steals property therein. *A* has not committed distinct offences.

This naturally seemed to show that the case under discussion fell within the clause of "separable offences" within the meaning of S. 71 of the Penal Code. It was accordingly held that separate sentences in such a case were illegal,[8] though according to the Bombay High Court the passing of such

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(5) (1875) 1 Bom. 214 (217), *Reg.* v. *Tukaya* (Should be treated as one combined offence—1873 Rat. 79 referred to).
(1874) 7 Mad. H. C. R. 375, In re *Noujan* (Do.).
(1880) 2 All. 644 (646), *Empress of India* v. *Ajudhia* (Court should concentrate on the gravest offence).
[See also (1883) 1883 All. W. N. 228 (228), *Empress* v. *Bandhu* (Do.).
(1879) 2 All. 101 (104), *Empress* v. *Budh Singh* (Separate sentences not prohibited provided aggregate is not severer than the maximum awardable for either offence).
(1878) 1878 Rat. 135 (135), *Queen-Empress* v. *Dada*.]

(6) (1886) 1886 Rat. 228 (229), *Queen-Empress* v. *Kashinath*.
(1888) 1888 Rat. 369 (370), *Queen-Empress* v. *Phakeera*.
(1889) 12 Mad. 36 (38, 39), *Queen-Empress* v. *Nirichan*.
(1895) 8 C. P. L. R. 7 (8), *Empress* v. *Balasur Ganda*.
[But see (1872-1892) Low. Bur. Rul. 390 (391), *Queen-Empress* v. *Nga Pru* (Falls under S. 71, Paragraph 1—It is submitted that the decision is not correct).
(1886) 1886 Rat. 307 (308), *Queen-Empress* v. *Ugra*.

(7) (1888) 10 All. 146 (149), *Queen-Empress* v. *Zor Singh*.
(1886) 10 Bom. 493 (497), *Queen-Empress* v. *Saharam Bhau* (Separate sentences legal).

(8) (1898) 2 Weir 34 (35), In re *Subbadu*.
(1921) 60 Ind. Cas. 54 (54): 1920 Lah. 312, *Barkat* v. *Emperor*.
(1900) 13 C. P. L. R. 124 (124), *Empress* v. *Rameshwardas*.
(1904) 1 Cri. L. Jour. 537 (538): 1904 Upp. Bur. Rul. 2, *King-Emperor* v. *Asgar Ali*.
(1900-1902) 1 Low. Bur. Rul. 279 (280), *Crown* v. *On Bu*.
(1906) 3 Cri. L. Jour. 348 (349): 3 Low. Bur. Rul. 112, *Emperor* v. *Kyaw Hla Aung*.
[See also the following cases (1923) 1923 Cal. 408 (408), *Sarat Chandra Ghose* v. *Emperor* (Being members of an unlawful assembly with the common object of committing an offence and the actual commission of that offence).
(1904) 1 Cri. L. Jour. 365 (366, 367) (Cal.), *Alim Sheik* v. *Shahzada Singh* (Do.).
(1904) 1 Cri. L. Jour. 139 (140) (Cal.), *Bhup Singh* v. *Emperor* (Do.).
(1900) 4 Cal. W. N. 245 (247), *Hridoy Mondal* v. *Jagananda* (Do.).
(1923) 1923 Lah. 160 (160, 161), *Ram Singh* v. *King-Emperor* (Do.).
(1922) 1922 Lah. 31 (32), *Kollu* v. *Emperor* (Do.).

S. 35, Note 4.

sentences would if anything be a curable irregularity.[9]

By the amending Act of 1923 the explanation and the illustration to S. 35 were omitted, but the words "subject to the provisions of S. 71 of the Indian Penal Code" were added in sub-S. (1) of the section. The omission of the illustration has again given rise to a difference of opinion as to whether the case under discussion was meant to be taken away from the category of "separable offences" under S. 71 of the Penal Code. According to the High Court of Calcutta it is.[10] According to the High Court of Patna it is not.[11] In view of the observations made in the beginning of this note the view of the High Court of Calcutta is correct.

Rioting and hurt—

A, *B*, *C*, *D* and *E* are members of an unlawful assembly and *A* in prosecution of the common object of the assembly commits hurt. In so far as *A* is concerned, he would be guilty—

(*a*) of rioting, and
(*b*) of causing hurt.

Now the hurt caused, may itself be a form of force used which converted the unlawful assembly into rioting, or it may be caused, in the course of rioting after the offence of rioting is *complete* by the use of other force. In the latter case, it is clear that the *hurt* is not *part* of the rioting within the meaning of S. 71 and separate sentences can be passed.[12] In the former case, according to the High Court of Calcutta and Lahore the hurt is part of the rioting within the meaning of S. 71 and separate sentences cannot be passed for the two

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(1894) 1 Weir 34 (34), High Court Proceedings, 21st February, 1894, No. 402 (Do.).
(1924) 1924 Pat. 764 (765): 3 Pat. 1015, *Prayag Gope* v. *King-Emperor* (Do.).
[See also (1908) 12 Cal. W. N. clxxxvii (clxxxvii), *Sheikh Jagir* v. *Emperor* (Convictions under Ss. 457 and 354, Penal Code).]

(9) (1899) 23 Bom. 706 (709, 710) (F.B.), *Queen-Empress* v. *Mallu*.
(1906) 8 Bom. L. R. 850 (850), *Emperor* v. *Dhandi Bapu Bhapkar*.
[See Cr. Rg. 36 of 1898. *In the matter of Paka*.]
(1899) 1 Bom. L. R. 69 (70), *Imperatrix* v. *Mahavir Ajodhaya*.

(10) (1925) 1925 Cal. 1015 (1016), *Kanchan Molla* v. *Emperor*.

(11) (1930) 1930 Pat. 385 (386), *Khatir Jama Khan* v. *Emperor*.
(1926) 1926 Pat. 367 (368): 5 Pat. 464, *Makhru Dusadh* v. *King-Emperor*.
[But see (1932) 1932 Pat. 335 (336), *Batisa Singh* v. *Emperor*.]
[See however (1928) 1928 Pat. 115 (116): 6 Pat. 828, *Gendo Uraon* v. *Emperor*.]

(12) (1885) 7 All. 757 (758) (F.B.), *Queen-Empress* v. *Ram Sarup*|
(1917) 18 Cri. L. Jour. 788 (789): 1917 All. 11: 39 All. 623, *Katwaru Rai* v. *Emperor*.
(1885) 7 All. 414 (421, 423) (F.B.), *Queen-Empress* v. *Pershad*.
(1884) 7 All. 29 (35), *Queen-Empress* v. *Dungar Singh*.
(1879) 2 All. 139 (140), *Empress of India* v. *Ram Adhir*.
(1926) 1926 Jour. 155 (2), *Sheo Nath* v. *King-Emperor*.
(1871) 3 N.-W. P. 174 (175), *Queen* v. *Hurgobind*.
(1893) 17 Bom. 260 (270), *Queen-Empress* v. *Banapunja*.
(1885) 11 Cal. 349 (353), *Loke Nath Sarkar* v. *Queen-Empress*.
(1891) 19 Cal. 105 (111), *Ferasat* v. *Queen-Empress*.
(1925) 1925 Cal. 1039 (1040), *Kapie Mandal* v. *Rabbani Sheikh*.
(1927) 1927 Cal. 575 (576), *Fattar Bop* v. *Emperor*.
(1913) 14 Cri. L. Jour. 66 (67): 40 Cal. 511, *Harbans Pandey* v. *Emperor*.
(1914) 1914 Cal. 675 (677): 41 Cal. 835, *Prokash Chandra* v. *Emperor*.
(1889) 16 Cal. 725 (729), *Mohur Mir* v. *Queen-Empress*.
(1886) 12 Cal. 495 (498), *Chandra Kanta Bhattarjee* v. *The Queen-Empress*.
(1908) 12 Cal. W. N. cxlvii (cxlviii), *Deonarain* v. *Emperor*.
(1866) 5 Suth. W. R. 19 (19), *Queen* v. *Azgur*.
(1885) 1885 Pun. Re. No. 32, p. 70 (76), *Jafir Khan* v. *The Empress*.
(1894) 1894 Pun. Re. No. 31, p. 102 (103), *Nur Khan* v. *Empress*.
Oudh S. C. 125. In the matter of *Bhagwandin Singh*.
(1921) 1921 Pat. 323 (324), *Mathura Rai* v. *Emperor*.
(1921) 1921 Pat. 374 (376), *Ramnath Rai* v. *Emperor*.
(1926) 1926 Jour. 155 (2) (155), *Sheo Nath* v. *King-Emperor*.
[See (1904) 1 All. L. Jour. 225, *Hafiz Rahim Ulla* v. *King-Emperor*.

offences.[13] According to the High Court of Madras, however, the hurt is not part of the rioting even in such a case inasmuch as the force necessary to constitute rioting may fall short of causing hurt, and the hurt caused by the use of force in excess of what is necessary to constitute rioting constitutes a different offence. *A* may therefore be punished separately for the two offences.[14] S. 35, Note 4.

As regards *B*, *C*, *D* and *E*, however, the position would be different. They are guilty

(*a*) of the offence of rioting; and

(*b*) *by virtue of their being members of an unlawful assembly and for that reason only*, of the offence of grievous hurt under S. 149 read with S. 325 of the Penal Code.

But for the rioting *B*, *C*, *D* and *E*, would not be guilty of causing grievous hurt, not having caused it themselves directly. The offence under S. 149 read with S. 325 is therefore a *part* of the offence of *rioting* and therefore separate sentences for each of the offences cannot be passed. This is the view of the Calcutta,[15] Madras[16] and Patna[17] High Courts and of the Judicial Commissioner's Court of Sind[18] though according to the latter Court the passing of separate sentences in such cases would only be a curable irregularity provided the aggregate of the sentences passed did not exceed the maximum punishment provided for the graver offence. A contrary view has, however, been

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(13) (1885) 11 Cal. 349 (353), *Loke Nath Sarkar* v. *Queen-Empress*.
(1891) 19 Cal. 105 (111), *Ferasat* v. *Queen-Empress*.
(1899) 3 Cal. W. N. 174 (175), *Ram Dihal* v. *Empress*.
(1927) 1927 Lah. 786 (788), *Huzura Singh* v. *Emperor*.
(1926) 1926 Lah. 581 (581), *Manak Chand* v. *Emperor*.
(1922) 1922 Lah. 405 (405), *Bishna* v. *Emperor*.
(1917) 1917 Lah. 358 (359): 1916 Pun. Re. 31, *Mangal Singh* v. *Emperor*.
(1911) 12 Cri. L. Jour. 236 (237) (Lah.), *Hardit Singh* v. *Emperor*.
(1901) 1901 Pun. Re. No. 4, *Bhawan Singh* v. *The Empress of India*.
[See also (1922) 1922 Lah. 410 (412), *Khizar* v. *Emperor*.]

(14) (1933) 1933 Mad. 338 (339): 56 Mad. 481, *Sothavalan* v. *Rama Kone*.
(1928) 1928 Mad. 18 (18), *Anthoni Udayan* v. *Royappa Udayar*.
[But see (1927) 1927 Mad. 970 (970), *Kunnammal Mayan* v. *King-Emperor* (Dissented from in 1933 Mad. 338).]

(15) (1889) 16 Cal. 442 (446), *Nilmony Podder* v. *Queen-Empress*.
(1931) 1931 Cal. 606 (607), *Harendra Barman* v. *Emperor*.
(1931) 1931 Cal. 450 (451), *Kitabdi* v. *Emperor* [The amendment of this section in 1923 does not alter the law as laid down in 16 Cal. 442 (F.B.).]
(1927) 1927 Cal. 931 (931), *Basiruddin* v. *Emperor*.
(1925) 1925 Cal. 217 (218), *Amiruddin* v. *Emperor*.
(1924) 1924 Cal. 771 (773): 51 Cal. 79, *Kiamuddi Karikar* v. *King-Emperor*.
(1918) 14 Cri. L. Jour. 66 (67): 40 Cal. 511, *Harbans Pandey* v. *Emperor*.
(1903) 8 Cal. W. N. 344 (349), *Sahadav Ahir* v. *Empress*.
(1908) 12 Cal. W. N. cxciv (cxciv), *Malai Mahi* v. *Mahamad Ali*.
(1898) 3 Cal. W. N. 174 (175), *Ram Dihal* v. *Empress*.
(1916) 20 Cal. W. N. cvii (cvii), *Jangli Singh* v. *King-Emperor*.
(1910) 14 Cal. W. N. lxiii (lxiii), *Abdulla* v. *Emperor*.
(1868) 9 Suth. W. R. 33 (35), *Queen* v. *Durzoolla*.
(1867) 7 Suth. W. R. 13 (14), *Queen* v. *Rubbeeoolah*.
(1871) 16 Suth. W. R. 45 (45), *Nilruthin Sein*, In re.
[See also (1904) 1 Cri. L. Jour. 449 (451) (Cal.), *Hansa Pathak* v. *Bansi* (Case of constructive theft).
(1899) 3 Cal. W. N. 761 (762), *Mithoo Singh* v. *Gopal Lal* (Do.).
(1914) 1914 Cal. 675 (677): 41 Cal. 836, *Prokash Chandra* v. *Emperor*.
(1868) 10 Suth. W. R. 63 (63), *Queen* v. *Dina Sheikh*.]
[See (1881) 6 Cal. 718 (720), *The Empress* v. *Jubhdur Kazi*.]
[But see (1867) 7 Suth. W. R. 60 (60), *Queen* v. *Lallachand*.]

(16) (1919) 1919 Mad. 353 (356), *Krishna Ayyar* v. *Emperor*.
(1934) 1934 Mad. 388 (391): 57 Mad. 643, *Ponniah Lopes* v. *Emperor*.

(17) (1921) 1921 Pat. 432 (433), *Nemdhri Singh* v. *Emperor*.
(1918) 1918 Pat. 227 (228), *Pattu Singh* v. *Emperor*.
(1920) 1920 Pat. 196 (197), *Chandra Mohan Singh* v. *Emperor* (Case of Constructive theft).
(1929) 1929 Pat. 263 (264): 8 Pat. 274, *Baja Singh* v. *Emperor*.

(18) (1910) 11 Cri. L. Jour. 415 (416): 3 Sind L. R. 224, *Imperator* v. *Baradi*.

S. 35. Note 4.

taken by the High Courts of Allahabad,[19] Bombay,[20] Lahore,[21] and Rangoon[22] the Chief Court of Oudh,[23] and the Judicial Commissioner's Court of Nagpur.[24] According to these decisions S. 149 *does not create any specific offence* though a person may be *punishable* under it. *B*, *C*, *D* and *E* are therefore not guilty of *two* offences, though they are punishable with two sentences. S. 71 therefore does not apply and the separate sentences are legal. It is submitted that this view is not correct in view of the decision of the Privy Council in *Barendranath* v. *Emperor*[25] that S. 149 of the Penal Code *creates a specific* offence.

See also the undermentioned cases.[26]

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(19) (1887) 9 All. 645 (654), *Queen-Empress* v. *Bisheshar* (Overruling 6 All. 121).
(1926) 1926 All. 225 (226), *Chidda* v. *King-Emperor*.
(1916) 7 Cri. L. Jour. 418 (419): 1916 All. 49, *Dharamdeo Singh* v. *Emperor*.
(1910) 11 Cri. L. Jour. 480 (481): 33 All. 48, *Dharam Das* v. *Emperor*.
[But see (1919) 1919 All. 379 (380), *Kure* v. *Emperor*.]

(20) (1893) 17 Bom. 260 (270) (F. B.), *Queen-Empress* v. *Bana Punja*.
(1926) 1926 Bom. 64 (64): 49 Bom. 916, *Emperor* v. *Piru Rama Havaldar*.
[But see (1889) 1889 Rat. 493 (494), *Queen-Empress* v. *Musa Bagas*.]

(21) (1929) 1929 Lah. 670 (672), *Ali Akbar* v. *Emperor*.
(1926) 1926 Lah. 521 (521), *Rahman* v. *Emperor*.
(1929) 1929 Notes 21 (*e*), *Faqiria* v. *Emperor*.
(1895) 1895 Pun. Re. No. 8, p. 31 (33), *Tokha* v. *Empress*.
[But see (1930) 1930 Lah. 1044 (1045), *Emperor* v. *Abdul Qadir Kasuri*.
(1929) 1929 Lah. 498 (499), *Buta* v. *Emperor*.
(1934) 1934 Lah. 614 (614), *Kehar Singh* v. *Emperor*.]

(22) (1924) 1924 Rang. 291 (293), *Nga Son Min* v. *Emperor*.

(23) (1914) 1914 Oudh 205 (206): 17 Oudh Cas. 184, *Mahpal Singh* v. *Emperor*.

(24) (1926) 1926 Nag. 459 (461), *Deoji* v. *King-Emperor*.

(25) (1925) 1925 P. C. 1 (7): 52 Cal. 197, *Barendra Kumar* v. *Emperor*.

(26) (1896) 1896 All. W. N. 194 (194), *Queen-Empress* v. *Ram Lal* (Convictions under S. 380 and S. 461, Penal Code).
(1867) 7 Suth. W. R. 59 (59), *Queen* v. *Abdul Azeez* (Conviction for making a false charge and for intentionally giving false evidence).
(1877) 1 All. 379 (381), *Queen* v. *Ramashwar Rai* (Convictions under Ss. 414 and 193, Penal Code).
(1923) 1923 Lah. 291 (292), *Lagh Singh* v. *Crown* (Convictions under Ss. 458 and 366, Penal Code).
(1924) 1924 Lah. 585 (587), *Allah Ditta* v. *Emperor* (Convictions for rioting with a view to prevent people from going by the train and for throwing stones at the Railway train).
(1870) 14 Suth. W. R. 19 (20), *Queen* v. *Joyah Mohun Chunder* (Accused objected to accompany a constable who had been directed to produce him before Court and also seized the constable by the arm and resisted his carrying away a penny which he was charged with having misappropriated was held to be guilty of separate offences).
(1870) 13 Suth. W. R. 16 (16), *Queen* v. *Goluck Chunder* (Conviction for being in possession of several seals with intent to commit several forgeries).
(1900-1902) 1 Low. Bur. Rul. 203 (204), *Crown* v. *Nga Shein* (Convictions for theft and receiving gift to recover stolen property).
(1867) 7 Suth. W. R. 68 (68), *Queen* v. *Durga Das* (Kidnapping girls and selling them for purposes of prostitution).
(1867) 7 Suth. W. R. 104 (104), *Queen* v. *Doorga Das* (Do.).
(1865) 2 Suth. W. R. 2 (3), Re *Bothurmonarain* (Kidnapping and abduction).
(1909) 9 Cri. L. Jour. 226 (245): 33 Bom. 221, In re *Balgangadhar Tilak* (Convictions under Ss. 124-A and 153-A, Penal Code).
(1910) 11 Cri. L. Jour. 583 (587): 4 Sind L. R. 55, *Emperor* v. *Virumal* (Do.).
(1870) 13 Suth. W. R. 75 (75), *Queen* v. *Assan* (Convictions for rescuing a person from the custody of an officer and for the use of criminal force towards another officer).
(1905) 2 Cal. L. Jour. 66 (N.), *Jasimulla* v. *Emperor* (Convictions under Ss. 143 and 379, Penal Code).
(1871) 16 Suth. W. R. 60 (60), *Gobind Chunder Roy*, In re (Convictions under Ss. 143 and 353, Penal Code).
(1923) 1923 Lah. 104 (105), *Dangar Khan* v. *Emperor* (Convictions under Ss. 365 and 395, Penal Code).
(1921) 1921 Lah. 323 (326), *Chandu Singh* v. *Emperor* (Under Ss. 366 and 394, Penal Code).
(1928) 1928 Oudh 507 (508), *Hazari Beria* v. *Emperor* (Under Ss. 120-B, 396 and 412, Penal Code).
(1894) 18 Bom. 205 (207), *Queen-Empress* v. *Shadshiv Atmaram* (Convictions under Ss. 500 and 506, Penal Code).
(1915) 1915 All. 417 (418): 37 All. 628, *Bateshar* v. *Emperor* (Hurt caused to several persons by separate acts though on the same occasion).
(1866) 5 Suth. W. R. 4 (4), Re *Madan* (Do.).
(1868) 9 Suth. W. R. 30 (30), *Goolzar Khan*, In re (Criminal intimidation to three persons at one time).
(1897) 1 Oudh Cas. 4 (7), *Ram Adhin* v. *Queen-Empress* (A person kidnapping two girls should be awarded separate sentences).
(1926) 27 Cri. L. Jour. 64 (65) (Lah.), *Samundar* v. *Emperor* (Do.).
(1866) 1866 Pun. Re. No. 66, p. 71 (71),

S. 35, Note 5.

5. "May sentence".—The word "*may*" in the section must be interpreted as "*shall*".[1] Where, therefore, an accused person is convicted at one trial of two or more offences, the Court *must*, in cases in which the provisions of S. 71 of the Indian Penal Code do not come into play, pass separate sentences for the several offences.[2] The Court has no discretion whatever to pass only one sentence for one offence and decline to pass sentences for the other offences of which it may find the accused guilty.[3] The reason is that just as the maximum "*Ubi jus ibi remedium*" (where there is a right there is a remedy) is a rule of jurisprudence, it is a principle of criminal law that where there is an offence, there must be a punishment, the general rule being affected by express provisions of law to the contrary.[4] *See also* the words "shall pass sentence" in Ss. 245, 258, 306 and 309, *infra*.

Mohur Banji v. *Chunda* (Stealing from his master's shop on two different occasions).
(1920) 1920 Bom. 315 (316, 317): 44 Bom. 88, *Emperor* v. *Johnson* (Where an employer employs several workmen in contravention of S. 41 of the Factories Act there are separate offences committed in respect of employing of each person).
(1921) 1921 Bom. 322 (322): 45 Bom. 220, *Vrijvallubedas Jekisondas* v. *Emperor* (Do.).
(1926) 1926 Jour. 97 (1), *Pira* v. *Emperor* (Distinct offences committed though in the course of the same transaction—Separate sentences should be passed).
(1934) 1934 Rang. 122 (123), *Nga Po Nyein* v. *Emperor* (Commission of two separate dacoities).
(1865) 4 Suth. W. R. 25 (25), *Queen* v. *Dinonath Gangooly* (Do.).
(1932) 1932 Rang. 184 (184): 10 Rang. 396, *Emperor* v. *Nga Sein Po*.
Possessing illicit liquor and possessing materials for manufacturing such liquor are separately punishable.
(1934) 1934 Rang. 338 (339, 341): 12 Rang. 419, *Emperor* v. *Mi Hlwa*.
(1928) 1928 Bom. 141 (142): 52 Bom. 277, *Emperor* v. *Pandu Anachit Bhil*.
(1890) 1890 Rat. 523 (523), *Queen-Empress* v. *Shivdia*.
(1888) 1888 Rat. 409 (409), *Queen-Empress* v. *Pascoe*.
(1918) 1918 Pat. 250 (251), *Bali Sahu* v. *Emperor*.
[See however (1933) 1933 All. 438 (439, 440): 55 All. 557, *Emperor* v. *Mohammad Ali Khan* (The one offence is included in the other).
(1902) 4 Bom. L. R. 720 (721), *Emperor* v. *Ranto Bhikhlo* (Do.).
(1924) 1924 Nag. 32 (32), *Sheikh Munir* v. *Emperor* (Do.).
(1904) 1 Cri. L. Jour. 552 (553, 554): 1904 Upp. Bur. Rul. 1, *Emperor* v. *Nga Sah Dun* (Do.).
(1900-1902) 1 Low. Bur. Rul. 33 (35, 36, 37), *Queen-Empress* v. *Aw. Wa.* (Do.).]
Convictions under Ss. 366 and 376, Penal Code—Separate sentences may be passed.
(1927) 1927 Lah. 88 (89): 7 Lah. 484, *Gulam Mohammad* v. *Crown*.
(1928) 1928 Notes 57 (*b*) (57), *Tek Singh* v. *Emperor*.
(1928) 1928 Notes 60 (*f*) (60), *Baga* v. *Emperor*.
[But see (1926) 1926 Lah. 114 (114), *Buta Singh* v. *Emperor*.]
Convictions under Ss. 411 and 414, Penal Code—Separate sentences may be passed.
(1928) 1928 Bom. 145 (145), *Emperor* v. *Hanma Timma Bhandiwadekar*.
[But see (1889) 1889 Rat. 449 (450), *Queen-Empress* v. *Sakharam*.
(1891) 1891 Rat. 553 (553), *Queen-Empress* v. *Alu*.
(1868) 4 Mad. H. C. R. App. xiii (xiv), High Court proceedings 12th August, 1868.]
Forgery and using a forged document as genuine—Separate sentences may be passed.
(1929) 1929 Mad. 450 (450, 451): 52 Mad. 532, *Sriramulu Naidu* v. *Emperor*.
(1924) 1924 Nag. 162 (162), *Gajaman Sekharam* v. *King-Emperor*.
[But see (1901) 23 All. 84 (85), *Queen-Empress* v. *Umrao Lal*.
(1913) 14 Cri. L. Jour. 183 (184): 1913 Pun. Re. No. 4, *Pirbhu Dial* v. *Emperor*.]

Note 5.

(1) (1933) 1933 Sind 9 (10, 11): 26 Sind L. R. 416, *Emperor* v. *Dharamdas*.
(2) (1934) 1934 Rang. 338 (339, 341): 12 Rang. 419, *Emperor* v. *Mi Hlwa*.
(1933) 1933 Sind 9 (10, 11): 26 Sind L. R. 416, *Emperor* v. *Dharmadas*.
(1887) 10 All. 58 (68), *Queen-Empress* v. *Wazir Jan*.
(1905) 2 Cri. L. Jour. 155 (156): 27 All. 491, *Emperor* v. *Narbadeshwar* (If however Court deems it necessary the sentences may be made to run concurrently).
(1900) 23 All. 84 (85), *Queen-Empress* v. *Umrao Lal* (Do.).
(1888) 1888 Rat. 369 (370), *Queen-Empress* v. *Phakeera*.
(1868) 10 Suth. W. R. 3 (3), *Nuggurdi Pramanaick*, In re.
(1900) 13 C. P. L. R. 124 (124), *Empress* v. *Rameshwardas* (Otherwise the sentence is illegal).
(1918) 1918 Lah. 297 (297-298): 1917 P. R. 46, *Emperor* v. *Wadhdawa*.
[But see (1872-1892) 1872-1892 L. B. R. 271 (271), *Queen-Empress* v. *Nga Kyin U*.
(1872-1892) L. B. S. J. 526 (527), *Queen-Empress* v. *Maung Kala*.
(1875) 12 Bom. H. C. R. 147 (148), *Reg.* v. *Gulam Abbas*.]
(3) (1934) 1934 Rang. 338 (341): 12 Rang. 419, *Emperor* v. *Mi Hlwa*.
(4) (1887) 10 All. 58 (65), *Queen-Empress* v. *Wazir Jan*.

S. 35, Notes 6—9.

6. **Separate and aggregate sentences.**—In cases coming within the scope of this section, a Court has no power to pass an aggregate sentence instead of separate sentences on each head of charge. The first clause of this section clearly contemplates the passing of separate sentences of imprisonment or transportation.[1] The object of the section in imposing separate sentences is to enable the appellate or revisional Court to determine the amount of punishment to be remitted in case one or other of the charges breaks down in appeal or revision.[2] Where, however, a consolidated sentence is passed instead of separate sentences, it is only a curable error or defect.[3]

7. **Consecutive sentences.**—Where an accused is sentenced, at one trial, to two consecutive terms of imprisonments, the first warrant of imprisonment should be completely executed both in regard to the substantive sentence of imprisonment and the imprisonment in default of payment of fine, if any, before any effect is given to second warrant.[1]

8. **"When consisting of imprisonment or transportation".**—Under S. 46 of the Code of 1861, it was held that it was illegal to pass two sentences of transportation, one to begin after the expiry of the other, on the ground that such a sentence could be passed only when the penalties consisted of imprisonments.[1] In view of the introduction of the words "or transportation" after the word "imprisonment" in the subsequent Codes this view is no longer good law.

9. **Imprisonment and whipping.**—An accused person convicted at one trial of two or more offences may, in addition to any other punishment, be sentenced to whipping subject to the restrictions contained in the Whipping Act.[1]

Where a person convicted at one trial of two or more offences is sentenced to imprisonment and also to whipping for one of the offences, the sentence of whipping ought not to be directed to be delayed till the expiry of the sentences of imprisonment, but must be carried out in accordance with the provisions of S. 391, *infra*.[4] The reason is that only sentences of imprisonment or transportation can be directed to take effect in succession. *See also* Notes to S. 391, *infra*.

Note 6.

(1) (1886) 1886 Pun. Re. No. 14, p. 22 (24), *Bahadar* v. *Empress*.
[See also (1924) 1924 Mad. 584 (585), *Kottoora Thevan*, In re.]
(2) (1868) 10 Suth. W. R. Cr. 3 (4), *Nuggurdi Paramanaick*, In re.
(1869) 4 Mad. H. C. R. App. xxvii (xxvii), High Court Proceedings 15th January, 1869.
(1934) 1934 Rang. 338 (339): 12 Rang. 419, *Emperor* v. *Mi Hlwa*.
(1886) 1886 Pun. Re. No. 14, p. 22 (24), *Bahadar* v. *Empress*.
(3) (1866) 2 Bom. H. C. R. 391 (392), *Reg.* v. *Vinayak Trimbak*.
[See also (1892) 1892 Rat. 597 (599), *Queen-Empress* v. *Mahomed* (It is not illegal to pass one sentence, but it is generally the proper course to pass separate sentences).]

Note 7.

(1) (1878) 1878 Rat. 132 (132), Dharwar District Magistrate Letter No. 682.

Note 8.

(1) (1869) 11 Suth. W. R. Cr. 10 (10), *Queen* v. *Kassim Ally*.

Note 9.

(1) (1871) 15 Suth. W. R. Cr. 89 (91, 92), *Moniruddeen* v. *Gour* (Impliedly overruling 9 Suth. W. R. Cr. 41).
(1870) 5 Mad. H. C. R. App. xviii (xviii) High Court Proceedings 18th February, 1870.
[But see (1868) 9 Suth. W. R. 41 (44, 46, 49) (F.B.), *Nassir* v. *Chunder*.
(1870) 14 Suth. W. R. 7 (7), *Ruttum Bava* v. *Buhur* (Following 9 Suth. W. R. 41).]
(2) (1886) 1886 Rat. 300 (301), *Queen-Empress* v. *Sagaram Nath*.
(1895) 1895 Rat. Un. Re. Cr. C. 803 (804), *Queen-Empress* v. *Habla Sola* (Two consecutive sentences of imprisonment and imprisonment and whipping respectively—Whipping cannot be postponed).
(1902) 4 Bom. L. R. 929 (930), *Emperor*

As to whether concurrent sentences of whipping can be passed, *see* Note 12, *infra*. S. 35, Notes 9—10.

10. Concurrent sentences.—Prior to the Code of 1898 it was held in the undermentioned cases,[1] that where an accused was sentenced to two or more terms of imprisonment or transportation on conviction at one trial it was illegal to direct the sentences to run concurrently. By the addition of the words "unless the Court directs that such punishments shall run concurrently" at the end of sub-S. (1) of this section in 1898, the abovementioned rulings have been rendered obsolete. Even under this section prior to the amending Act of 1923, concurrent sentences could be passed only when the accused was convicted of two or more offences at *one trial* (*see* Note 2, *ante*) and the Court had, therefore, no power to order sentences to run concurrently with sentences passed in other trials.[2] In such cases S. 397, *infra*, provided that the sentences should commence the one after the expiry of the other. Section 397, *infra*, has now been amended in 1923 so as to empower the Court to pass concurrent sentences even in cases where an accused has been convicted in two or more separate trials.

Where a Magistrate convicted an accused person of offences under Ss. 148 and 326 of the Penal Code and sentenced him to 18 months imprisonment "under 326|148, Penal Code", it was held that it must be interpreted as meaning

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v. *Jagannath Sagar* (Two consecutive sentences of imprisonment with whipping added to both—Second whipping cannot be postponed).

[See also (1893-1900) L. B. P. J. 582 (583), *Queen-Empress* v. *Nga Paw Dun*.

(1898) 1898 Rat. 955 (955), *Queen-Empress* v. *Dagdu Jangi*.]

Note 10.

(1) (1887) 10 All. 58 (64), *Queen-Empress* v. *Wazir Jan*.

(1897) 20 All. 1 (2), *Queen-Empress* v. *Ishri*.

(1896) 1896 Rat. 878 (878), *Queen-Empress* v. *Bava*.

(1888) 1888 Rat. Un. Re. Cr. C. 383 (384), *Queen-Empress* v. *Rama* (Cases of several sentences of transportation).

(1888) 10 Bom. 254 (256), *Queen-Empress* v. *Pir Muhammad*.

(1897) 25 Cal. 557 (558, 559), *Daitari Das* v. *Queen-Empress*.

(1865) 3 Suth. W. R. 13 (13), *Queen* v. *Mohesh Chunder*.

(1864) 1 Suth. W. R. Cr. Cir. 2 (2), Criminal Circular No. 16 of 20th August, 1864.

(1894) 1894 Pun. Re. No. 12 Cr., p. 38 (38, 39), *Muzoffar* v. *Queen-Empress*.

(1895) 8 C. P. L. R. Cr. 1 (2), *Empress* v. *Tikaram Lohar*.

(1893) 6 C. P. L. R. 9, Cr. (10), *Empress* v. *Shrawan*.

(1872-1892) L. B. S. J. 526 (526), *Queen-Empress* v. *Maung Kala*.

[See also (1869) 1869 Rat. 18 (18), Khandesh Sessions Judge's Letter No. 815 of 1869.

(1873) 20 Suth. W. R. 70 (70), *Queen* v. *Sobrat*.]

[But see (1886) 1886 Rat. 288 (288), *Queen-Empress* v. *Nadharya*.

(1869) 1869 Rat. 19 (19), *Reg.* v. *Ramchandra*.]

(2) (1925) 1925 All. 305 (306): 47 All. 59, *Dulli* v. *Emperor* (Case arising before amendment of 1923).

(1921) 1921 All. 126 (127), *Harak Narain* v. *Emperor*.

(1920) 1920 All. 211 (211), *Emperor* v. *Bhikki*.

(1913) 14 Cri. L. Jour. 240 (240) (All.), *Makbul Hussain* v. *King-Emperor*.

(1902) 4 Bom. L. R. 876 (877), *Emperor* v. *Tukaram Hari*.

(1900) 2 Bom. L. R. 111 (112), *Queen-Empress* v. *Bhagwandas*.

(1891) 1891 Rat. 552 (553), *Queen-Empress* v. *Mahomed*.

(1918) 1918 Cal. 243 (243), *Joyanullah Bepari* v. *Emperor*.

(1917) 18 Cri. L. Jour. 410 (411): 1917 Cal. 416, *Kamal Mandal* v. *Emperor*.

(1925) 1925 Lah. 334 (335), *Batan Singh* v. *Emperor*.

(1912) 13 Cri. L. Jour. 3 (3) (Lah.), *Emperor* v. *Ganda Singh*.

(1911) 12 Cri. L. Jour. 217 (218): 1911 P. R. 11, *Girdhari Lal* v. *Emperor*.

(1910) 11 Cri. L. Jour. 679 (680) (Lah.), *Sheo Narain* v. *Emperor*.

(1912) 13 Cri. L. Jour. 466 (467) (Mad.), *The Advocate-General* v. *Govindaswami*.

(1902) 15 C. P. L. R. 57 (57), *Emperor* v. *Buddhu*.

(1914) 1914 Oudh 193 (194): 16 Oudh Cas. 370, *Debi Dayal* v. *King-Emperor*.

(1923) 1923 Rang. 197 (198): 1 Rang. 306, *Nga Sein* v. *Emperor*.

(1913) 14 Cri. L. Jour. 388 (388) (Rang.), *Nga Pya* v. *Emperor*.

(1911) 12 Cri. L. Jour. 465 (465): 6 L. B. R. 22, *Emperor* v. *Eng Gyaung*.

(1908) 7 Cri. L. Jour. 445 (445): 4 L. B. R. 147, *Emperor* v. *San E and others*.

(1902-1903) U. B. R. Cr. P. 19, *Nga Tok Gyi* v. *King-Emperor*.

(1909) 10 Cri. L. Jour. 236 (237): 2 Sind L. R. 23, *Imperator* v. *Khudabux*.

(1915) 13 All. L. Jour. (N) 1, *King-Emperor* v. *Dasarath*.

S. 35, Notes 10—14.

that the Magistrate passed concurrent sentences under each section and not as separate sentences of 9 months on each charge.[3]

11. Imprisonment or transportation—Concurrent sentences of.—The word 'or' between the words "imprisonment" and "transportation" in sub-S. (1) does not restrict the applicability of the section to cases where the several punishments are all of the same kind, *i.e.*, are all sentences of imprisonment or all sentences of transportation: the section applies also to cases where one of the sentences inflicted is imprisonment and the other is transportation.[1] Therefore, a term of imprisonment can legally be made to run concurrently with a term of transportation.[2]

12. Whipping—Concurrent sentences of.—Concurrent sentences can be passed only when the sentences are *imprisonment or transportation.* It is, therefore, illegal for a Court to pass concurrent sentences of *whipping.*[1] The literal meaning of concurrent sentences of whipping would be that the prisoner is to be flogged by two operators simultaneously, which is a monstrous result.[2]

13. Imprisonment in default of payment of fine, if can be made concurrent.—This section which empowers a Court to pass concurrent sentences of imprisonment, does not refer to sentences of imprisonment in default of payment of fine, but refers only to *substantive* sentences of imprisonment.[1] Thus, it is illegal to pass concurrent sentences of imprisonment in default of payment of fines imposed upon convictions for two or more offences at one trial.[2]

14. No imprisonment for a period longer than 14 years—Proviso (a).—Proviso (*a*) to this section places a limit upon the period to which the aggregate of sentences of imprisonment awarded under sub-S. (1) may extend. Thus an aggregate sentence of 20 years passed in respect of 3 convictions at one trial is contrary to this proviso.[1] It has been already mentioned in Note 2, *ante*, that this section applies only to convictions for several offences at *one trial.* Therefore, if the accused is tried and convicted separately in *two or more cases*, the aggregate of the several sentences may be accumulated beyond the period of 14 years.[2]

(1914) 12 All. L. Jour. (N) 2, *Manohar* v. *Emperor.*

[But see (1911) 12 Cri. L. Jour. 241 (241) (Bom.), *Emperor* v. *Muhamed Isaf Habib* (Trials taking place on the same day and one after the other so that for practical purposes may be taken to be one trial).]

(3) (1924) 1924 All. 492 (492), *Sohan Ahir* v. *Emperor.*

Note 11.

(1) (1916) 17 Cri. L. Jour. 238 (238): 1917 Cal. 377, *Khohua Moran* v. *Emperor.*

(2) (1914) 1914 Lah. 75 (76): 1913 P. R. 21, *Bogi* v. *Emperor.*

(1916) 17 Cri. L. Jour. 238 (238): 1917 Cal. 377, *Khohua Moran* v. *Emperor.*

Note 12.

(1) (1911) 12 Cri. L. Jour. 465 (465): 6 L. B. R. 22, *Emperor* v. *Eng Gyaung.*

(2) (1911) 12 Cri. L. Jour. 465 (465): 6 L. B. R. 22, *Emperor* v. *Eng Gyaung.*

Note 13.

(1) (1929) 1929 Sind 179 (179), *Emperor* v. *Ghulam Ahmed.*

(2) (1926) 1926 Bom. 62 (62), *Emperor* v. *Subrao Sesharao.*

(1929) 1929 Sind 179 (179), *Emperor* v. *Ghulam Ahmed.*

(1912) 13 Cri. L. Jour. 536 (536): 5 Sind L. R. 263, *Imperator* v. *Akidulla Valad Azizullah.*

Note 14.

(1) (1910) 11 Cri. L. Jour. 679 (680) (Lah.), *Sheo Narain* v. *Emperor.*

[See also (1870) 1870 Pun. Re. No. 33, *Imamuddin* v. *Crown* (Case under S. 46 of Code of 1861 which provided for cases where accused is convicted at *the same time* of two or more offences).]

(2) (1867) 7 Suth. W. R. 1 (2), *Queen* v. *Puban.*

Where an accused is convicted at one trial of two or more offences and sentences of transportation are passed upon him under S. 59, Penal Code, in lieu of the terms of imprisonment awarded; the aggregate of the sentences of transportation is also subject to the maximum limit of 14 years.[3]

15. **Proviso (b).**—*See* Note 2, *ante*.

16. **Aggregate of sentences when treated as a single sentence.**—Sub-S. 3 of this section provides that, for the purposes of appeal, the aggregate of consecutive sentences passed under this section shall be deemed to be a single sentence.[1] The aggregate of such sentences can be deemed to be a single sentence only for the purposes of appeal.[2] Thus, two or more consecutive sentences of imprisonment, each less than 7 years, cannot be added up and treated as a single sentence for the purpose of commuting them into transportation under S. 59 of the Penal Code.[3] The aggregate of consecutive sentences referred to in sub-S. (3) refers only to sentences of imprisonment and not to sentences of fine.[4]

Even before the amendment of sub-S. (3) of this section by the Amending Act of 1923, introducing the word "consecutive" the general trend of opinion was that the phrase "aggregate sentence" related only to cases of consecutive sentences and not to cases of concurrent sentences.[5] The amendment of 1923 referred to above gives legislative recognition to the above view.[6]

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(3) (1894) 7 C. P. L. R. Cr. 29 (30), *Empress* v. *Gumani Gond*.
(1893-1900) 1893-1900 L. B. P. J. 478 (478), *Ngā Po Seik* v. *Queen-Empress*.
(1884) 1884 All. W. N. 285 (285, 286), *Empress* v. *Sahtu*.

Note 16.

(1) (1931) 129 Ind. Cas. 731 (732) (All.), *Hamid* v. *Emperor*.
(1911) 12 Cri. L. Jour. 348 (351): 38 Cal. 214, *Chandra Sarkar* v. *Emperor*.
(1879) 3 Cal. L. R. 511 (512), *Emperor* v. *Haradhan Tamuli*.
(1930) 1930 All. L. Jour. 1206 (1207), *Emperor* v. *Hamid*.
[See also (1875) 12 Bom. H. C. R. 147 (148), *Rag.* v. *Gulam Abbas*.
(1876) 1 Bom. 223 (224), *Reg.* v. *Rama Bhivgowda* (For purposes of confirmation under earlier Codes).
(1898) 1898 Pun. Re. No. 3 Cr., p. 6 (7), *Queen-Empress* v. *Ratera* (Do.).
(1893-1900) L. B. P. J. 268 (269), *Nga U* v. *Queen-Empress* (Do.).]
(2) (1887) 1887 Pun. Re. No. 45, p. 110 (113), *Azim Khan* v. *The Empress*.
(3) (1865) 2 Suth. W. R. 1 (1), *Queen* v. *Mootkee Kora*.
(1865) 3 Suth. W. R. 44 (44), *Queen* v. *Tonooram Malee*.
(1866) 5 Suth. W. R. 44 (44), *Queen* v. *Shonaullah and Adoo*.
(4) (1926) 1926 Bom. 416 (416), *Emperor* v. *Shidlingappa*.
(5) (1913) 14 Cri. L. Jour. 119 (119): 35 All. 290, *Tulsi Ram* v. *Emperor*.
(1909) 10 Cri. L. Jour. 250 (250) (Bom.), *Tulsidas Lakshmandas* v. *Emperor*.
(1921) 1921 Cal. 152 (152), *Abdul Jubbar* v. *Emperor*.
(1916) 17 Cri. L. Jour. 266 (266): 1916 Cal. 464, *Lakshmi Ram Gaogi* v. *Emperor*.
(1913) 14 Cri. L. Jour. 254 (255): 40 Cal. 631, *Aziz Sheikh* v. *Emperor*.
(1912) 13 Cri. L. Jour. 787 (788) (Cal.), *Suknandan Singh* v. *Emperor*.
(1901) 1901 Pun. Re. No. 25, p. 83 (83), *Sher Muhammad* v. *The Emperor*.
(1917) 1917 Pat. 33 (33), *Gurusahay Ram* v. *Emperor*.
(1900-1902) Low. Bur. R. 57 (57), *Nga Shwe* v. *Emperor*.
(1897-1901) 1 U. B. R. 13 (14), *Said Hlaing* v. *Empress*.
[But see (1912) 13 Cri. L. Jour. 877 (877) (Cal), *Abdul Khalek* v. *Emperor*.
(1911) 12 Cri. L. Jour. 391 (392) (Cal.), *Bepin Behary Dey* v. *Emperor*.]
(6) [See also (1927) 1927 Nag. 255 (255, 256), *Jagadish Chandra* v. *Emperor* (The Court followed the previous rulings without noticing the effect of the amendment of 1923).]

C.—Ordinary and Additional Powers.

S. 36. **36.*** All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and

Ordinary powers of Magistrates.

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*(CODE OF 1882—S. 36.)

C.—Ordinary and Additional Powers.

36. All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Ordinary powers of Magistrates.

(CODE OF 1872—Ss. 21, 22, 24, 26, 28 & 30.)

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

Powers conferred upon Magistrates.

(1) Power to make over cases to a Subordinate Magistrate (S. 44).
(2) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate (S. 46).
(3) Power to withdraw cases and to try or refer them for trial (S. 47).
(4) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes (S. 47).
(5) Power to arrest an accused person found in Court (S. 104).
(6) Power to order the Police to investigate an offence (S. 110).
(7) Power to record confessions or statements during a Police investigation (S. 122).
(8) Power to authorise detention of a person during a Police investigation (S. 124).
(9) Power to hold an inquest (S. 135).
(10) Power to entertain complaints and receive Police reports (S. 141).
(11) Power to entertain cases without complaint (S. 142).
(12) Power to commit for trial (S. 143).
(13) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (S. 157).
(14) Power to direct warrant to landholder (S. 162).
(15) Power to arrest offender in presence of Magistrate (S. 166).
(16) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (Ss. 168 and 170).
(17) Power to issue proclamation in cases judicially before him (Ss. 171 and 353).
(18) Power to attach and sell property in cases judicially before him (Ss. 172 and 354).
(19) Power to try summarily (S. 222).
(20) Power to hear appeals from convictions by Magistrates of the second and third classes (S. 266).
(21) Power to call for proceedings (Ss. 295 and 296).
(22) Power to quash convictions in certain cases (S. 328).
(23) Power to issue a search-warrant for letter in Post office (S. 369).
(24) Power to endorse a search-warrant and order delivery of thing found (Ss. 372, 373 and 376).
(25) Power to issue search-warrant otherwise than in the course of an inquiry (S. 377).
(26) Power to revise bail orders (S. 398).
(27) Power to sell perishable property of a suspicious character (S. 415).
(28) Power to sell suspicious or stolen property (S. 417).

specified in the third schedule. Such powers are called their "ordinary powers." S. 36.

(29) Power to demand security to keep the peace (S. 491).
(30) Power to discharge recognizances to keep the peace (S. 500).
(31) Power to demand security for good behaviour (Ss. 504 and 505).
(32) Power to discharge person bound to be of good behaviour (S. 511).
(33) Power to issue order to prevent obstruction, etc. (S. 518).
(34) Power to issue order prohibiting repetition of nuisance (S. 519).
(35) Power to make orders, etc., in local nuisance cases (S. 521).
(36) Power to make orders, etc., in possession cases (S. 530).
(37) Power to make orders of maintenance (S. 536).

Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

(1) Power to arrest an accused person found in Court (S. 104).
(2) Power to record confessions or statements during a Police investigation (S. 122).
(3) Power to authorise detention of a person during a Police investigation (S. 124).
(4) Power to arrest offender in the presence of Magistrate (S. 166).
(5) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (Ss. 168 and 170).
(6) Power to issue proclamation in cases judicially before him (Ss. 171 and 353).
(7) Power to attach and sell property in cases judicially before him (Ss. 172 and 354).
(8) Power to endorse a search-warrant and order delivery of thing found (Ss. 372, 373 and 376).
(9) Power to sell perishable property of a suspicious character (S. 415).

Powers of Magistrates of the Second Class.

24. Magistrates of the Second Class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

(1) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial (S. 110).

Powers of Magistrates of the First Class.

26. Magistrates of the First Class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers:—

(1) Power to commit for trial (S. 143).
(2) Power to issue search-warrant otherwise than in the course of an inquiry (S. 377).
(3) Power to demand security to keep the peace (S. 491).
(4) Power to demand security for good behaviour (Ss. 504 and 505).
(5) Power to make orders etc., in possession cases (S. 530).
(6) Power to make orders of maintenance (S. 536).

Powers of Magistrates of Divisions of Districts.

28. Magistrates who, under the provisions of section forty, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the First Class, and referred to in section twenty-six, and, in addition, shall have the following powers:—

(1) Power to make over cases to a Subordinate Magistrate (S. 44).
(2) Power to pass sentence on proceedings recorded by a Subordinate Magistrate (S. 46).
(3) Power to withdraw cases, but not appeals, and to try or refer them for trial (S. 47).
(4) Power to hold inquests (S. 135).
(5) Power to entertain complaints of offences, and receive Police reports (S. 141).
(6) Power to entertain cases without complaint (S. 142).

S. 36, Note 1.

SYNOPSIS.

SCOPE OF THE SECTION .. .. .. Note No. 1

Other Topics.

Ordinary powers—Entertaining complaints. See Note 1, Pt. 3.
Power to issue search warrant. See Note 1, Pt. 2.
Section 36 whether overrides S. 107. See Note 1, Pt. 5.

1. **Scope of the section.**—Section 28, *ante*, read with column 8, Sch. II of the Code, defines the powers vested in each class of Magistrates to try particular offences. This section read with Sch. III defines certain incidental powers vested in the Magistrates of each class, which they are required to exercise either in the course of trial before them or otherwise. These powers are referred to as the *ordinary powers* of a Magistrate as opposed to *additional powers* which may be conferred on them under S. 37, *infra*.[1] Thus the power to issue a search warrant under S. 96 is one of the *ordinary* powers of any Magistrate.[2]

But the power to entertain complaints is not one of the ordinary powers of a First, Second or Third Class Magistrate, but must be conferred as an additional power under S. 37.[3]

Schedule III is, however, not exhaustive of the powers conferred on Magistrates under the Code. Thus a power to demand security for keeping the peace under S. 106 is not mentioned in Sch. III as one of the powers of a First Class Magistrate, but is expressly given by S. 106. A First Class Magistrate therefore can exercise the powers under that section notwithstanding it is not specified in Sch. III.[4] But a power to act under a particular section referred to in Sch. III can only mean a power to act subject to the conditions of that section. Thus a power to act under S. 107 is conferred by Sch. III on a First Class Magistrate, but a District Magistrate cannot detain the accused under sub-

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(7) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (S. 157).
(8) Power to sell suspicious or stolen property (S. 417).
(9) Power to issue order to prevent obstruction, etc., (S. 518).
(10) Power to issue order prohibiting repetition of nuisance (S. 519).
(11) Power to make orders in local nuisance cases (S. 521).

Provided that, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the Second Class, he shall not have power to demand security to be of good behaviour.

Powers of Magistrates of Districts.

30. Magistrates of Districts may, as such, exercise all the powers mentioned in section twenty-one.

(CODE OF 1861—Nil.)

Section 36—Note 1.

(1) (1928) 1928 Sind 1 (4): 22 S. L. R. 157, *Emperor* v. *Noor Mahomed.*
(2) (1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953, *Loftus Otway Clarke* v. *Brojendra Kishore.*
(3) (1911) 12 Cri. L. Jour. 535 (535): 34 Mad. 343, *Logan* v. *Romer.*
(4) (1932) 1932 Mad. W. N. 151 (152).

S. (4) of S. 107 unless the accused has been *sent up* before him under sub-S. (3).[5] **S. 36, Note 1.**

Any notification conferring on Justices of the Peace, the powers of a First Class Magistrate, confers only the ordinary powers under this section and not any of the powers conferrable on them under S. 37, *infra*,[6] or any other general powers of the Magistrate under the Code.[7]

37.* In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate. **S. 37.**

Additional powers conferrable on Magistrates.

***(CCDE OF 1882—S. 37.)**

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Additional powers conferrable on Magistrates.

(CODE OF 1872—Ss. 23, 25, 27 and 29.)

Powers which Local Government and Magistrate of the District may confer on Magistrates of the third class.

23. In addition to the powers mentioned in section twenty-two, a Magistrate of the third class may be invested with the following powers:—

(*a*) By the Local Government—
(1) Power to hold inquests (S. 135).
(2) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (S. 141).
(3) Power to commit for trial (S. 143).
(4) Power to issue order to prevent obstruction, etc. (S. 518).
(5) Power to issue order prohibiting repetition of nuisance (S. 519).
(*b*) By the Magistrate of the District—
(1) Power to hold inquests (S. 135).
(2) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (S. 141).
(3) Power to issue order to prevent obstruction, etc. (S. 518).
(4) Power to issue order prohibiting repetition of nuisance (S. 519).

Powers which may be conferred on Magistrates of the second class.

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the second class may be invested with the following powers:—

(*a*) By the Local Government—
(1) Power to hold inquests (S. 135).
(2) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (S. 141).

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(5) (1908) 7 Cri. L. Jour. 360 (360): 31 Mad. 315, In re *V. O. Chitthambaram Pillai.*

(6) (1911) 12 Cri. L. Jour. 535 (535): 34 Mad. 348, *Logan* v. *Romer.*

(7) (1916) 17 Cri. L. Jour. 293 (293): 1917 Mad. 139, *Bofdore*, In re.
(1911) 12 Cri. L. Jour. 42 (42): 34 Mad. 346, In re *Lawrence.*

SYNOPSIS.

Note No.

S. 37, Note 1. SCOPE OF THE SECTION 1

1. Scope of the section.—This section deals with the conferment of *additional* powers on Magistrates.[1] Certain additional powers can be conferred by the Local Government only and certain others by the District Magistrate. These are set forth in Sch. IV, *infra*. Thus a District Magistrate cannot authorise a Second Class Magistrate to commit a case for trial under S. 206[2] but

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(3) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial (S. 142).
(4) Power to commit for trial (S. 143).
(5) Power to issue order to prevent obstruction, etc., (S. 518).
(6) Power to issue order prohibiting repetition of nuisance (S. 519).

(*b*) By the Magistrate of the District—
(1) Power to hold inquests (S. 135).
(2) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (S. 141).
(3) Power to issue order to prevent obstruction, etc., (S. 518).
(4) Power to issue order prohibiting repetition of nuisance (S. 519).

Powers which may be conferred on Magistrates of the first class.

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the first class may be invested with the following powers:—

(a) By the Local Government—
(1) Power to make over cases taken up on complaint, etc., to a Subordinate Magistrate (S. 44).
(2) Power to hold inquests (S. 135).
(3) Power to entertain complaints of offences, and receive Police reports (S. 141).
(4) Power to entertain cases without complaint (S. 142).
(5) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (S. 157).
(6) Power to try summarily (S. 222).
(7) Power to hear appeals from convictions by Magistrates of the second and third classes (S. 266).
(8) Power to sell suspicious or stolen property (S. 417).
(9) Power to issue order to prevent obstruction, etc. (S. 518).
(10) Power to issue order prohibiting repetition of nuisance (S. 519).
(11) Power to make orders, etc., in local nuisance cases (S. 521).

(*b*) By the Magistrate of the District—
(1) Power to hold inquests (S. 135).
(2) Power to entertain complaints of offences, and receive Police reports (S. 141).
(3) Power to issue order to prevent obstruction, etc., (S. 518).
(4) Power to issue order prohibiting repetition of nuisance (S. 519).

Powers which Local Government may confer on Magistrates of Divisions of Districts.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the first class, the following powers:—

(1) Power to try summarily. (S. 222).
(2) Power to hear appeals from convictions by Magistrates of the second and third classes (S. 266).

(CODE OF 1861—NIL.)

Section 37—Note 1.

(1) (1928) 1928 Sind 1 (4): 22 S. L. R. 157, *Emperor* v. *Noor Mahommad.*

(2) (1926) 1926 Pat. 400 (400): 5 Pat. 447, *Bengali Gope* v. *Emperor.*

the Local Government can do so. When once such powers are conferred on any Magistrate they remain personal to him and independent of the local area where he may be exercising it until withdrawn by the authority conferring the powers.[3] S. 37, Note 1.

38.* The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government. S. 38, Note 1.

Control of District Magistrate's investing power.

1. **Scope of the section.**—This section was newly inserted in the Code of 1882 and has been re-enacted in this Code.

D.—Conferment, continuance and cancellation of powers.

39.† (1) In conferring powers under this Code the Local Government may, by order, empower persons specially, by name or in virtue of their office, or classes of officials generally by their official titles. S. 39.

Mode of conferring powers.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

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*(CODE OF 1882—S. 38.)

Control of District Magistrates' investing power. 38. The power conferred on the District Magistrate by Section 37 shall be exercised subject to the control of the Local Government.

(CODES OF 1872 AND 1861—Nil.)

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†(CODE OF 1882—S. 39.)

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers. 39. In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

(CODE OF 1872—S. 43.)

Mode of conferring powers. 43. In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

(CODE OF 1861—Nil.)

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(3) (1931) 1931 Bom. 517 (519, 520), *Bhat* v. *Emperor* (Power to take cognizance of offence under S. 190).

[See also (1911) 12 Cri. L. Jour. 535 (535); 34 Mad. 343, *Logan* v. *Emperor*.]

S. 39, Notes 1—2.

SYNOPSIS.

Note No.
CONFERMENT OF POWERS, GENERALLY OR SPECIALLY. 1
ORDER CONFERRING POWERS, WHEN TAKES EFFECT —SUB-S. (2) 2

Other Topics.

Communication—Hour of. See Note 2, Pt. 5.
General and special—Distinguished. See Note 1, Pt. 2.
Higher powers conferred during trial—Effect. See Note 2, Pt. 2.
Subsequent ratification. See Note 2, Pt. 4.

1. Conferment of powers, generally or specially.—The words "generally" and "specially" are used in this section in contrast with each other. Where, by notification of the Government, a class of officials is invested with powers to try certain offences such officials are *generally* empowered.[1] But where a notification empowers the Magistrates *mentioned in the list* attached to the notification to try certain cases, such Magistrates are *specially* empowered.[2]

See also the undermentioned case.[3]

2. Order conferring powers, when takes effect Sub-S. (2).—There was no provision in the Code of 1872 corresponding to sub-S. (2) of this section and it was doubted whether communication of the investiture of power was necessary before the power can be exercised.[1] Sub-S. (2) was accordingly added in the Code of 1882, to remove this doubt.

Where before the sentence is passed in a case, the Magistrate trying the case is invested with higher powers, he can pass sentence in the exercise of such higher powers.[2] But the *forum* of appeal will depend not necessarily on the sentence but on the question whether the investiture of higher powers was during the *trial* and before the sentence, or *after the trial*, and before sentence. *See* S. 407, *infra*.

The maxim "*Omnis ratihabitio retro-trahitur et mandato priori aequiparatur*"—a subsequent notification or confirmation has a retrospective effect and is equivalent to a prior command-does not apply to criminal cases.[3] So a power conferred under this section has no retrospective effect.[3-a] Thus where a Third Class Magistrate passed a sentence, which only Second Class Magistrate can

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Section 39—Note 1.

(1) (1915) 16 Cri. L. Jour. 268 (269): 1915 Mad. 1159, *Mahommed Kasim* v. *Emperor*.
(1882) Weir 3rd Edn. 715 (716), Re *Paritala*.
(2) (1924) 1924 Mad. 256 (256), *Alaga Pillai* v. *Emperor*.
(3) (1933) 1933 Rang. 116 (117), *Nga Aung Pa* v. *Emperor* (Judge empowered by Government to try cases under S. 396, Indian Penal Code, under a special procedure—Offence under S. 395, without murder cannot be tried by such Judge by special procedure).

Note 2.

(1) (1881) 6 Cal. 476 (477, 478), *Chando* v. *Mahammad*.
(2) (1885) 7 All. 414 (418, 419, 422) (F.B.), *Queen-Empress* v. *Pershad*.
(1928) 1928 Mad. 55 (55, 56): 51 Mad. 257, *Venkatareddi* v. *Rammayya*.
(1925) 1925 Pat. 472 (472), *Sheobhanjan* v. *King-Emperor*.
(1908) 8 Cri. L. Jour. 48 (49): 4 L. B. R. 239, *Emperor* v. *Nga Paw*.
(3) (1864) 1 Bom. H. C. R. 107 (111), *Reg.* v. *Rama*.
(3-a) (1878) 3 Cal. L. R. 281 (282), In re *Mt. Surgee*.
(1933) 1933 Pesh. 97 (97), *Gul Mahomed* v. *Emperor* (Magistrate not invested with power to try summarily at the time of trial—Subsequent notification purporting to invest such powers retrospectively—It cannot have such effect).

pass, a subsequent notification investing him with second class powers from a date antecedent to that of the sentence will not validate the sentence passed.[4] S. 39, Note 2.

Where an order is found to have been communicated on a particular day, but the *hour* of communication thereof is not clear, the rule that official acts must be presumed to have been done at the earliest part of the day will be applied.[5]

40*. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is *appointed* to an equal or higher office of the same nature, within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, * * * exercise the same powers in the local area *in* which he is so *appointed*. S. 40.

Powers of officers appointed.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"UNLESS THE LOCAL GOVERNMENT OTHERWISE DIRECTS"	3
IS APPOINTED TO AN EQUAL OR HIGHER OFFICE OF THE SAME NATURE	4
ABSENCE ON LEAVE, EFFECT OF	5

*(CODE OF 1882—S. 40.)

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Continuance of powers of officers transferred.

(CODE OF 1872—S. 56.)

56. Whenever any person holding an office in the service of Government, who has been invested with any powers, under this Act or any enactment hereby repealed, in any District, is transferred to an equal or higher office of the same nature within another District, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the District to which he is so transferred.

Continuance of powers of officers transferred.

(CODE OF 1861—Nil.)

(4) (1878) 3 Cal. L. R. 281 (282), *Re Must. Surgee.*

(5) (1906) 10 Cal. W. N. ccxliii (ccxliv), *Benwari Tewari v. Shee.*

S. 40, Notes 1—2.

Other Topics.

Absence without leave. See Note 5, F.N. 1. **Trials—Continuation of.** See S. 350.
Continuance of powers. See Note 2, Pt. 1.

1. Legislative Changes.—

Changes made in the Code of 1882—

(1) The words "*local area*" was substituted for the word "*District*" whenever the word occurred in S. 56 of the Code of 1872.

(2) The words "*under the same Local Government*" were newly inserted.

(3) The words "*or has otherwise directed*" were newly inserted.

Changes made in the Code of 1898—

The section remained the same in the Code of 1898.

Changes made in 1923—

(1) The word "*appointed*" has been substituted for the word "*transferred*" wherever it occurred in the section.

(2) The words "*continue to*" were omitted.

2. Scope of the section.—This section provides that whenever any person invested with any powers under the Code in any local area is appointed to an equal or higher office of the same nature in a like local area under the same Local Government, the powers so invested, continue in him.[1] But he can exercise such powers only *in the local area in which he is so appointed.* The reason is that under S. 12, *ante,* Magistrates can exercise jurisdiction only within the local areas defined for them, or where there is no such definition, throughout the District. In *Bisheshar Nath* v. *Empress,*[2] Plowden, J., observed as follows:—

> "Under S. 12 of the Code of Criminal Procedure, 1882, the appointment of Magistrates.....rests with the Local Government, which, may appoint such persons as it thinks fit to be Magistrates of the first, second or third class in any District. The local area of the jurisdiction of a Magistrate so appointed may extend to the whole District, but does not, by force of that section, extend beyond it. A Magistrate appointed under S. 12 may, however, be competent to exercise magisterial functions in a District, other than that in which he is a Magistrate, by appointment under S. 12, without being *appointed* to be a Magistrate in that District. This is brought about by S. 40 operating upon officers of Government, who, being invested with magisterial powers under the Code are transferred from one District to an office in another District. In this case, such officer is competent to exercise magisterial functions in the latter District, not by *appointment* to be Magistrate in that District, but by virtue of his holding some office in that District. When, therefore, the question is, whether a particular person is competent to exercise the powers of a Magistrate of any class described in S. 12 at a particular

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Section 40—Note 2.

(1) (1898) 2 Weir 36 (37), In re *Hanumantha.*
(1899) 22 Mad. 47 (48), *Sri Ahobalamatam Jeer.*
(1892) 15 Mad. 132 (133), *Queen-Empress* v. *Viranna.*
(2) (1884) 1884 Pun. Re. No. Cr. 15, p. 20 (22. 23), *Bisheshar Nath* v. *Empress.*

S. 40, Notes 2—5.

moment of time in a particular District, the answer cannot be in the affirmative unless either *first* he has been appointed by the Local Government under S. 12 to be a Magistrate in such District, and such appointment is still in force, or *secondly* he holds in that District, at the time when he assumes to act as Magistrate some office in the service of Government on which S. 40 can operate."

3. **"Unless the Local Government otherwise directs".**—Where *A* who was invested with powers by the Local Government to exercise summary jurisdiction in District *X* under S. 222 of the Code of 1872 (now S. 260), proceeded to England on furlough and on his return, was posted to District *Y* and was invested by a fresh notification with the powers of a Magistrate of the first class, it was held that the fresh investment of powers was a "direction otherwise" within the meaning of this section and that *A* could not exercise summary powers in District *Y*.[1]

4. **Is appointed to an equal or higher office of the same nature.**—This section applies only when a person invested with any powers under the Code is appointed to an *equal* or *higher office* of the same nature *within a like local area* under the same Government.[1-a] But this does not mean that a person invested with powers does not retain his powers if he is appointed to a *lesser* office in the *same local area*. Thus, where *A* was invested by *name* with second class magisterial powers when he was officiating as Mamlatdar of Pandarpur and was reverted subsequently to his permanent post of Head Karkun in the *same* local *area* it was held S. 40 did not apply but that *A* retained his powers.[1]

5. **Absence on leave, effect of.**—Where a First Class Magistrate invested with appellate powers, was transferred from Shikarpur to Sholapur and next as District Magistrate of Ahmedabad, and during the course of this service there were various intervals of leave, it was held that he continued to exercise the powers conferred on him, and that it made no difference that he proceeded on various terms of leave during the interval.[1] But where there is an implied withdrawal of powers as where, an officer invested with powers under the Code is appointed permanently to other duties or elsewhere dissociated from magisterial work, or when he resigns the office, a subsequent appointment to the same or higher office requires a fresh investment of powers and S. 40 will not apply.[2]

Note 3.

(1) (1876) 2 Cal. 117 (120, 121, 122), In re *Pursooram Borooah*.

Note 4.

(1-a) (1933) 1933 Sind 398 (400), *Emperor* v. *Karimbux* (Sub-Judge with powers of First Class Magistrate and power to try cases under S. 260, transferred to another local area as Sub-Judge—Unless such powers are again conferred he cannot exercise the jurisdiction under this Code).

(1) (1887) Rat. 322, *Queen-Empress* v. *Rama*.

Note 5.

(1) (1900) 2 Bom. L. R. 536 (538, 539), *Bai Harku* v. *Sitaram* (But absence *without leave* involves loss of appointment and loss of powers).

[See also (1930) 1930 Lah. 833 (834), *Pritam Singh* v. *Emperor*.]

(2) (1923) 1923 Mad. 598 (599), *Hamed Haji* v. *Emperor*.

(1867) 1867 Pun. Re. No. 22, p. 41 '41), In re *Lehna*.

S. 41, Notes 1—3.

41*. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

Powers may be cancelled.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
WITHDRAWAL OF POWERS	2
"BY ANY OFFICER SUBORDINATE TO IT"	3

1. **Legislative Changes.**—

Changes made in the Code of 1882—

The word "*withdraw*" was substitued for the words "*vary or cancel*" used in S. 54 of the Code of 1872.

Changes made in the Code of 1898—

Sub-S. 2 is new.

2. **Withdrawal of powers.**—The Local Government and the District Magistrate may, under this section, withdraw any or all of the powers conferred under this Code on any person by it or by him but until they are so *withdrawn,* they will continue. A Government order wrongly *interpreting* a previous investiture order will not operate as a *withdrawal.*[1]

A withdrawal may also be implied from the fact that the Magistrate upon whom powers are conferred, is permanently allotted to another duty not entailing Magisterial powers or from the fact that he resigns, or retires from his appointment.[2]

An order withdrawing powers under this section operates only from the date of its communication to the Magistrate concerned and, until this is done the powers continue.[3]

3. **"By any officer subordinate to it."**—This refers to the powers conferrable by a District Magistrate under Ss. 37 and 38, *ante.*

***(CODE OF 1882—S. 41.)**

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

Powers may be cancelled.

(CODE OF 1872—S. 54.)

Continuance and alteration of powers.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers may be varied or cancelled.

(CODE OF 1861—Nil.)

Section 41—Note 2.

(1) (1882) 3 Weir 715 (717), Re *Paritala.*

(2) (1923) 1923 Mad. 598 (599), *Kottitholi Hamed Haji* v. *Emperor.*

(3) (1891) 15 Mad. 132 (133), *Emperor* v. *Viranna.*
(1893) 2 Weir 86 (87), In re *Hanumantha.*

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42*. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns—

Public when to assist Magistrates and police.

(*a*) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorized to arrest;

(*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

***(CODE OF 1882—S. 42.)**

PART III.

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42. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the Presidency-towns—

Public when to assist Magistrates and police.

(*a*) in the taking of any other person whom such Magistrate or police officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

(CODE OF 1872—S. 91.)

91. Every person is bound to assist a Magistrate or police officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or an affray, or in the taking of any other person whom such Magistrate or police officer is authorised to arrest.

All persons to assist Magistrate and police in certain cases.

S. 42, Notes 1—3.

SYNOPSIS.

	Note No.
I. LEGISLATIVE CHANGES	1
II. SCOPE OF THE SECTION	2
III. "IS BOUND TO ASSIST"	3
(1) PERSON ASSISTING NOT A PUBLIC SERVANT HIMSELF ..	4
IV. "IN THE TAKING OR PREVENTING THE ESCAPE OF ANY OTHER PERSON	5
V. ILLEGAL ARREST	6
VI. DISOBEDIENCE OF ORDER UNDER THE SECTION ..	7

Other Topics.

Aid—Nature of. See Note 3, Pts. 1 to 3.
"Every person." See Note 2, Pt. 1.
"Reasonably demanding." See Note 2, Pts. 2 to 4.

1. Legislative Changes.—

Changes introduced in 1898—

(1) The words "or preventing the escape of" in clause (*a*) are new.

(2) The words "or suppression" have been introduced in Cl. (*b*) and Cl. (*c*) of the Old section has, in consequence, been deleted.

2. Scope of the Section.—This section requires that, in the *cases specified*, every person shall assist a Magistrate or a police officer reasonably demanding his aid.[1] It does not intend that police officers and Magistrates should have a general power of calling upon members of the public to join them in doing the work for which they are paid, such as tracing out the whereabouts of an absconding criminal or collecting evidence to warrant his conviction.[2] When a Magistrate in a case of theft ordered a person to find a clue within 15 days, it was held that the order was illegal.[3] Similarly where a Sub-Inspector of Police demanded the accused to give assistance in finding and arresting a number of unknown persons whose precise whereabouts were unknown and the accused refused to give such assistance it was held that they incurred no criminal liability by reason of such refusal.[4]

3. "Is bound to assist."—The assistance that can be demanded under the section is *personal* assistance of the individual of whom it is demanded.[1] It will include also such material assistance as the placing at the dispoal of the police officer, the use of a fire-arm or of a bicycle or other means of locomotion

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(CODE OF 1861—S. 82.)

82. Every person is bound to assist a Magistrate or police officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or an affray, or in the taking of any other person whom such Magistrate or police officer is authorized to arrest.

All persons bound to assist in certain cases.

Section 42—Note 2.

(1) (1881) 3 All. 201 (202, 203), *Empress* v. *Bakshiram.*
(2) (1920) 1920 All. 265 (266): 42 All. 314, *Joti Prasad* v. *Emperor.*
(3) (1881) 3 All. 201 (202), *Empress* v. *Bakshi Ram.*
(4) (1920) 1920 All. 265 (266): 42 All. 314, *Joti Prasad* v. *Emperor.*

Note 3.

(1) (1893) 2 Weir 37 (37), In re *Ramiah.*

urgently required by the circumstances of the case.[2] It will not include however, the supply of a contingent of men to assist.[3] S. 42, Notes 3—7.

4. **Person assisting, not a public servant himself.**—A person assisting a Magistrate or a police officer under this section is not a "public servant" within the meaning of S. 21 of the Penal Code.[1]

5. **"In the taking or preventing the escape of any other person."**—The word "taking" means the same thing as the word "arresting." Where a person on being arrested, lay down on the ground and refused to move it was held that the object in so lying down must have been only to secure his eventual escape and that the police officer effecting the arrest was entitled, under this section to demand the assistance of persons in preventing such escape.[1]

6. **Illegal arrest.**—The fact that assistance is taken under this section will not render the arrest or custody lawful if it is otherwise illegal.[1]

7. **Disobedience of order under the section.**—The disobedience of a valid order under this section demanding assistance is punishable under S. 187 of the Penal Code.[1] But the disobedience of an order not authorised by the section, as when an order is made against a person that he should find a clue in a case of theft within 15 days, is not an offence and is not punishable under that section.[2]

S. 43.

43*. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Aid to person, other than police officer, executing warrant.

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*(CODE OF 1882.—S. 43.)

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Aid to person other than Police-officer, executing warrant.

(CODE OF 1872—S. 163.

163. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Warrants directed to any person other than a Police-officer.

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(2) (1920) 1920 All. 265 (266): 42 All. 314, *Joti Prasad* v. *Emperor.*
(3) (1898) 2 Weir 37 (37), In re *Ramiah.*

Note 4.

(1) (1917) 18 Cri. L. Jour. 351 (352): 1917 U. B. R. 8: (1916) 2 U. B. R. 122, *Nga Paw E* v. *Emperor.*

Note 5.

(1) (1932) 1932 All. 506 (507), *Ambika Prasad* v. *Emperor.*

Note 6.

(1) (1881) 1881 Weir 341, *Acting Government Pleader* v. *Venkatachala Mudali.*

Note 7.

(1) (1932) 1932 All. 506 (507), *Emperor* v. *Ambika Prasad.*
(1902) 6 Cal. W. N. 337 (338), *Manik* v. *Kenaram.*
(2) (1881) 3 All. 201 (202), *Empress* v. *Bakshi Ram.*
(1920) 1920 All. 265 (266): 42 All. 314, *Joti Prasad* v. *Emperor.*

S. 44.

44*. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121-A, 122, 123, 124, 124-A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

Public to give information of certain offences.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.

(CODE OF 1861—S. 78).

78. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

When directed to any person other than a Police officer.

***(CODE OF 1882—S. 44.)**

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121-A, 122, 123, 124, 124-A, 125, 126, 130, 302, 303, 304, 382, 392, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

Public to give information of certain offences.

(CODE OF 1872—S. 89.)

PART III.

OF THE POLICE.

CHAPTER VIII.

Offences of which information must be given to the police and duty of the public.

89. Every person aware of the commission of any offence made punishable under Ss. 121, 121-A, 122, 123, 124, 124-A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, or 460 of the Indian Penal Code, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest police officer or Magistrate.

All persons to give information of certain offences.

S. 44, Notes 1—2

SYNOPSIS.

	Note No.
I. LEGISLATIVE CHANGES	1
II. SCOPE OF THE SECTION	2
III. "SHALL IN THE ABSENCE OF REASONABLE *CAUSE* ....FORTHWITH GIVE INFORMATION"	3
(1) "INFORMATION" MEANING OF	4
IV. FAILURE TO GIVE INFORMATION—EFFECT OF ..	5

Other Topics.

Information sent to Chowkidar. No information after information. See Note 3, Pts. 1 and 2.

Omission to inform punishable only if **intentional. See Note 5, Pt. 1.**

1. Legislative changes.—

Changes introduced in 1872—

(1) S. 138, of the Code of 1861, did not include Ss. 121, 121-A, 122, 123, 124, 124-A, 125, 126, 130, 302, 303 and 304 of the Penal Code. These were included in the Code of 1872.

(2) **Under the Code of 1861 there was a duty to give information only when the person aware of the commission of the offence had *reason to believe* that if such information was withheld, the person who committed the offence may not be brought to justice or may have his escape facilitated. This qualification was deleted in the Code of 1872.**

Changes introduced in 1882—

(1) **The words "whether within or without the Presidency Towns" were newly added.**

(2) **The words "or of the *intention* of any other person to commit" were newly added.**

Changes introduced in **1898**—

(1) Ss. 143, 145, 147 and 148 have been added to the sections specified in the section of the Code of 1882.

(2) **Sub-S. 2 is new.**

2. Scope of the section.—This section imposes a duty on every person aware of the commission or of the intention of any other person to commit any **of the offences specified in the section, to forthwith give information thereof to the nearest Magistrate or police officer. The object of imposing such an obliga**tion is to suppress all such dangerous forms of crimes.[1] There is, however, no

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(CODE OF 1861—S. 138.)

All persons to give information of offences.

138. It shall be the duty of every person who is aware of the commission of any offence made punishable under Ss. 382, 392, 393 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, or 460, of the Indian Penal Code, to give information of the same to the nearest police officer, whenever he shall have reason to believe that, if such information be withheld, the person who committed the offence may not be brought to justice, or may have his escape facilitated.

Section 44—Note 2.

(1) (1892-1896) 1 U. B. R. 273 (273), *Queen-Empress* v. *Nga So.*

S. 44, Notes 2—5.

obligation under this section to give information of the offences *not specified* in the section, though there may be an obligation under some other section to do so.[2] The section does not exclude the criminal himself from the obligation thereunder, and he can be prosecuted for not giving such information.[3]

3. **"Shall in the absence of reasonable cause....forthwith give information."**—When once information of the fact of a crime has reached the police the object of this section gets fulfilled and it is not reasonable that every other person who may possibly be bound to give information should be prosecuted for not having done so.[1] [*See also* Note to S. 45, *infra*.] Where there were several *lambardars* aware of the commission of an offence and one of them to the knowledge of the others directed the village chowkidar to make a report at the *Thana* it was held that there was no *intentional* omission on the part of the others to give the information or at any rate that there was a reasonable excuse for not giving it.[2]

4. **"Information" meaning of.**—The word "information" means something which the person bound to report knows or has reason to believe to be true and not any hearsay or any vague surmises which the people around him might have put into his head.[1] As to the meaning of the words "give information" under S. 182 and S. 203 of the Penal Code see the undermentioned cases.[2] Where a person who could speak to an offence only from hearsay, gave a report based on such hearsay it was held that the report could not be used as evidence to corroborate his evidence, both the report and the evidence being based on hearsay.[3]

It is not necessary that the information should be *signed* by the informant.[4]

5. **Failure to give information—Effect of.**—An intentional omission to give the information under this section is an offence punishable under S. 176 or under S. 202 of the Penal Code.[1] The giving of a false information of the commission of an offence, is also punishable under S. 182 or S. 211 of the Penal Code, as the case may be.[2]

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(2) (1867) 3 Mad. H. C. R. App. 30 (31), (Offences under Ss. 379 and 461 not specified in S. 138 of 1861).
(1867) 1867 Pun. Re. No. 25, page 45, *Crown* v. *Alloo* (Case of theft—No obligation to report).
(3) (1930) 1930 Mad. 870 (872): 54 Mad. 68, *Chinna Gangappa* v. *Emperor*.

Note 3.

(1) (1879) 4 Cal. 623 (624), *Empress* v. *Sashi Bhusan*.
(1926) 1926 Nag. 217 (218), *Bhagwant Rao* v. *Emperor*.
(1893) 1893 Rat. Un. Cr. C. 674 (675), *Queen-Empress* v. *Sada* (Once information reaches the Police no *further duty* remains).
(2) (1889) 1889 Pun. Re. No. 5, Cr. p. 38, *Sher Singh* v. *Empress*.

Note 4.

(1) (1878) 19 Suth. W. R. 57 (65), *Queen* v. *Jaffar Ali*.
(2) (1928) 1928 Pat. 56 (57), *Biswanath Singh* v. *Emperor* (Section 182).
(1913) 14 Cri. L. Jour. 252 (254): 6 Sind L. R. 143, *Emperor* v. *Akhtiar* (Section 203 means "Volunteers information").
(3) (1925) 1925 Lah. 418 (419): 6 Lah. 437, *Sajjan Singh* v. *Crown*.
(4) (1910) 11 Cri. L. Jour. 3 (4): 3 Sind L. R. 132, *Emperor* v. *Gokhal* (Case under S. 182, Penal Code).

Note 5.

(1) (1867) 1 Agra Cr. 37, *Government* v. *Kesree*.
(1871) 16 Suth. W. R. Cr. 35 (36), In re *Phool Chand Broja Basse*.
(1915) 16 Cri. L. Jour. 219 (219): 1916 Mad. 493, In re *Pavalli Manakkal Narayana Nambudripad*.
(1920) 1920 Nag. 170 (171): 16 Nag. L. R. 30, *Adjodhi* v. *Emperor* (Section 202).
(1867) 7 Suth. W. R. Cr. 29 (30), *Queen* v. *Lahai Mundul* (No intentional omission—No offence).
(2) (1913) 14 Cri. L. Jour. 491 (492) (Bom.), *Appayya Tatoba* v. *Emperor*.
[See the following cases:—
(1910) 11 Cri. L. Jour. 54 (55) (Rang.), *Emperor* v. *Jagmohan*.
(1931) 1931 All. 269 (270), *Emperor* v. *Johri*.

S. 44, Note 5.

A person who is aware of the intention of certain persons to commit an offence and does not disclose it to anybody is practically a consenting party to the crime and an accomplice thereto and his evidence is worthless and no reliance should be placed upon it.[3]

The mere omission to give information of an offence does not amount to "intentionally aiding" the offender in his offence within the meaning of S. 107 of the Penal Code.[4]

See also the undermentioned case.[5]

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45.* (1) Every village-headman, village-accountant, village-watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier *in charge of the management of that land* and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may *possess* respecting—

Village headman, accountants, land-holders and others bound to report certain matters.

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

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*(CODE OF 1882—S. 45.)

45. Every village-headman, village-watchman, village police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police station, whichever is the nearer, any information which he may obtain respecting:—

Village-headman, landholders and others bound to report certain matters.

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or police-

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(1919) 1919 All. 159 (159), *Mula* v. *Emperor*.
(1917) 18 Cri. L. Jour. 1017 (1017): 1917 All. 223: 39 All. 715, *Mathura Prasad* v. *Emperor*.
(1912) 13 Cri. L. Jour. 855 (855) (All.), *Barkatullah* v. *Sadho Kalwa*.
(1919) 1919 Cal. 679 (680): 46 Cal. 427, *Taprinessa* v. *Emperor*.
(1909) 9 Cri. L. Jour. 170 (171): 32 Mad. 258, *The Sessions Judge* v. *Sivan Chetty*.
(1932) 1932 Mad. 427 (427), *Rathinam Pillai*, In re.
(1918) 1918 Mad. 731 (732), In re *Maula Obiah*.
(1915) 16 Cri. L. Jour. 423 (424): 1916 Mad. 639, *Solaimuthu Pillai* v. *Murugaiah Moopan*.
(1912) 13 Cri. L. Jour. 576 (577): 1 U. B. R. 134, *Mi Ngwe* v. *Ei Chit*.]
(3) (1919) 1919 Lah. 168 (168): 1919 Pun. Re. No. 20, *Shahrah* v. *Emperor*.
(1923) 1923 Lah. 391 (392), *Nawab* v. *Crown*.
[But see (1904) 1 Cri. L. Jour. 641 (658): 27 Mad. 271, *Maulabaksh* v. *Niazo*.]
(4) (1913) 14 Cri. L. Jour. 610 (615) (Rang.), *Goman Saya* v. *Emperor*.
(5) (1893-1900) Low. Bur. Rul. 382 (383), *Queen* v. *Nga Cho* (A person is not bound to give information of a murder of which he is aware, if he had reasonable excuse for not making a report).

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(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, in or near such village, any non-bailable offence or any offence punishable under section 143, 144, 145, 147 or 148 of the Indian Penal Code;

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances; *or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred, or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person*;

(*e*) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489A, 489B, 489C and 489D;

(*f*) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person

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officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section "village" includes village-lands.

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or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(*i*) "village" includes village-lands; and

(*ii*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India, in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village headman by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate *or Sub-divisional Magistrate* may from time to time appoint one or more persons, *with his or their consent, to perform the duties of a village-headman under this section, whether a village-headman has or has not been appointed for that village under any other law.*

(CODE OF 1872—S. 90.)

90. Every village-headman, village-watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest police station, any information which he may obtain respecting:—

Land-holders and others bound to report certain matters.

(*a*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c*) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(*d*) the occurrence of any sudden or unnatural death.

(CODE OF 1861—NIL)

S. 45, Note 1.

SYNOPSIS.

	Note No.
ANALOGOUS LAW	1
LEGISLATIVE CHANGES	2
SCOPE AND OBJECT OF THE SECTION	3
"EVERY VILLAGE-HEADMAN, ETC."	4
"OWNER OR OCCUPIER OF LAND"	5
"AGENT OF ANY SUCH OWNER OR OCCUPIER IN CHARGE OF THE MANAGEMENT OF THAT LAND"	6
"EVERY OFFICER EMPLOYED IN THE COLLECTION OF REVENUE"	7
"SHALL FORTHWITH COMMUNICATE"	8
"ANY INFORMATION WHICH HE MAY POSSESS" ..	9
"INFORMATION—MEANING OF"	10
"POSSESS"—MEANING OF	11
RESIDENCE OF RECEIVER OF STOLEN PROPERTY, ETC., —CLAUSE (*A*)	12
PASSAGE OF THUG, ETC., THROUGH VILLAGE—CLAUSE (*B*)	13
COMMISSION OF NON-BAILABLE OFFENCE—CLAUSE (*C*).	14
SUDDEN OR UNNATURAL DEATH—CLAUSE (*D*) ..	15
APPOINTMENT OF VILLAGE-HEADMAN FOR PURPOSES OF THIS SECTION—SUB-S. 3	16
ORDER UNDER SUB-S. 3 IF REVISABLE BY HIGH COURT.	17
PUNISHMENT FOR NON-COMPLIANCE WITH THE SECTION.	18
EFFECT OF GIVING FALSE INFORMATION	19

Other Topics.

Death under suspicious circumstances. See Note 15, Pt. 5.

Difference between S. 44 and this section. See Note 3.

Mukadam and Kotwar. See Note 4, Pts. 3 and 3-a.

Non-compliance—What the prosecution has to prove. See Note 18, Pts. 3 and 4.

Owner of a house. See Note 5, F.N. 2.

"Proclaimed offender includes." See Note 13, Pt. 1.

Respecting the commission. See Note 18, Pt. 4.

To the Officer in charge of a Police Station. See Note 18, Pts. 5 and 6.

Village accountant. See Note 4, Pt. 1.

Village Chowkidar and Watchman. See Note 4, Pt. 4.

Zailar in the Punjab. See Note 4, Pt. 5.

1. **Analogous law.**—Similar provisions have been made in very many Local or Special Acts which oblige the persons mentioned therein to give information of various matters under those Acts to the Officer in charge of the nearest police-station or to other authorities concerned, and to do certain duties. *See*, for example, the following Acts:—

(i) The Criminal Tribes Act, III of 1911—S. 26.[1]

(ii) The Forest Act, XVI of 1927—S. 79.

Section 45—Note 1.

(1) (1917) 1917 All. 143 (144), *Rajain Singh* v. *Emperor* (Occupier of land to inform about arrival of member of criminal tribe).

(iii) The Madras Regulation, XI of 1816—Ss. 8, 9, 11 and 13.[2] **S. 45, Notes 1—3.**
(iv) The Madras Sati Regulation, I of 1830—S. 3
(v) The Madras Forest Act, V of 1882—S. 23.
(vi) The Bengal Village Chaukidari Act, VI of 1870—S. 39.
(vii) The N.-W.P. Village and Road Police Act, XVI of 1873—S. 8.
(viii) The Oudh Laws Act, XVIII of 1876—S. 34.
(ix) The Bombay Village Police Act, VIII of 1867—Ss. 6 to 13.
(x) The Burma Forest Act, IV of 1902—Ss. 50 and 51.
(xi) Punjab Laws Act, S. 39-A (Rules under section).[2-a]

Section 7, Cl. (2) of the Burma Village Act, VI of 1907 while making provisions similar to this section, expressly excludes the operation of this section in areas in which it is in force. *See* the undermentioned cases.[3]

2. Legislative changes.—The following amendments have been introduced in the section, by Act XVIII of 1923:—

In sub-section 1—
(i) the words "in charge of the management of that land" have been newly added. *See* Note 6.
(ii) The word "obtain" has been substituted by the word "possess" *See* Note 9.
(iii) In Cl. (*d*) the words "or the discovery.....respect of such person" are new. *See* Note 15.
(iv) Some more sections of the Indian Penal Code have been added in Cl. (*e*), *viz.*, Ss. 231 to 238 and 489-A to 489-D.

In Sub-section 3—
(i) the words "or sub-divisional Magistrate" have been newly added.
(ii) The words "to be village-headman for the purposes of this section in any village for which there is no such headman appointed under any other law" have been substituted by the words "with his.....under any other law".

3. Scope and object of the section.—This section differs from S. 44, *ante* in the following respects—

(1) Section 44 applies to *every person* who is aware of the commission or of the intention to commit any of the offences specified, while this section is limited in its application to certain *specified persons* only.[1]

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(2) (1867) 3 Mad. H. C. R. App. xxx (xxx).
(2-a) (1889) 1889 Pun. Re. No. 5, *Sher Singh* v. *Empress.*
(1893) 1893 Pun. Re. No. 8, *Amirchand* v. *Empress.*
(1893) 1893 Pun. Re. No. 11, *Bahals* v. *Empress.*
(3) (1892-1896) 1 Upp. Bur. Rul. 169, *Nga Ek Maung* v. *Empress* (Case under Burma Village Regulation).
(1892-1896) Upp. Bur. Rul. 19, *Queen-Empress* v. *Nga Po Maung* (Do.).
(1892-1896) 1 Upp. Bur. Rul. 171, *Queen-Empress* v. *Nga Shwe Yin* (Do.).

Note 3.

(1) [See (1881) 3 All. 201 (202), In re *Bakshi Ram and others.*
(1875) 23 Suth. W. R. 60 (61), In re *Madhosoodhan Chakravarthy.*
(1882) 1882 Pun. Re. No. 34, *Bahadur* v. *Emperor* (Persons not mentioned in S. 45 not liable for not reporting).]

S. 45, Notes 3—5.

(2) The information should, under S. 44, be given to the nearest Magistrate or *police-officer* while, under this section, it should be given to the nearest Magistrate or to the officer *in charge of the Police-Station*.

(3) The matters in respect of which information should be given under this section are somewhat different from and more numerous than, the matters referred to in S. 44.

"The object of the law" said Prinsep, J., in *Matuki Misser* v. *Queen Empress*[2] "is clearly that the earliest information should be communicated by those who are in the best position to obtain the same, or who, from their connection with the land, are in some authority, and should accordingly be made responsible for this duty, in order that an inquest may be held."

4. "Every village-headman, etc.".—In the Code of 1872 a village accountant was not specified in the section as one of the persons bound to give information.[1] He is expressly mentioned in the present Code. A *village Magistrate* in Madras is a village headman within the meaning of the section.[2] So also a *Mukkadam*[3] and *Kotwar*[3-a] in the Central Provinces. A village *Chowkidar* is a village-watchman under this section.[4] As to *Zaildar* in the Punjab see the undermentioned cases.[5]

The village-headman is part of the machinery of Criminal administration and definite duties have been imposed on him with regard to information given or complaint made to him.[6]

5. "Owner or occupier of land."—This section speaks of the owner or occupier of *land* but not of a *house*. The reason why the legislature has limited the liability to the owner of land seems to be that where there are houses it is expected that the place will be populous and the police will somehow get the information. In cases of land in the mofussil there are not always a sufficient number of police men available in the locality and it is necessary that the owner or occupier of *land* should be made liable to give the information. The owner of a *house* is not bound, under the section to give the information.[1]

Illustrations.

(1) *X* commits suicide by falling into the well situated in the compound of a house. The owner or occupier of the house and compound is not obliged to give information under this section.[2]

(2) *X*, a member of Nayar Tarwad family dies suddenly in the family house. The Karnavan of the Tarwad is not bound to furnish information under this section.[3]

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(2) (1885) 11 Cal. 619 (623), ***Matuki Misser*** v. *Queen-Empress*.

Note 4.

(1) (1878) 1 Mad. 266 (267), In re *Raminihi Nayar* (So also village munsif's peon).

(2) (1909) 9 Cri. L. Jour. 170 (172): 32 Mad. 258, In re *Sivan Chetty*.

(3) (1911) 12 Cri. L. Jour. 441 (443): 7 Nag. L. R. 101, *Local Government* v. *Manilal Singh*.

(3-a) (1922) 1922 Nag. 87 (88), *Domar Singh* v. *Emperor*.

(4) (1924) 1924 Pat. 691 (693), *Lachmi Singh* v. *Emperor*.

(1929) 1929 All. 935 (935), *Bhagwan Din* v. *Emperor*.

(1881) 3 All. 60 (61), *Empress* v. *Kallu*.

(5) (1886) 1886 Pun. Re. No. 19, *Shah Muhammad*.

(1894) 1894 Pun. Re. No. 25, *Hari Singh* v. *Queen-Empress*.

(6) (1909) 9 Cri. L. Jour. 170 (173): 32 Mad. 258, *Sessions Judge, Tinnevelly* v. *Sivan Chetty*.

Note 5.

(1) (1887) 1 Weir 101 (101), Re *Mainda*.

(1875) 23 Suth. W. R. 60 (61), In re, *Mudhoosoodun Chakrabutty*.

(1889) 1 Weir 101 (102), *Mainda* v. *Sale Pullanna*.

(2) (1929) 1929 Bom. 12 (12), *Hiru Satua Deshla* v. *Emperor* (Suicide by falling into a well in compound of a house—Owner of house and compound held owner of a house and not land).

(3) (1889) 12 Mad. 92 (93), *Queen-Empress* v. *Achuta*.

S. 45, Notes 6--9.

6. **"Agent of any such owner or occupier in charge of the management of that land."**—Under the section as it stood before the amendment of 1923 the "agent of any such owner or occupier" was bound to give information in respect of the matters referred to therein. It was, however, considered that, unless qualified, the word "agent" would include all kinds of agents and servants, that the imposing of the liability under the section on all such persons would make the section very wide and troublesome, and that it should be restricted only to persons in charge of the management of the land.[1] The words "in charge of the management of the land" were accordingly added after the word "agent" by the amending Act, XVIII of 1923.

A Khazanchi of a Zamindar of a village[2] or a Mukhtear[3] or a mere servant of the owner or occupier[4] is not an agent within the meaning of the section. A *dewan* may be an agent if his master is absent. But if he was acting only under the orders of his *resident* master he will not be liable under the Act.[5] It was held in the undermentioned case arising under the Code of 1872 that the liability of the resident agent arose when the owner was not resident and had no personal knowledge of the fact and that when he had such knowledge the liability attached to him.[6]

7. **"Every officer employed in the collection of revenue."**—A village-accountant is not a person engaged in the collection of revenue.[1] Under the present section, he is, however, liable as a *village-accountant* to furnish the information regarding the matters specified.

8. **"Shall forthwith communicate."**—The word "shall" indicates that the provisions of the section are imperative. It is therefore incumbent on the persons mentioned in the section to give the information specified.[1] The word "forthwith" has been held to mean within a reasonable time "having regard to the object of the provisions and the circumstances of the case".[2] *See* Note 3 above for the object of the section.

9. **"Any information which he may possess."**—The section as it stood before the amendment seemed to suggest that there was an obligation on the part of the persons mentioned therein *to obtain* information.[1-a] This difficulty has now been overcome by the substitution of the word "possess" which requires the informant to give such information as he may possess to his own knowledge and is fit to be communicated to the officer-in-charge of the police station.[1]

Note 6.

(1) *See Debates of the Legislative Assembly*, 16—1—23, *p.* 1114.
[See also (1879) 4 Cal. 603 (604), In re *Achiraj*.]
(2) (1879) 4 Cal. 603 (604), *Emperor* v. *Achiraj*.
(3) (1875) 23 Suth. W. R. 60 (61), *Mudhoosoodun*.
(4) (1911) 11 Ind. Cas. 609 (610) (Lah.), *Thakri* v. *Emperor*.
(5) (1879) 4 Cal. 603 (604), In re *Achiraj*.
(6) (1875) 23 Suth. W. R. 60 (61), *Mudhoosudhun*.

Note 7.

(1) (1876) 1 Mad. 266 (267), In the matter of *Raminihi Nayar*.

Note 8.

(1) (1874) 22 Suth. W. R. 42 (43), *Queen-Empress* v. *Ahmed Ali*.
(1924) 1924 Pat. 691 (693), *Lachmi Singh* v. *King-Emperor*.
[See (1929) 1929 Bom. 12 (12): 53 Bom. 184, *Hiru Satua Desla* v. *Emperor*.]
(2) *Wharton's Law Lexicon*, 13*th Edn.*, *p.* 374.
(1895) Rat. Un Rep. Cr. Cas. 784, *Queen-Empress* v. *Waman Dhond Dev* [Information under cl. (*d*) given 7 or 8 hours after knowledge held not 'forthwith'].

Note 9.

(1-a) (1881) 3 All. 201 (202), *Empress* v. *Bakshiram* (In which a Magistrate ordered a land-holder to "find a clue" in the case of theft "within 15 days". Held that such order was not authorised).
(1) (1924) 1924 Pat. 691 (693), *Lakshmi Singh* v. *King-Emperor*.

S. 45, Notes 9—14.

Where a person gives information of a decoity in the village to the village headman, which is reduced to writing, it is enough if the latter merely communicates the information. He need not transmit the statement along with it.[2]

10. "Information"—Meaning of.—"Information" does not mean a person's belief or opinion.[1] Nor is a mere rumour of an occurrence in a village "information" within the meaning of this section.[2] Thus where a Zamindar and his agent were told by people in the village, whose names they did not remember, that a certain person had disappeared from the village and had been murdered, it was held that this was not "information" which either the Zamindar or his agent was bound to communicate under this section.[3]

11. "Possess"—Meaning of.—*See* Note 9.

12. Residence of receiver of stolen property, etc.—Clause (a).—For the definition of "stolen property", *see* S. 410, Indian Penal Code (Act XLV of 1860) and also the undermentioned case.[1]

13. Passage of thug, etc., through village—Clause (b).—This clause requires information to be given as to the visit to a village, of persons suspected to be dacoits,[1-a] robbers, etc.

For the definition of the word "thug", *see* S. 310 of the Penal Code.

Sub-S. 2 (ii) of this section provides that the expression "proclaimed offender" *includes* the classes of persons referred to therein. The use of the word "includes" shows that the persons included in the expression are persons over and above those to whom the words, in their ordinary signification, applies, and who might, but for this explanation escape out of the category of "proclaimed offenders".[1]

Where a man is prosecuted for failure to report the movements of the proclaimed offender the burden is on the prosecution to prove that there was a due proclamation in accordance with the provisions of S. 87 of the Code; no presumption of due proclamation under that section can be drawn from the mere fact of attachment under S. 88 of the Code.[2]

Where a person suspected of a robbery is arrested and brought to a village and then released there it cannot be said that a suspected robber has "resorted to or passed through" the village.[3]

14. Commission of non-bailable offence—Cl. (c).—There is no duty upon the persons *referred to* in the section, to communicate information of *bailable* offences other than those specified in Cl. (c).[1] Nor are they bound to

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(2) (1909) 9 Cri. L. Jour. 170 (178, 179): 32 Mad. 258, *Sessions Judge* v. *Sivan* (*Per* Sankaran Nair, J.).

Note 10.

(1) [See (1882) 4 All. 498 (499), *Empress* v. *Madho* (Case under S. 182, I. P. Code).]
(2) (1924) 1924 Pat. 691 (693), *Lachmi Singh* v. *King-Emperor*.
(3) (1900) 1900 All. W. N. 207 (208), *Bhup Singh and another*.

Note 12.

(1) (1892) 19 Cal. 190 (192), *Empress* v. *Baburam*.

Note 13.

(1-a) (1881) Rat. 160 (161), *Queen-Empress* v. *Bala*.
(1) (1901) 1901 All. W. N. 10 (10), *Narapal*.
(2) (1884) 7 Mad. 436 (438), In re *Pandya*.
(3) (1887) 1887 Pun. Re. No. 30, p. 59 Cr., *Empress* v. *Malik Daub*.

Note 14.

(1) (1887) 1887 Pun. Re. No. 30, p. 59 Cr.,

communicate information under the section if the offence is not committed *in or near* their village.[2]

S. 45, Notes 14—18.

15. Sudden or unnatural death—Cl. (d).—The obligation to report about any sudden, suspicious or unnatural death arises only when it takes place *in or near* the village and not in a remote part of the country.[1] The words 'sudden or unnatural death' in the ordinary sense mean that there is a suspicion that the death has not occurred from natural causes.[2] Thus death by suicide is an unnatural death.[3] But however unnatural, in the ordinary sense, the cause of a death might be, it would not come within the meaning of the word "unnatural" in S. 45 unless the death occurred soon after the cause. If for instance, a person who has had a fall from a tree lingered for several weeks and then died, solely from the effects of the fall, it cannot be regarded as a case of sudden or unnatural death within the meaning of the section.[4]

Before the amendment of 1923, the section contained no words as to the obligation to report about the discovery of any *corpse* in or near such village under suspicious circumstances. It was, however, held in several cases[5] that the discovery of the corpse under suspicious circumstances would give rise to a presumption that the death was not natural, and that, therefore, there was an obligation to communicate information as to the occurrence. The amendment of Cl. (*d*) by the Act XVIII of 1923 now gives effect to this view.

Under the Bombay Village Police Act, VIII of 1867, the police-patel has to hold an inquest over the dead body, investigate into the cause of death, and submit a written report and when necessary send the body for *post mortem* examination.[6]

16. Appointment of village-headman for purposes of this section—Sub-S. (3).—*See* for example the rules made under The Bengal Village Chaukidari Act VI of 1870, for the appointment of headmen of villages.

17. Order under Sub-S. (3) if revisable by High Court.—An order passed by a District Magistrate dismissing a village-headman from his office, by virtue of the rules framed by the Local Government under Sub-S. 3 is an executive and not a judicial order and is not open to revision by the High Court.[1]

18. Punishment for non-compliance with the section.—A failure to comply with the provisions of this section may be punishable under S. 202

Empress v. *Malik Ram* (*e.g.*, offence of receiving of illegal gratification).

(1909) 1 Ind. Cas. 245 (246) (Mad.), In re *Vemi Reddi* (Information that a jewel is *missing* being either lost or stolen, is not one about a non-bailable offence).

[See also (1909) 1 Ind. Cas. 187 (192): 32 Mad. 258, *Sessions Judge* v. *Sivan*.]

(2) [See (1886) 1886 All. W. N. 65 (65), *Empress* v. *Khuda Baksh* (Robbery outside village).]

Note 15.

(1) (1875) 23 Suth. W. R. 60 (61), In re *Mudhoosoodhan* (This was the law even when the words 'in or near' did not occur in the Code of 1872).

(2) (1887) 1 Weir 101 (101), *Manida*.

(3) (1929) 1929 Bom. 12 (12): 53 Bom. 184, *Emperor* v. *Hira Satua*.

(4) (1922) 1922 Nag. 87 (88), *Domar Singh* v. *Emperor*.

(5) (1885) 11 Cal. 619 (624), *Matuki Misser* v. *Queen-Empress* (Mitter, J. dissenting).

(1895) Rat. Un. Re. Cr. Cas. 784, *Queen-Empress* v. *Waman Dhond Dev*.

(1887) 1887 Pun. Re. No. 20, p. 40, Cr., *Sher Mohamad* v. *Empress* (Corpse found in a stream).

(6) (1895) 19 Bom. 612 (613), *Empress* v. *Ragho Mahadu*.

Note 17.

(1) (1907) 29 All. 563 (565), *High Court* v. *Damma*.

S. 45. Notes 18—19.

or S. 176 or S. 154 of the Penal Code according to the nature of the information omitted to be given. Thus a failure to furnish the information referred to in Cl. (*a*) or Cl. (*b*) or Cl. (*d*) of the section will be punishable under S. 176 of the Penal Code.[1-a] A failure to furnish the information referred to in Cl. (*c*) will be punishable under S. 202 or S. 176 of the said Code.[1-b] In the case of an owner or occupier of land, he can be prosecuted for an offence under S. 154 when he[1] or his agent or manager[2] fails to report of the occurrence of a *riot or unlawful assembly* on the land. The fact that the person bound to give the information under this section is himself the injured party will not exempt him from criminal liability if he fails to give the information.[2-a] The burden of proving that the accused holds a position which raises the obligation under this section is on the prosecution.[3] Where a person is prosecuted for failure to give information of an offence, the prosecution has also to prove that the specified offence was committed, that the accused had knowledge of it, and that he intentionally failed to give information.[4] This section ought not to be used for purposes of vexation but in order to secure due information to Magistrates and the Police of offences committed within their jurisdiction.[4-a] If that information is conveyed to the nearest Magistrate or the Police officer by one of the persons bound to give such information it will not be reasonable that every other person who may possibly be bound to give the information be prosecuted for not having done so.[5] Thus where *A* and *B* were both bound to give information under this section and *B* gave the information in the *presence* of *A* the latter should not be prosecuted for not having given the information over again.[6] But where the accused had no reason to suppose that information had been given to the authorities by any one else, he cannot escape liability merely because another person who was also bound to give information under the section was present at the occurrence.[7]

19. Effect of giving false information.—The giving of false information under this section as to an offence may be made the basis of a

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Note 18.

(1-a) [See (1885) 11 Cal. 619 (624), *Matuki Misser* v. *Empress*.
(1887) 1887 Pun. Re. 20, p. 40 Cr., *Sher Muhammad* v. *Empress*.
(1911) 11 Ind. Cas. 609 (610) (Lah.), *Thakri* v. *Emperor*.]

(1-b) [See (1911) 11 Ind. Cas. 785 (788): 7 Nag. L. R. 101, *Local Government* v. *Manihar Singh*.
(1895) Rat. 783 (783), *Queen-Empress* v. *Mhatu Balaji* (No intentional omission—No offence).]

(1) (1901) 28 Cal. 504 (516), *Kazi Zeamuddin* v. *Empress*.
(1902) 7 Cal. W. N. 245 (246), *Eshak Meah* v. *Emperor* (Prosecutions for offences under Ss. 154, 155 should be instituted without delay having regard to the object of the law laid down in those sections which is to impress upon landholders their responsibilities and obligations in respect of riots or unlawful assemblies committed under the circumstances mentioned in those sections).
(1902) 7 Cal. W. N. 301 (305), *Sarat Chandra* v. *Emperor* (Do.).

(2) (1890) 12 All. 550 (551), In re *Prayag Singh*.

(2-a) (1883) 1883 All. W. N. 9 (9), *Empress* v. *Shankar*.

(3) (1878) 1 Mad. 266 (267), In re *Raminihi Nayar*.

(4) (1874) 22 Suth. W. R. 42 (42), *Queen* v. *Ahmed Ali*.

(4-a) (1921) 1921 Oudh 227 (228), *Rampal* v. *King-Emperor*.
(1929) 1929 Bom. 12 (12): 53 Bom. 184, *Hiru Satna* v. *Emperor*.

(5) (1879) 4 Cal. 623 (624), *Empress* v. *Sashi Bhusan*.
(1884) 7 Mad. 436 (438), In re *Pandya Nayak*.
(1893) 20 Cal. 316 (318), *Queen-Empress* v. *Gopal Singh*.
(1895) Rat. Un. Re. Cr. Cas. 778, *Queen-Empress* v. *Harigopal* (Police officer himself present at offence).
(1933) 1933 Lah. 515 (516), *Lt. Dhara Singh* v. *Emperor*.
(1879) 4 Cal. 623, *Empress* v. *Sashi Bhusan*.
(1893) Rat. 674 (675), *Queen* v. *Sada* (Case under S. 44).

(6) (1921) 1921 Oudh 227 (228), *Rampal* v. *Emperor*.

(7) (1915) 16 Cri. L. Jour. 219 (219), In re *Pavalli Manakkal Narayan Nambudripad*.

charge under S. 211 of the Penal Code, where it amounts to "institution of a Criminal Proceeding" or a "false charge" against any person within the meaning of that section. But, every information of an offence does not necessarily amount to a *charge* of an offence, *e.g.*, when a man gives information which he has heard from another and the truth of which he does not allege.[1] S. 45, Note 19.

CHAPTER V.

OF ARREST, ESCAPE, AND RETAKING.

A—Arrest generally.

46*. (1) In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. S. 46.

Arrest how made.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

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*(CODE OF 1882—S. 46.)

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

46. In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

If such person forcibly resists the endeavour to arrest him (or attempts to evade the arrest), such police or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

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(1) (1909) 1 Ind. Cas. 187 (189, 190): 32 Mad. 258 (F.B.), *The Sessions Judge* v. *Sivan*. Note 19.

S. 46, Note 1.

SYNOPSIS.

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LEGISLATIVE CHANGES	1
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ARREST ON SUNDAY	4
"ALL MEANS NECESSARY TO EFFECT ARREST" ..	5
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Arrest how made. See Note 2, Pts. 2 and 3.
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Handcuffs—use of. See Note 5, Pt. 2.
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Warrant not signed. See S. 75.
Warrant to be in the possession of the person arresting. See S. 80.
What violence justified. See Note 5, Pts. 3 to 5.

1. Legislative Changes.—

Changes introduced in 1872—

No changes were introduced in 1872. Ss. 177 and 178 merely were repetitions of Ss. 91 and 92 of the Code of 1861.

Changes introduced in 1882—

The provisions of Ss. 177 and 178 were embodied in a single section namely S. 46 with this difference that the words "or attempts to evade arrest" and a paragraph corresponding to the present sub-S. 3 were new.

Changes introduced in 1898—

There is no difference between S. 46 of the Code of 1882 and the present section except that the three paragraphs have been separately numbered as sub-sections in the present section.

(CODE OF 1872—Ss. 177 and 178.)

177. In making an arrest, the police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Warrant how executed.

178. If a person against whom a warrant of arrest is issued forcibly resists the endeavour to arrest him, the police officer or other person executing the warrant may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

(CODE OF 1861—Ss. 91 and 92.)

91. In making an arrest, the police officer or other person executing the warrant, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Warrant how to be executed.

92. If a person against whom a warrant of arrest is issued, shall forcibly resist the endeavour to arrest him, it shall be lawful for the police officer or other person executing the warrant, to use all such means as may be necessary to effect the arrest.

Resisting an endeavour to arrest.

S. 46. Notes 2—5.

2. **Scope of the section.**—An arrest under the Code can be made in certain cases only under a *warrant of arrest*, and in certain cases without any warrant. (S. 54, *infra.*) This section applies generally to all arrests under the Code whether under a warrant or otherwise.

Under the English common law an arrest of a person consists, except in the case of submission, of the actual seizure or the touching of the body of a person with a view to his detention.[1] There is no difference between Civil and Criminal cases in this respect[2]. This section, in substance, is a reproduction of that rule. There must be touch, or confinement or else acquiescence. An arrest by mere *oral declaration* is not legal.[3]

3. **Submission to custody.**—Where a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence: and if he makes the statement to a police officer, as such, he submits to the custody of the officer within the meaning of S. 46 of the Code.[1] A submission to the custody of a police officer within the meaning of this section is "custody" within the meaning of S. 27 of the Evidence Act.[2]

4. **Arrest on Sunday.**—An arrest on a Sunday is not illegal.[1]

5. **"All means necessary to effect arrest".**—The general principle of the law is that in making an arrest no more force is to be used than is necessary.[1] It is sufficient if the arresting officer *touches* the body of the person to be arrested and even this is unnecessary when the latter submits to the arresting officer's custody by word or action. It is by no means necessary that the arresting officer should, in arresting the person, immediately proceed to put hand-cuffs on him with cord or chain; such articles are used as a means of restraint and their use can only be justified on the ground that they are means necessary to effect the arrest.[2]

On the other hand the person effecting the arrest is justified under sub-S. 2 of the section in using so much violence as is necessary to effect his object[2-a] with this qualification, namely that his right does not, in cases coming under sub-S. 3, extend to causing the death of the person sought to be arrested. Thus where a *Chowkidar* seeking to arrest a fugitive thief, seeing no other means of capturing him, wounded him with a spear, it was held that he was

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Section 46—Note 2.

(1) (1919) 50 Ind. Cas. 999 (1000): 1919 Bom. 39: 43 Bom. 550, *Emperor* v. *Lalbu Waghji*.
(2) (1916) 17 Cri. L. Jour. 87 (87): 1916 Sind 19: 9 Sind L. R. 141, *Aludomal* v. *Emperor*.
(1930) 1930 Rang. 131 (132): 7 Rang. 598, *U Thwe* v. *A Kim Fee*.
(3) (1929) 30 Cri. L. Jour. 128 (Nag.), *Harmohanlal* v. *Emperor*.
(1916) 17 Cri. L. Jour. 87 (87): 1916 Sind 19: 9 S. L. R. 141, *Aludomal* v. *Crown*.

Note 3.

(1) (1933) 1933 Pat. 149 (151): 12 Pat. 241, *Santoki Beldar* v. *Emperor* (1928 Pat. 491 overruled).
(2) (1933) 1933 Pat. 149 (151): 12 Pat. 241, *Santoki Beldar* v. *Emperor*.
(1931) 1931 Lah. 278 (279), *Jalla* v. *Emperor*.
(1922) 1922 Cal. 342 (344): 49 Cal. 167, *Legal Remembrancer* v. *Lalit Mohan*.

Note 4.

(1) (1868) 10 Suth. W. R. 350 (351), *Abraham* v. *Queen*.
(1869) 4 Mad. H. C. App. 62, *High Court's Proceedings, 30th July*, 1869 (Arrest under civil process).
[See also (1873) 7 Mad. H. C. R. 285 (287), *Param Shook Doss* v. *Rasheed Ood Dowlah Bahadur* (Do.).]

Note 5.

(1) (1894) 1894 Pun. Re. No. 32 Cr., p. 106, *Muhammad Azim* v. *Sawan*.
(2) (1900-02) 1 L. B. R. 173 (174, 175), *Tain Sein* alias *Maung Singh* v. *Crown*.
(2-a) (1904) 1 Cri. L. Jour. 920 (923) (Kathiawar), *Emperor* v. *Kala Nanji*.

S. 46. Notes 5—7.

justified in doing so.[3] Similarly a shot fired over the head of a suspect, a dangerous person, in order to effect his arrest, was held to be justified.[4] But where *A* seeing *B* cutting corn in his (*A's*) land, gave him chase and the latter while being so pursued ran his head (the night being dark) against a tree and fell, and thereupon *A* hit him with a stick and fractured his skull, it was held that he exceeded his right of using violence in arresting him.[5]

6. **Illegal arrest—Effect of.**—The fact that the officer who effected the arrest was beyond his powers in making the arrest does not affect the jurisdiction of the Court to try the accused for the offence with which he is charged.[1] Nor does it affect the question whether the accused was or was not guilty of the offence for which he was charged.[2] But the person wrongfully making the arrest would be guilty of the offence of wrongful confinement punishable under S. 342 of the Penal Code, unless he is, or by a mistake of fact, in good faith, believes himself to be, bound by law to do it.[3]

A resistance to an illegal arrest is no offence and S. 99 of the Penal Code will not apply.[4] Similarly a rescue from custody under an illegal arrest is not an offence.[5] But though a rescue from arrest where the warrant is not *illegal* but merely *defective* will be an offence.[6]

Where for the purpose of effecting an arrest of a person for an offence not punishable with death or transportation for life, the Police Officer fired two shots at the person who thereupon turned round and wounded the inspector, it was held that the act of the accused was done in self-defence.[7]

7. **Resistance to lawful arrest.**—A resistance or illegal obstruction to a lawful arrest may amount to an offence punishable under S. 224 of the Penal Code.[1] But the mere act of running away before arrest or the evasion of arrest does not constitute the offence of resistance or illegal obstruction to lawful apprehension.[2] There is no legal right of private defence against an arrest carried out in the manner provided by this section.[3]

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(3) (1865) 2 Suth. W. R. Cr. 9 (9), *Queen* v. *Protab Chowkeedar*.
[See also (1898-1900) L. B. R. 136 (137), *Queen-Empress* v. *Nga Taung* (Stabbing to prevent evasion of arrest).]
(4) (1933) 1933 Sind 193 (196): 27 S. L. R. 24, *Nawaz Ali* v. *Emperor*.
(5) (1902) 1902 Pun. Re. No. 29, Cr., p. 79, *Bag* alias *Bagi* v. *Emperor*.

Note 6.

(1) (1928) 1928 Sind 161 (163), *E. C. D. Wheeler* v. *Emperor*.
(1899) 1899 Pun. Re. No. 6, p. 18, *Sobha* v. *Empress*.
(1911) 12 Cri. L. Jour. 505 (508): 39 Cal. 164, In re *Rudolph Stallman*.
(1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho*.
(1897-1901) 1 Upp. Bur. Rul. 211, *Queen-Empress* v. *Nga Su*.
(1892-96) 1 Upp. Bur. Rul. 123, *Queen-Empress* v. *Nga Kan*.
(1903-04) 2 Low. Bur. Rul. 60, *King-Emperor* v. *Nga Thu Daw*.
(1906) 1906 Pun. Re. No. 17, p. 71 Cr., *Juma* v. *Emperor*.
(2) (1903) 26 Mad. 124 (125), *Emperor* v. *Ravalu Kesigadu*.
(3) (1924) 1924 Bom. 333 (333), *Emperor* v. *Gopalier*.
[See also (1875) 24 Suth. W. R. Cr. 51 (51), In re *Budrool Hossein*.]
(4) (1897) 24 Cal. 320 (324), *Empress* v. *Jogendranath*.
(1930) 1930 Lah. 348 (350), *Gaman* v. *Emperor*.
(1897) 1 Cal. W. N. xcviii, *Mathura Kanta* v. *Kesu Singh*.
(5) (1912) 13 Cri. L. Jour. 590 (591), *Shyama Charan Majumdar* v. *Emperor*.
(1898) 1898 Pun. Re. No. 12, p. 29 Cr., *Lajje Ram* v. *Queen-Empress*.
(6) (1918) 1918 Lah. 332 (333): 1918 P. R. 9, *Attar Singh* v. *Crown*.
(7) (1920) 1920 U. B. 85 (86): 3 U. B. R. 176, *Nga Nanda* v. *Emperor*.

Note 7.

(1) (1891) 1891 All. W. N. 64 (64), *Queen-Empress* v. *Kallu*.
(1932) 1932 Lah. 615 (616), *Pratap Singh* v. *Emperor*.
(1891) 1891 All. W. N. 64 (64), *Queen-Empress* v. *Kallu*.
(2) (1888) 1 Weir 205 (206), In re *Nanjan* (Evading arrest).
(3) (1904) 1 Cri. L. Jour. 285 (287) (Kathiawar), *Emperor* v. *Kolimepa Bhaga*.

S. 47.

47*. If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1

***(CODE OF 1882—S. 47.)**

47. If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

(CODE OF 1872—Ss. 99 and 179.)

99. If there is reason to believe that any person liable to arrest under this Chapter without a warrant, of whom a police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

Ingress to be allowed into house entered by person of whom police in search.

179. If there is reason to believe that any person against whom a warrant has been issued has entered into, or is within, any house or place it shall be the duty of any person residing in or in charge of such house or place, on demand of the police officer or other person executing a warrant, to allow such police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Search of house entered by person against whom warrant issued.

(CODE OF 1861—Ss. 93 and 106.)

93. If there is reason to believe that any person, against whom a warrant has been issued, has entered into, or is within any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the police officer or other person executing the warrant, to allow such police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Search of house entered into by person against whom warrant has been issued.

106. If there is reason to believe that any person liable to arrest under this Chapter without a warrant, of whom a police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

Person in charge of house entered into by another of whom police officer is in search to allow ingress, etc.

S. 47, Note 1.

1. **Scope of the Section.**—This section only compels persons in charge of any place to afford to the police, facilities for the search of persons to be arrested, who are or have entered into such place. It does not restrict the powers of the police to enter the place to be searched without any demand as mentioned in the section.[1]

S. 48.

48*. If ingress to such place cannot be obtained under section 47, it shall be lawful, in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Procedure where ingress not obtainable.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanana.

***(CODE OF 1882—S. 48.)**

48. If ingress to such place cannot be obtained under S. 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Procedure where ingress not obtainable.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, pefore entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanana.

(CODE OF 1872—Ss. 100, 180 and 181.)

100. If ingress to such house or place cannot be obtained under S. 99, the police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested, and send immediate information to any Magistrate having jurisdiction.

Procedure where ingress not obtainable.

Section 47—Note 1.

(1) (1914) 1914 Cal. 456 (470): 41 Cal. 350, *Romesh Chandra v. Emperor.*

officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it. S. 48.

If a warrant cannot be obtained without affording such person an opportunity of escape, and there is no person authorised to enter without a warrant on the spot, the police officer may make an entry into such house or place and search therein.

180. The police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of door or window.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

Breaking open zanana.

If the accused person does not deliver himself up, the police officer or other person authorized to execute the warrant may notify his authority and purpose and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

(CODE OF 1861—Ss. 94, 95 and 107.)

94. The police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused, or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of outer door or window.

95. If information be received that a person accused of any offence, for which a warrant may issue, is concealed in a zenana or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the police officer or other person employed to execute the warrant, shall take such precautions as may be necessary to prevent the escape of the accused person, and if the accused person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance, break open such zenana or apartment, and execute the process entrusted to him; first giving notice to any woman as aforesaid in such zenana or apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and affording her every reasonable facility for withdrawing.

Breaking open a zenana or female apartment.

107. If ingress to such house or place cannot be obtained under the last preceding section, the police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to a Magistrate. If no warrant can be obtained

Procedure if ingress be not obtained.

S. 48, Note 1.

SYNOPSIS.

SCOPE OF THE SECTION .. .. Note No. 1

1. **Scope of the Section.**—This section provides that if difficulties are placed in the way of a police officer, he may use force to obtain ingress.[1]

S. 49, Note 1.

Power to break open doors and windows for purposes of liberation.

49*. Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

SYNOPSIS.

BREAKING OPEN DOOR .. .. Note No. 1

1. **Breaking open door.**—Where one *J*, a tenant of a portion of a house had departed after locking up the whole house with X's property in it and on a petition by X the Court ordered the police to break open the door and deliver the goods to X, it was held that the Magistrate had no jurisdiction to make any such order.[1]

No unnecessary restraint.

50†. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

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without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the police officer may make an entry into such house or place and search therein.

***(CODE OF 1882—S. 49.)**

49. Any police officer or other person authorized to make an arrest may break open any *outer or inner* door or window of any house or place in order *to liberate himself or any other* person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors and windows for purposes of liberation.

(CODES OF 1872 and 1861—Nil.)

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†(CODE OF 1882—S. 50.)

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

Section 48—Note 1.

(1) (1914) 1914 Cal. 456 (470): 41 Cal. 350, *Romesh Chandra* v. *Emperor*.

Section 49—Note 1.

(1) (1923) 1923 All. 473, *Ovid* v. *Seth Chandra Bhan*.

1. **"Shall not be subjected to more restraint than . . . escape".**—*See* S. 46 *ante*. **S. 50, Note 1.**

51*. Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and **S. 51.**

Search of arrested persons.

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

(CODE OF 1872—S. 182.)

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

(CODE OF 1861—S. 96.)

96. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

***(CODE OF 1882—S. 51.)**

51. Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Search of arrested persons.

Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

(CODE OF 1872—S. 387.)

387. Whenever a person is arrested by the police under a warrant which does not provide for the taking of bail,

Search of arrested persons.

or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail,

or is arrested without warrant and is not admitted to bail,

it shall be the duty of the arresting officer to search such person and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

(CODE OF 1861—NIL)

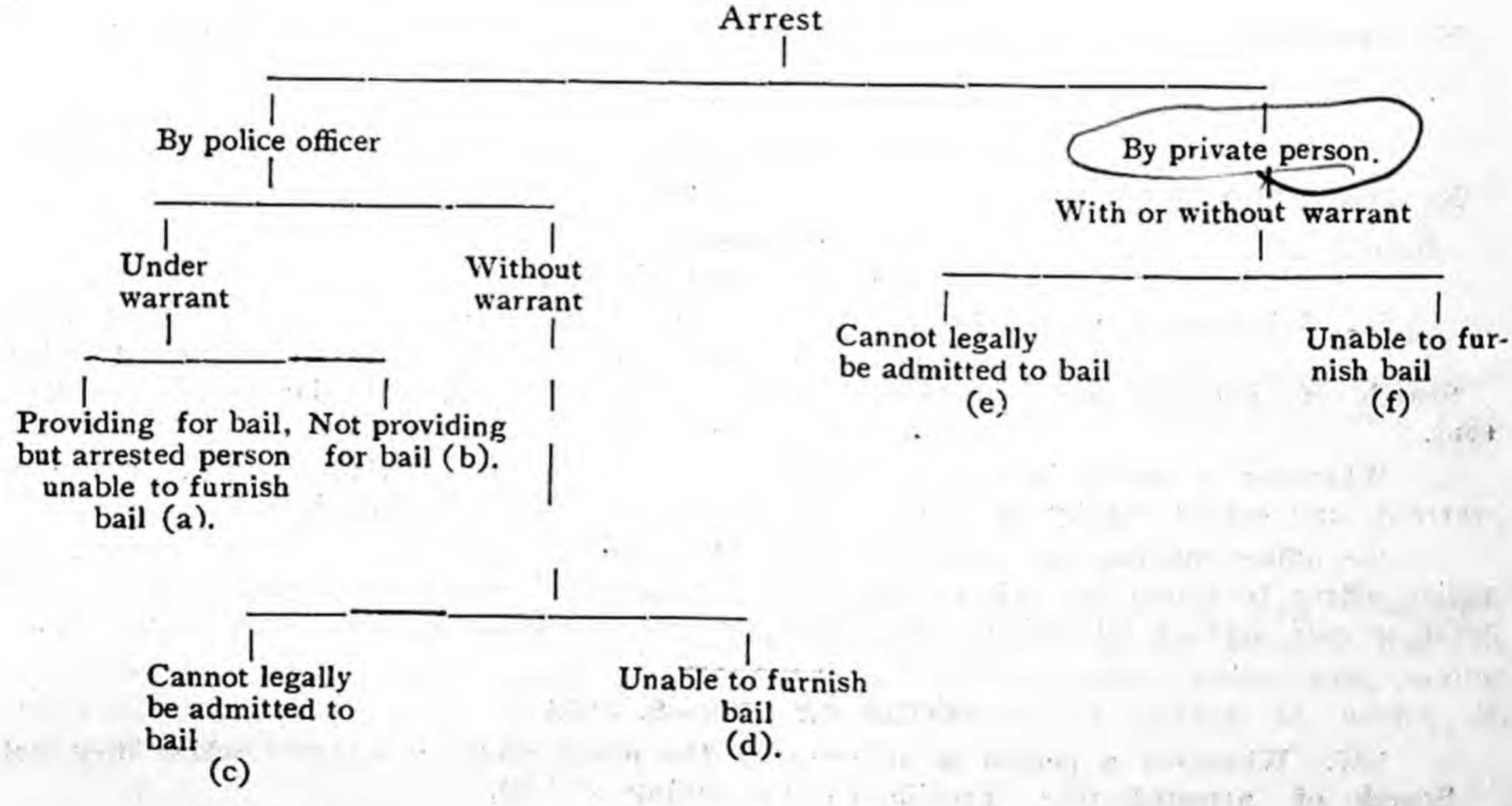
S. 51, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SEARCH OF ARRESTED PERSONS	2
RESISTANCE TO SEARCH	3
MANNER OF SEARCH	4
DISPOSAL OF THINGS FOUND ON THE PERSON SEARCHED.	5

1. Legislative Changes.—There was no section corresponding to this in the Code of 1861. S. 387 of the Code of 1872 contained the words "or is arrested without warrant and is not admitted to bail" for the second paragraph of the present section. It was the *duty* of the arresting officer under that section to search the person arrested. Under the present section the police officer *may* search such person.

2. Search of arrested persons.—Ss. 51 to 53 deal with search of *arrested* persons, Ss. 102 and 103 *inter alia* deal with search of a person in other cases. This section provides that in the cases (*a*) to (*f*) in the following table, the officer arresting a person, or to whom the arrested person is made over, may search such person:—



It is not necessary that the purpose of the search under Ss. 51 to 53 should always be to look for something definite, such as an incriminating article. The searching officer may and should take notice of anything worthy of attention, such as marks of injury, and, if called as a witness, he may depose to such marks. But it is not permissible to forcibly take hold of a prisoner and examine his body medically without his consent for the purpose of qualifying some medical witness to give medical evidence in the case against the accused. Any such examination without the consent of the prisoner amounts to an assault and the police are not entitled to do this without authority. Medical evidence obtained

under such circumstances is, it has been held, not admissible.[1] When the prisoner *consents* to be examined, the evidence of the medical officer who examined him is, of course, admissible.[2] S 51. Notes 2—5.

It is submitted that the view that the evidence of the medical witness is inadmissible, does not seem to be a sound one. In 11 Cri. L. Jour. 453,[3] Sir Lawrence Jenkins, C.J., observed "For without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded."

3. Resistance to search.—A resistance to a search under this section may amount to an offence under S. 186 of the Penal Code.[1]

4. Manner of search.—There is no provision in the Code which requires a panch to be called in cases of searches of persons.[1] Under S. 12 of the Police Act, 1861, however, Rules have been framed by the Local Governments requiring the search to be made wherever possible in the presence of witnesses, *see* for example the Allahabad Police Regulations, para. 141.

5. Disposal of things found on the person searched.—*See* S. 523 *infra*.

52*. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency. S. 52.

Mode of searching women.

***(CODE OF 1882—S. 52.)**

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Mode of searching woman.

(CODE OF 1872—S. 386.)

386. Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Mode of searching woman.

(CODE OF 1861—S. 126.)

126. In any case in which it shall be necessary to cause a female to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

Mode of searching females.

Section 51—Note 2.

(1) (1931) 1931 Cal. 601 (602, 604), *Bhondar v. Emperor* (Per Lort Williams, J.: Ghose, J. on this point contra).
(2) (1932) 1932 Cal. 723 (725), *Hanuman Sarma v. Emperor* (The consent need not be in writing).
(3) (1910) 11 Cri. L. Jour. 453 (464): 37 Cal. 467, *Bharindra Kumar Ghose v. Emperor*.

Note 3.

(1) (1911) 12 Cri. L. Jour. 457 (457, 459) (Bom.), *Emperor v. Thaver Issaji*.

Note 4.

(1) (1911) 12 Cri. L. Jour. 457 (457) (Bom.), *Emperor v. Thaver Issaji*.

S. 53.

53*. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B—Arrest without Warrant.

S. 54.

When Police may arrest without warrant.

54.† (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest,—

First.—Any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly.—Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

***(CODE OF 1882—S. 53.)**

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

(CODES OF 1872 and 1861—Nil.)

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†(CODE OF 1882—S. 54.)

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police officer may, without an order from a Magistrate and without a warrant, arrest,—

First.—Any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

Secondly.—Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

S. 54.

Thirdly.—Any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

Fourthly.—Any person in whose possession anything is found which may reasonably be suspected to be stolen property, *and* who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly.—Any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

Sixthly.—Any person reasonably suspected of being a deserter from Her Majesty's Army, Navy *or Air Force* or of belonging to Her Majesty's Indian Marine Service and being illegally absent, from that service.

Seventhly.—Any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India;

Eighthly.—Any released convict committing a breach of any rule made under section 565, sub-section (3); and

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Thirdly.—Any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

Fourthly.—Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly.—Any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

Sixthly.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the Police in the towns of Calcutta and Bombay.

S. 54.

Ninthly.—Any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) This section applies also to the police in the town of Calcutta.

(In the sixth clause the words "or Air Force" have been added by Act X of 1927.)

(CODE OF 1872—S. 92.)

CHAPTER IX.

Of Arrest without Warrant.

When police may arrest without warrant.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest:—

Firstly.—Any person who, in the sight of such police officer, committs a cognizable offence.

Secondly.—Any person against whom a reasonable complaint has been made, or a reasonable suspicion exists, of his having been concerned in any such offence.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

Fourthly.—Any person who has been proclaimed, either under this Act, or in a District or Police Gazette or Notification.

Fifthly.—Any person found with property in his possession which may reasonably be suspected to be stolen property.

Sixthly.—Any person who obstructs a police officer while in the execution of his duty, or who escapes from lawful custody, and

Seventhly.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

(CODE OF 1861—S. 100.)

CHAPTER VI.

Of Arrest without Warrant.

Police officer may arrest without warrant in certain cases.

100. A police officer in the cases hereinafter mentioned may, without orders from a Magistrate and without a warrant, arrest,—

Firstly.—Any person who in the sight of such police officer shall commit an offence specified in Column 3 of the Schedule annexed to this Act, as an offence for which police officers may arrest without a warrant.

Secondly.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

Thirdly.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

Fourthly.—Any person who is a proclaimed offender.

Fifthly.—Any person who is found with stolen property in his possession.

Sixthly.—Any person who shall obstruct a police officer while in the execution of his duty.

SYNOPSIS.

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IV.	"CONCERNED IN ANY COGNIZABLE OFFENCE"—	
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XI.	ESCAPE FROM LAWFUL CUSTODY	14
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Other Topics.

Arrest in British Territory by the police of a Native State. See Note 3, Pt. 3.
Arrest outside British India by British Police. See S. 58.
Detention without arrest. See S. 60.
May arrest. See Note 2.
May arrest once warrant has issued. See Note 6, Pt. 5.
Police officer cannot depute private persons to arrest. See Note 3, Pt. 1.
Property suspected to be stolen. See Note 8.
Punishment. See Note 13.
Respectable persons—arrest of. See Note 5, Point 2.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872.

Clauses 5 and 7 of the Code of 1872 corresponding to clauses 4 and 6 of the present section, were absent in the Code of 1861.

Difference between the Codes of 1872 *and* 1882.

The words "and who may reasonably be suspected of having committed an offence with reference to such thing" in clause 4 of the Code of 1882 were newly inserted.

Difference between the Codes of 1882 *and* 1898.

(1) The words "or of belonging . . . service" in clause 6 is new.

(2) Clauses 7 and 8 are new.

(3) The words "and Bombay" which occurred in the last paragraph of the old section have now been deleted from sub-S. 2.

S. 54, Notes 1--3.

Amendment of 1923.

Clause 9 has been newly added.

2. **Scope of the section.**—This section gives the police wide powers of arresting persons without warrant. It is however not a matter of caprice, limited only by the police officers' own view as to what persons they may arrest without warrant. Their powers are strictly defined by the Code, and being an encroachment on the liberty of the subject, an arrest purporting to be under the section would be illegal unless the circumstances specified in the various clauses of the section exist.[1] Where a police constable purported to act *under a warrant* which was found to be invalid and there was nothing to show that he proceeded under this section it was held that the arrest could not be supported under this section.[2]

This section refers to cases where a person is arrested not only without a warrant but also without an *order* from a Magistrate. Hence, where a person is arrested in pursuance of the order of a Magistrate, it is such order that must determine the legality or otherwise of the arrest.[3]

A police officer's power to arrest under this section is *discretionary* and notwithstanding the existence of the conditions specified in the section, it may be desirable in the circumstances of a particular case to simply make a report to the Magistrate instead of arresting the suspected person.[4]

3. "**Any police officer**".—It is only a *police officer* that can act under this section. A private person cannot act under this section even though authorised by a police officer to do so, inasmuch as the Code confers no powers on a police officer to send persons who are not police officers to make an arrest which he himself could lawfully make.[1]

The word "Police" is defined in the Indian Police Act, 1861, and also in the various Local Police Acts as including all persons enrolled under those Acts as such. A village Chowkidar is not a police officer.[2] Nor are the authorities of a Native State, police officers within the meaning of the Indian Police Act. They cannot therefore make an arrest in British Territory.[3] See also the following cases as to who is and who is not a police officer.[4] As to the

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Section 54—Note 2.

(1) (1926) 1926 Pat. 560 (561), *Ramprit Ahir* v. *Emperor*.
(1917) 1917 Cal. 253 (256): 44 Cal. 76, In the matter of *Charu Ch. Majumdar*.

(2) (1932) 1932 Pat. 171 (174), *Kartik Chandra Maity* v. *Emperor*.
(1918) 1918 Pat. 252 (252), *Mousi Lal* v. *Emperor*.

(3) (1935) 1935 Cal. 122 (124), *Santabir Lama* v. *Emperor*.

(4) (1892-1900) Low. Bur. Rul. 390 (392), *Queen-Empress* v. *Pume*.

Note 3.

(1) (1909) 10 Cri. L. Jour. 118 (120): 5 L. B. R. 21, *Emperor* v. *Taik Pyu*.

(2) (1929) 1929 All. 935 (935), *Bhagwan Din* v. *Emperor*.
(1914) 1914 Cal. 272 (273): 41 Cal. 17, *Puranachandra* v. *Emperor*.
(1916) 17 Cri. L. Jour. 529 (530): 1916 All. 253, *Jafar* v. *Emperor*.
(1908) 7 Cri. L. Jour. 188 (189): 35 Cal. 361, *Balairaj* v. *Emperor* (Duffadar is only a head Chowkidar).
(1881) 3 All. 60 (61), *Empress* v. *Kallu*.
(1929) 1929 All. 935 (936), *Bhagwan Din* v. *Emperor*.
(1916) 17 Cri. L. Jour. 164 (165): 1916 Cal. 247, *Dirajaddi* v. *Emperor* (Village Chowkidar is not police officer within the meaning of Village Chowkidari Act (Bengal Act VI of 1870).

(3) (1870) Rat. 35 (35), Re *Kaladji Magistrate*.
(1907) 5 Cri. L. Jour. 277 (277): 29 All. 377, *Emperor* v. *Debi*.

(4) (1891) 1 Weir 632 (632), Re *Venkaswami* (Abkari peon is not a police officer).
(1879) 1 Weir 342 (343), Re *Venkaligadu* (Thalayari—Not a Police Officer).
(1871-74) 7 Mad. H. C. R. App. 4 (4), (Kavalgar not appointed under the Act—not a Police Officer).
(1882) 1 Weir 197 (198), Re *Bodapati* (Village vetti not appointed under the Act, not a Police Officer).
(1886) 9 Mad. 97 (98), Re *Eragani* (Village Policeman is included in the word "Police").

power of a police officer to arrest beyond the limits of the police station to which he is attached, *see* the undermentioned case.[5]

S. 54, Notes 3--6.

4. "Concerned in any cognizable offence"—Clause 1.—A police officer can act under clause 1 only when the offence for which a person is to be arrested is a *cognizable offence*.[1] Such person, must, as a fact, have been concerned in such offence or there must have been a *reasonable complaint* made or *credible information*[1-a] received or a *reasonable suspicion* felt that he has been so concerned. An offence under S. 61 of the Bombay Village Police Act (VIII of 1867) is not a cognizable offence and the police have no power to arrest without warrant for such offence.[2] Again, if the person arrested is a child under 7 years of age, who cannot under S. 82 of the Penal Code commit an offence, the arrest is illegal.[3]

5. Reasonable complaint.—It is not necessary that the complaint should have been made to the police officer himself who makes the arrest; it is sufficient if there is a reasonable complaint made to *any person entitled to entertain it*. Where a Magistrate acts upon a complaint of a cognizable offence, there is a "reasonable complaint" of the accused being concerned in a cognizable offence within the meaning of this section.[1] Where, however, a complaint is made to a police officer of the commission of a cognizable offence, but there are circumstances in the case which lead him to suspect the information, he should refrain from arresting persons of respectable position and leave the complainant to go to Magistrate and convince him that the information justifies the serious step of the issue of warrants of arrest.[2] As to the meaning of the word "reasonable", *see* note 7 *infra*.

6. "Credible information".—There was no provision in the Codes of 1861 and 1872, enabling an arrest without warrant on *credible information* as to the person to be arrested being concerned in a cognizable offence. Such a provision was introduced for the first time in S. 54 of the Code of 1882.[1]

The words "credible information" include any information which, in the judgment of the officer to whom it is given, appears entitled to credit in the particular instance. It need not be sworn information.[2] The words "credible" and "reasonable" have reference to the mind of the person receiving the information. A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not therefore amount to

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(1924) 1924 Nag. 29 (31), *Sukhwaria Chamarin* v. *Emperor* (Kotwar in Central Provinces not a Police Officer).

(5) (1914) 1914 Sind 160 (162): 5 S. L. R. 1, *Mir Shah Nawaz Khan* v. *Emperor*.

Note 4.

(1) [See (1869) 11 Suth. W. R. 20 (21), *Queen* v. *Shaikh Emoo* (Dacoity).

(1-a) [See (1928) 1928 Pat. 454 (455): 7 Pat. 484, *Ramasray* v. *Emperor* (When there is credible information before a police officer, he is justified in arresting).]

(2) (1891) Rat. 583 (584), *Queen-Empress* v. *Meham*.

(3) (1915) 16 Cri. L. Jour. 602 (603): 1916 Mad. 642, In re *Santa Cruz Morais*.

Note 5.

(1) (1922) 1922 All. 457 (458), *Alay Mohammad* v. *Emperor*.

(2) (1895) Rat. 795 (797), *Queen-Empress* v. *Irappa*.

[See also (1892-1900) L. B. R 390 (392), *Queen-Empress* v. *Pu Me*.]

Note 6.

(1) (1886) 10 Bom. 506 (511), *Queen-Empress* v. *Amarsang*.

(2) (1882) 1882 Pun. Re. No. (Cr. J.) 7 (11) (F. B.), *Kada* v. *Empress* (Case under Gaming and Wagering Act III of 1867).

(1929) 1929 Lah. 720 (720), *Devi Dayal* v. *Emperor*.

S. 54, Notes 6—7.

"credible information".[3] The "reasonable suspicion" and "credible information" must relate to *definite averments* which must be considered by the police officer himself before he arrests a person under this section.[3-a]

A complaint of a cognizable offence recorded by a Magistrate and sent by him to the police for investigation and report is sufficient information justifying action under this section.[4] Similarly an information that a warrant of arrest has been issued against a person in respect of a cognizable offence, may justify action being taken under this section.[5] Where, from a report of a *bisuedar* that certain persons were dacoits the police sergeant called them to surrender but the latter resisted and fired shots at the sergeant, it was held that the latter was justified in arresting those persons.[6] But where a vague information was received that if the police went to a certain place along the Railway line they would see some people there who were probably about to rob a train, and the police went to the place and finding certain persons there arrested them, it was held that there was no authority for assuming that because a party or persons were in a certain place at a certain time they were about to engage in a criminal act, and that therefore there was no legal justification for the arrest.[7]

7. **"Reasonable suspicion exists of his having been so concerned."**—A police officer can arrest a person without warrant where a reasonable suspicion exists of his having been concerned in any cognizable offence.[1] Where a police officer suspecting that certain pieces of cloth which a man was carrying early morning, was stolen property, went to him and questioned him and having received unsatisfactory answers, arrested him, it was held that he was entitled to do so.[2] Where a person was found armed lurking at midnight in a village inhabited by persons well known to the police as professional dacoits it was held that there was a reasonable suspicion against the person of his being concerned in a cognizable offence.[3] But this does not mean that the police are limited only by their own discretion as to what persons they may arrest without warrant. Their powers in this respect are as has been seen in Note 2 *ante* strictly defined by the Code. In order to act under the first clause, there must be a *reasonable* complaint or *reasonable* suspicion of the person to be arrested having been concerned in a cognizable offence. What is a 'reasonable' complaint or suspicion must depend upon the circumstances of each particular case; but it should be at least founded on some *definite fact* tending to throw suspicion on the person arrested, and not on a *mere* vague surmise.[4]

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(3) (1925) 1925 Cal. 278 (279): 52 Cal. 319, *Subodh Chandra Roy Chouduri* v. *Emperor*.
(3-a) (1934) 1934 Sind 197 (199): 28 S. L. R. 205, *Saindinojakhro* v. *Emperor*.
(4) (1923) 1923 Pat. 547 (547): 2 Pat. 379, *Emperor* v. *Bhola Bhagat*.
(5) (1917) 18 Cri. L. Jour. 709 (709): 1918 Mad. 514: 40 Mad. 1028, In re *Ratna Mudali*.
(1914) 1914 All. 205 (206): 36 All. 6, *Emperor* v. *Gopal Singh*.
[See also (1917) 18 Cri. L. Jour. 666 (667): 1917 All. 85, *Rangpal* v. *Emperor*.]
(6) (1900) 1900 Pun. Re. No. 21, p. 47, *Bhanga Singh* v. *Empress*.
(7) (1926) 1926 Pat. 560 (560, 561), *Ramprit Ahir* v. *Emperor*.

Note 7.

(1) (1924) 1924 All. 201 (202), *Mahadeo Rai* v. *Emperor* (Rape).
(1914) 1914 Cal. 456 (470): 41 Cal. 850, *Ramesh* v. *Emperor*.
(1910) 11 Cri. L. Jour. 423 (424): 1910 P. R. 18, *Emperor* v. *Yusuf* (Burglary).
(2) (1888) 12 Bom. 377 (396, 397), *Bhawoo Jivaji* v. *Mulji Dayal*.
[See also (1885) Rat. 220 (221), *Queen-Empress* v. *Ramachandra*.
(3) (1869) 1869 Pun. Re. No. 7 Cr., pp. 9, 10, *Crown* v. *Gatsea Meena*.
(4) (1867) 7 Suth. W. R. 3 (5), *Queen* v. *Behary Singh*.

S. 54, Notes 8—11.

8. Possession of stolen property—Clause 4.—Under the Code of 1861 any person *found with stolen property in his possession* could be arrested without warrant.[1] It was held that the clause referred to property *found* to have been stolen and not to anything *suspected* to have been stolen.[2] Under the present clause, however, a *reasonable suspicion* as to its being stolen property is sufficient.

9. Obstruction to police officer—Clause 5.—It is a right and duty of a police officer to prevent a breach of the peace and he may arrest any one who obstructs and resists him in performing this duty.[1]

10. Deserter from Army or Navy—Clause 6.—A police officer has power to arrest without warrant a deserter from His Majesty's Army and an obstruction thereto would be punishable under S. 225-B of the Penal Code.[1]

11. Arrest of fugitive criminals for offences committed outside British India—Clause 7.—There was no provision corresponding to this clause in the Code of 1882 and it was held under that Code that a police officer could not arrest without warrant a British subject in British India on a charge of a cognizable offence committed outside British India.[1] The present clause now authorises the police in British India, where the offence is one of those enumerated in the First Schedule of the Extradition Act (XV of 1903), to arrest without warrant fugitive criminals from outside British India.[2] To satisfy the requirements of this clause two conditions must be present: *First*, that the person to be arrested has been concerned or a reasonable complaint has been made or credible information has been received, or reasonable suspicion exists of his having been concerned, in any act committed outside British India which if committed within British India would be punishable as an offence, and *secondly*, that the person is liable for such act to be apprehended or detained in custody in British India under any law relating to extradition or under the Fugitive Offenders Act or otherwise. The wording of the clause clearly indicates that the arresting police officer has to exercise his own judgment and form his own opinion as to whether he should or should not act, and to enable him to do so he must have the necessary facts before him. As to what is reasonable suspicion, *see* Note 7 above.[3]

There must be in *existence* as a fact, as opposed to any belief which may be entertained by any person, a warrant which has been issued under the Extradition Act. It is not necessary that it should be present or available to any particular officer. It must merely exist.[4]

Note 8.

(1) (1867) 8 Suth. W. R. 28 (Cr.) (28), *Queen* v. *Gowree Singh*.
(2) (1868) 10 Suth. W. R. (Cr.) 20 (20), *Sheo Saran Sahai* v. *Mohomed Fasil*.

Note 9.

(1) (1887) Rat. 331 (332), *Queen-Empress* v. *Sorabji*.

Note 10.

(1) (1912) 13 Cri. L. Jour. 234 (234): 1911 P. R. 20, *Emperor* v. *Rahim Ali*.

Note 11.

(1) (1895) 19 Bom. 72 (75), In re *Mukund Babu Vethe*.
(2) (1905) 2 Cri. L. Jour. 439 (446), *Emperor* v. *Husunally Niarally*.
[See also (1906) 4 Cri. L. Jour. 366 (366): 33 Cal. 1032, *Balthasar* v. *Emperor* (Cheating is one of the offences mentioned in the schedule).]
(3) (1925) 1925 Cal. 278 (281): 52 Cal. 319, *Subodh Chandra Roy* v. *Emperor*.
(4) (1933) 1933 Lah. 159 (160), *Emperor* v. *Kalu*.
(1891) 1891 Pun. Re. No. 20, p. 64 (65), *Choghatta* v. *Empress* (In absence of warrant from proper authority arrest by British Indian Police is illegal).

S. 54, Notes 12—17.

12. **Sub-S. 2.**—This section does not extend to the police in the town of Bombay.[1]

13. **Resistance to lawful arrest.**—*See* S. 46 *ante* note 7.

14. **Escape from lawful custody.**—*See* S. 224 of the Penal Code and the undermentioned cases.[1]

15. **Procedure after arrest.**—A person arrested under this section should be produced before a Magistrate having jurisdiction in the case or before the officer-in-charge of a police station *without unnecessary delay* (S. 60). The person arrested cannot be detained in police custody for more than 24 hours in the absence of a special order of a Magistrate under S. 167 (S. 61).[1]

16. **Effect of illegal arrest on conviction.**—*See* Note 6 to S. 46.

17. **Arrest without warrant under other laws.**—*See* the following cases.[1]

S. 55.

Arrest of vagabonds, habitual robbers, etc.

55.* (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

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***(CODE OF 1882—S. 55.)**

55. Any officer in charge of a police station may, in like manner, arrest or cause to be arrested:—

Arrest of vagabonds, habitual robbers, &c.

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

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Note 12.

(1) (1925) 1925 Bom. 104 (105), *Sriram Shambudayal*, In re.

Note 14.

(1) (1906) 4 Cri. L. Jour. 389 (390): 3 Low. Bur. Rul. 221, *Emperor* v. *Pohla*.
(1901) 28 Cal. 253 (255), *Deo Sahay Lal* v. *Empress*.
(1896) 1896 All. W. N. 151 (151), *Kamta Prasad* v. *Kamtanath*.
(1870) 13 Suth. W. R. 75 (76), *Queen* v. *Assan Shurreff* (Arrest for being member of unlawful assembly is legal—Rescuing arrested person is offence).
(1933) 1933 Lah. 884 (885), *Mehr Sing* v. *Emperor* (Although in cases under S. 225-B of I. P. Code, proper person to make the complaint is the officer from whom the escape or rescue has been effected, still a complaint by another person aware of the facts is not a nullity).
(1894) 21 Cal. 337 (340), *Gangacharan Sing* v. *Queen-Empress*.

Note 15.

(1) (1924) 1924 Cal. 893 (895), *Dwarkadas Haridas* v. *Amba Lal Ganpatram*.

Note 17.

(1) (1930) 1930 Bom. 49 (50): 54 Bom. 146, *Emperor* v. *Ismail Hirji* (Bombay Prevention of Gambling Act, S. 6).
(1930) 1930 Pat. 344 (345), *Bechu Mian* v. *Emperor* (Bihar and Orissa Excise Act II of 1915).
(1929) 1929 Cal. 730 (731), *Hamid* v. *Sadhir Mohan* (Railways Act).
(1925) 1925 Bom. 131 (132, 133): 49 Bom. 212, *Candri Bawoo* v. *Emperor* (Bombay Prevention of Prostitution Act XI of 1923).
(1914) 1914 Cal. 675 (676): 41 Cal. 836, *Prokash Chandra* v. *Emperor* [Excise Act (Bengal)].
(1916) 17 Cri. L. Jour. 379 (380): 1917 Cal. 426, *Mohammad Kazi* v. *Emperor* (Arrest under the provisions of Opium Act by Excise Officer).
(1877) 26 Suth. W. R. Cr. 3, In re *Grish Chunder Nundee* (Arrest under the provisions of Indian Police Act).
(1894) Rat. 695 (696), *Queen-Empress* v. *Gopal* (Indian Forest Act).

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or S. 55.

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the town of Calcutta.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"IN LIKE MANNER"	3
WHO CAN MAKE AN ARREST UNDER THIS SECTION ..	4
HABITUAL ROBBERS, ETC.,—CLAUSE (C)	5
ARREST OF PERSONS OUTSIDE THE LIMITS OF THE POLICE STATION	6
PROCEDURE ON ARREST	7
SUB-SECTION (2)	8
ESCAPE FROM LAWFUL CUSTODY	9

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(CODE OF 1872—S. 94.)

94. An officer in charge of a police station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station, who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

Arrest of vagabonds.

(CODE OF 1861—S. 101.)

101. An officer in charge of a Police Station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such Station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, or any person who is reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

Vagabonds.

S. 55, Notes 1—2.

Other Topics.

Arrest under the section when justified. See Note 2.
Bail. See Note 7, Pt. 1.
Habitual gambler—if can be arrested under the section. See Note 2, Pt. 3.
Illegal arrests. See Note 5, Pts. 1 and 2.
Presence must be voluntary. See Note 6, Pt. 1.
Resisting apprehension. See Note 9, See also S. 46, Note 7 *ante*.
S. 55 compared with S. 110. See Note 2, Pt. 2.
Watching bad characters. See Note 2, Pt. 4.

1. **Legislative Changes.**—There is no difference between S. 101 of the Code of 1861 and S. 94 of the Code of 1872.

Difference between the Codes of 1872 *and* 1882.

(1) The words "any person found lurking within the limits of such station" were substituted by a clause corresponding to clause (*a*) of this section.

(2) The words "or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood" were substituted by a clause corresponding to clause (*c*) of this section.

Difference between the Codes of 1882 *and* 1898.

There is no difference between the corresponding sections of the two Codes except that the present sub-S. 2 is new.

2. **Scope of the Section.**—This section deals with matters which are not offences but in which an officer in charge of a police station may arrest without warrant. Thus the fact that a person is a habitual offender is by itself not an offence, but he may be arrested under this section and dealt with under the security sections.[1] This section is, however, independent of Chapter VIII of the Code (Security sections) although proceedings under Chapter VIII may follow such arrest as a natural sequence.[2]

It is only a person falling within any of the three clauses (*a*), (*b*) or (*c*) of the section that can be arrested under this section. A person, for example, who is suspected of earning his livelihood by unlawful gaming, is not one of such persons and cannot be arrested under this section.[3] The powers with which officers in charge of police stations have been armed under the Code for the purpose of restraining bad characters are exceptional powers and should never be put in force without the greatest deliberation. This section is intended for suppression of habitual bad characters whom an officer in charge of a police station suddenly finds within his circle, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under S. 112.[4]

Section 55—Note 2.

(1) (1917) 18 Cri. L. Jour. 709 (709): 1918 Mad. 514: 40 Mad. 1028, In re *Ratna Mudali*.
(1926) 1926 Sind 190 (191): 20 S. L. R. 85, *Hardayal Singh* v. *Emperor* (The mere fact that there is an intention to act under Ch. 8 by the Police does not grant to the accused persons immunity from preliminary arrest).
(2) (1918) 14 Cri. L. Jour. 618 (618): 35 All. 407, *Nepal* v. *King-Emperor*.
(1930) 1930 Pat. 103 (104), *Ram Nandan Singh* v. *Emperor*.
[See (1916) 17 Cri. L. Jour. 319 (320): 1917 Low. B. 140: 8 L. B. R. 378, *Emperor* v. *Nga Po Aung*.
(1921) 1921 All. 278 (280): 43 All. 186, *Raghu* v. *Emperor*.
(1926) 1926 All. 759 (760), *Nihal* v. *Emperor*.]
(3) (1906) 3 Cri. L. Jour. 20 (21): 3 Low. Bur. Rul. 94, *Emperor* v. *Khyaw dun*.
(4) (1891-1898) 14 All. 45 (46), In the matter of the petition of *Daulat Singh*.

S. 55, Notes 3—9.

3. **"In like manner".**—The words "in like manner" refers to S. 54 which a Police officer has power to arrest without an order from a Magistrate and without a warrant.[1]

4. **Who can make an arrest under this section.**—It is only an officer in charge of a police station that can make an arrest under this section. If he wishes to depute any other police officer to do it, he should proceed under S. 56, *infra*.

5. **Habitual robbers etc.,—Clause (c).**—This clause refers to reputed *habitual* offenders. An arrest on mere suspicion that a person is concerned in several offences is not justified.[1] Where a person was acquitted on a charge of dacoity, but was immediately arrested by the police purporting to be under this section but without anything to show that he was a habitual offender, and was kept in custody for 12 days, it was held that the procedure was altogether illegal and entirely without jurisdiction.[2]

6. **Arrest of persons outside the limits of the police-station.**—An arrest of a person under this section means the arrest of a person voluntarily *within the limits* of a police station. It is illegal for an officer in charge of a police station to arrest under S. 55 out of the limits of his station.[1]

7. **Procedure on arrest.**—See S. 61 infra. When the police act under this section they are bound to give the person arrested the option of bail, and that bail should be, as the Code requires, not excessive but in accordance with the position in life occupied by the person arrested.[1]

8. **Sub-S. 2.**—The Code does not apply to the Police of Calcutta unless expressly made applicable to them (See S. 1). This section is one of those that are made expressly applicable to the police of Calcutta and therefore an arrest by an Inspector of Police in Calcutta of a person who has no ostensible means of subsistence or is unable to give a satisfactory account of himself, is quite legal.[1]

9. **Escape from lawful custody.**—It was held in the undermentioned cases[1] that an obstruction to, or escape from, lawful custody under an arrest under this section is not punishable under Ss. 224 or 225 of the Penal Code inasmuch as the person arrested is not charged with any *offence*. The Penal Code was however, subsequently amended by the introduction of a new section *viz.*, 225-B and now, an escape from any lawful custody is punishable under that section.

Note 3.

(1) (1918) 14 Cri. L. Jour. 618 (618): 35 All. 407, *Nepal* v. *King-Emperor*.

Note 5.

(1) (1924) 1924 Mad. 555 (557): 47 Mad. 442, In re *Appaswami Mudali*.

(2) (1919) 1919 All. 160 (161): 41 All. 488, *Maiku* v. *Emperor*.

[See also (1888) 1888 All. W. N. 228 (228), *Empress* v. *Mir Khan*.]

Note 6.

(1) (1888) 1888 All. W. N. 228 (228), *Empress* v. *Amirkhan*.

Note 7.

(1) (1892) 14 All. 45 (47), In the matter of the petition of *Daulat Singh*.

Note 8.

(1) (1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho Dhobi*.

Note 9.

(1) (1882) 8 Cal. 331 (331), *The Empress* v. *Shasti Chun Napit*.

(1885) 7 All. 67 (70, 71), *Queen-Empress* v. *Khandiah*.

S. 56.

56.* (1) When any officer in charge of a police-station *or any police-officer making an investigation under Chapter XIV* requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Procedure when police officer deputes subordinate to arrest without warrant.

The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) This section applies also to the police in the town of Calcutta.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"ANY OFFICER SUBORDINATE TO HIM"	3
"ORDER IN WRITING"	4
"OTHER CAUSE"	5
NOTIFYING SUBSTANCE OF ORDER TO PERSON ARRESTED.	6

***(CODE OF 1882—S. 56.)**

56. When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

Procedure when Police officer deputes subordinate to arrest without warrant.

(CODE OF 1872—S. 102, Para. 1.)

102. When any officer in charge of a police-station requires any officer, subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the police officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Procedure when police officer deputes subordinate to arrest without warrant.

(CODE OF 1861—S. 140.)

140. When any officer in charge of a police-station requires any officer, subordinate to him, to make without a warrant an arrest which may lawfully be made by such officer without a warrant, he shall deliver to the police officer required to make such arrest, an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Procedure when a police officer deputes another.

Other Topics.

S. 56, Notes 1—5.

Order in cases of cognisable offences if necessary. See Note 2, Pt. 1. Warrant issued by Magistrate. See Note 4, Pt. 1.

1. Legislative Changes.—

(1) There was no material difference between S. 140 of the Code of 1861 and S. 102 of the Code of 1872. The latter section was re-enacted without any alteration in the Code of 1882.

(2) Sub S. (2) of the present section is new.

(3) The words "or any police officer making an investigation under Chap. XIV and the words "the officer so required shall . . . . show him the order" have been added by the amending Act of 1923.

2. Scope of the section.—The fact that an order in writing is given under this section to a police constable to make an arrest, does not deprive him of his statutory powers of arrest conferred on him independently of this section. Thus a constable to whom an order is given in writing under this section may arrest an offender under S. 54, *ante* and such arrest will not be bad by reason of the provisions of this section not being followed.[1] The fact that a Magistrate has issued a warrant for the arrest of a person under S. 114, *infra*, is no bar to an order for his arrest under this section.[2]

3. "Any officer subordinate to him".—As a general rule, the Code confers no power on a police officer to send persons other than police officers to make an arrest which he himself can lawfully make.[1] This section is however an exception to this general rule.

The expression "officer subordinate" is not limited to a *police* officer as in S. 54 and Ss. 57 to 61 of the Code. An arrest by a *Chowkidar* in pursuance of an order from an officer in charge of a police-station is therefore legal.[2]

4. "Order in writing".—The mere endorsement of a constable's name on a warrant of arrest issued by a Magistrate, and signed by the officer in charge of a police-station is not "an order in writing" within the meaning of this section.[1] The endorsement of the name of the constable actually going to make the arrest is not necessary for the validity of an order under this section.[2]

5. "Other cause".—The words "other cause" refer to the causes specified in S. 55, *ante*, for which a person may be arrested without warrant. It has been held by the Judicial Commissioner's Court of Sind that the order for arrest given to a subordinate officer should specify within which *category* as given in S. 55 the supposed offender falls.[1] But the Allahabad High Court has held

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Section 56—Note 2.

(1) (1926) 1926 Pat. 424 (425): 5 Pat. 533, *Kishun Mandar* v. *King-Emperor*. [See also (1869) 11 Suth. W. R. 20 (21) (Cr.), *Queen* v. *Shaikh Emoo*.]

(2) (1896) 18 All. 246 (249), *Queen-Empress* v. *Dalip*.

Note 3.

(1) (1909) 10 Cri. L. Jour. 118 (120): 5 Low. Bur. Rul. 21, *Emperor* v. *Tatk Pyu*.

(2) (1906) 3 Cri. L. Jour. 201 (202) (Cal.), *Bahubal Sircar* v. *The Emperor*.

Note 4.

(1) (1896) 18 All. 246 (248, 249), *Queen-Empress* v. *Daleep*.

(2) (1934) 1934 All. 879 (880), *Rameshwar* v. *Emperor*.

Note 5.

(1) (1926) 1926 Sind 190 (191): 20 S. L. R. 85, *Hardayal* v. *Emperor*.

S. 56, Notes 5—6.

that the mere specification of S. 55, will be enough.[2]

6. **Notifying substance of order to person arrested.**—Under the section as it stood before the year 1923, it was held in the undermentioned cases[1] that S. 80 of the Code did not apply to arrests made under this section and that the substance of the order for arrest need not be notified to the person to be arrested nor the order shown to him. The introduction of the words "the officer so required shall, before making the arrest, notify to the person, etc.," by the Amending Act of 1923 has now negatived this view.[2] The person ordered to arrest, is not bound on *his own initiative* to show to the person to be arrested, the order given to him. He should do so only *if so required* by the person to be arrested.[3]

S. 57.

57.* (1) When any person, who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence, refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

Refusal to give name and residence.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required,

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***(CODE OF 1882—S. 57.)**

57. When any person in the presence of a police officer commits or is accused of committing a non-cognizable offence, and refuses on demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Refusal to give name and residence.

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(2) (1934) 1934 All. 879 (880), *Rameshwar* v. *Emperor.*

Note 6.

(1) (1900) 27 Cal. 320 (323), *Queen-Empress* v. *Basant Lal.*

(2) [See (1926) 1926 Pat. 424 (425): 5 Pat. 533, *Kishnumandar* v. *Emperor.*

(3) (1925) 1925 Oudh 544 (544), *Umrao* v. *Emperor.*

to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

S. 57, Notes 1—3.

SYNOPSIS.

	Note No.
SCOPE OF SECTION	1
RELEASE ON BAIL OF PERSON ARRESTED	2
DUTY OF THE POLICE	3

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1. **Scope of section.**—In the case of noncognisable offences, the power of the police to arrest without warrant arises only under the conditions specified in this section, *i.e.*, when the offender refuses to give his name and address or gives a name and address which the police officer has reason to believe is false.[1]

2. **Release on bail of person arrested.**—Where the true name and residence of the person arrested is ascertained he must be released on bail if he executes the necessary bond.[1]

3. **Duty of the Police.**—Where a police constable found a person causing disturbance on a public road and demanded his name and address, which was not given, whereupon he used abusive language to the person and arrested him, it was held that the arrest was justified but that the use of abusive language amounted to an offence under S. 504, of the Penal Code.[1]

(CODE OF 1872—S. 93.)

Person charged refusing to give his name and residence.

93. Any person known to have committed, or suspected of having committed, an offence for which a police officer is not authorized to arrest without a warrant, and who refuses on demand of a police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

(CODE OF 1861—S. 108.)

Person charged with an offence refusing to give his name and residence.

108. Any person who is known or suspected to have committed an offence for which a police officer is not authorized to arrest without a warrant, and who shall refuse on demand of a police officer to give his name and residence, or shall give a name or residence which there is reason to believe to be false, may be detained by such police officer for the purpose of ascertaining the name or residence of such person and with a view to future proceedings.

Section 57—Note 1.

(1) (1923) 1923 Mad. 528 (526): 46 Mad. 605, *Gopal Naidu* v. *Emperor* (Person drunk and creating disturbance in public street—Name and address known to constable—Arrest illegal but if there is apprehension of danger to person or property, arrest is not offence).

(1872) 9 Bom. H. C. R. 343 (344), *Reg.* v. *Narayan Gangaram.*

Note 2.

(1) (1919) 1919 All. 160 (161): 41 All. 488. *Maiku* v. *Emperor.*

Note 3.

(1) (1903) 5 Bom. L. R. 597 (598), *Emperor* v. *Goolab Rasul.*

S. 58, Notes 1—2.

58.* A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

SYNOPSIS.

	Note No.
PURSUIT OF PERSONS OUTSIDE BRITISH INDIA	1
BRITISH INDIA	2

1. Pursuit of persons outside British India.—This section authorises the pursuit of an offender into any place in *British India*.[1] It does not authorise the pursuit into *foreign territory* for purposes or arrest. Where an offender, in respect of an offence committed in British India was arrested on territory belonging to the Nizam's dominions it was held by the Privy Council that the arrest was illegal and without jurisdiction.[2] Similarly it has been held by the High Court of Lahore that the arrest of a person in Gwalior State for an offence committed in British India is illegal.[3] But where full and exclusive power and jurisdiction of every kind over Railway lines and over all persons within those lines had been ceded by the Patiala State to the British Government and the accused, a subject of the Patiala State was arrested in a Railway carriage within those limits, it was held that the arrest was lawful.[4]

2. "British India".—*See* S. 1.

***(CODE OF 1882—S. 58.)**

58. A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

(CODE OF 1872—S. 103.)

103. For the purpose of arresting any person accused of a cognizable offence, a police officer may pursue any such person into the limits of the local jurisdiction of another police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

Police may pursue offenders into other jurisdictions.

(CODE OF 1861—S. 141.)

141. It shall be lawful for a police officer to pursue, with a view to arrest, any person accused of any of the offences specified in Column 3 of the Schedule annexed to this Act, as offences for which police officers may arrest without a warrant, into the limits of another police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be under the same Local Government or not.

Police may pursue offenders into other jurisdictions.

Section 58—Note 1.

(1) (1922) 1922 Mad. 215 (216): 45 Mad. 14, In re *Kochunni Elaya Nayar*.

(2) (1898) 25 Cal. 20 (30, 31): 24 Ind. App. 137: 1897 Pun. Re. 6 (P.C.), *Muhammad Yusuf Uddin* v. *The Queen-Empress* (Reversing 1896 Pun. Re. No. 1).

(3) (1920) 1920 Lah. 235 (236): 1 Lah. 405. *Radha Kishan* v. *Emperor*.

(4) (1919) 1919 Lah. 459 (464): 1918 Pun Re. 81, *Bulwant Singh* v. *Emperor*.

3. **Arrest in British India by police of Native State.**—*See* notes under S. 54 and the undermentioned case.[1] S. 58, Note 3.

59*. (1) Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or *cause him to be taken in custody* to the nearest police-station. S. 59.

Arrest by private persons, and procedure on such arrest.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

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*(CODE OF 1882—S. 59.)

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender

Arrest by private persons.

and shall, without unnecessary delay, make over any person so arrested to a police-officer; or, in the absence of a police officer, take such person to the nearest police station.

Procedure on such arrest.

If there is reason to believe that such person comes under the provisions of S. 54, a police officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of S. 54. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

(CODE OF 1872—Ss. 105 & 107.)

Of Arrest by private persons.

Arrest by private persons.

105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

Note 3.

(1) (1907) 5 Cri. L. Jour. 277 (277): 29 All. 377, *Emperor* v. *Debi* (No power).

S. 59, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"IN HIS VIEW"	3
PRIVATE PERSON	4
"MAY ARREST"	5
HOW TO MAKE AN ARREST UNDER THIS SECTION ..	6
"TAKE SUCH PERSON OR CAUSE HIM TO BE TAKEN IN CUSTODY"	7
"POLICE OFFICER"	8
ESCAPE FROM CUSTODY	9

1. Legislative Changes.—

(1) There was no provision corresponding to this in the Code of 1861.

(2) The difference between Ss. 105 and 107 of the Code of 1872 and S. 59 of the Code of 1882 was merely verbal.

(3) There was no material difference between the corresponding section of 1882 and this section as it stood before the amendment of 1923.

(4) The words "cause him to be taken in custody" in sub-S. (1) were newly added by the amending Act of 1923.

2. Scope of the section.—Sections 54 to 58, *ante* deal with the powers of a *police officer* to arrest without warrant. The powers of a *private individual* to arrest are necessarily much more limited and are dealt with by this section.[1] A private individual may arrest a person only[1-a] when

(1) he is a proclaimed offender or

(2) he, in *his view, commits* a non-bailable and cognizable offence.[2]

After the arrest is effected the arrestor, should, *without unnecessary delay make over the arrested person to a police-officer* or, if such officer is absent, take or send such person in custody to the nearest police station.

How to proceed with person arrested.

107. A private person making an arrest under this chapter shall forthwith make over the person arrested to a police officer; and, in the absence of a police officer, shall take such person to the nearest police station. The police shall deal with such person according to the provisions of Ss. 92 or 93, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

(CODE OF 1861—Nil.)

Section 59—Note 2.

(1) (1925) 1925 Cal. 884 (885): 52 Cal. 615, *Gouri Prosad Dey* v. *Chartered Bank of India, Australia and China.*

(1-a) (1934) 1934 Cal. 610 (615): 61 Cal. 991, *Emperor* v. *Bhagirath Mahato* (In absonce of circumstances bringing case under section, arrest is illegal).

(2) See Note 3, *infra.*

[See also (1924) 1924 All. 645 (652) *Kishen Lal* v. *Emperor.*]

S. 59, Notes 2—5.

As to whether a private person in India can arrest a person who *threatens* to commit an offence, as can be done under the Common Law of England, see the undermentioned case.[3]

3. **"In his view".**—As has been seen in S. 54, *ante* a police officer may arrest a person without warrant if there is *reasonable suspicion* of his having been concerned in a cognizable offence. But a *private person* cannot arrest on mere suspicion of information.[1] The offence must be committed *in his view*. The words "in his view" mean "in presence of" or "within sight of" and not "in his opinion".[2] An arrest made by a private person where the offender has not committed any offence *in the sight* of the arrestor is not a lawful arrest.[3] Thus where *A* whose bullock had been stolen *in his absence* traced it to the house of *B* and then and there arrested him it was held that *B* not having committed any offence *in the view* of *A*, the arrest was illegal.[4] Similarly where, on hearing a cry from *J* that *R* had committed a cognizable offence, *X*, a private individual came up and arrested *R*, it was held that the arrest was not lawful.[5] On the other hand where *A* was beating *C* with a cane and thereupon *D* an onlooker arrested *A* it was held that the arrest was justified.[6]

The words "in his view" should not be given too strained a construction. Where *A* went to his cocoanut tope and, seeing a man standing on the ground with a pot of toddy in his hands and two of his confederates climbing the trees, arrested the man on the spot, it was held that the latter should be deemed to be committing theft "in the view" of his arrestor. The toddy should be regarded as being in the process of being removed from the tope.[7]

4. **Private person.**—A Chowkidar is not a police-officer but is only a "private person" and cannot arrest any person on mere suspicion.[1] The private person making an arrest under this section and the person with whom the arrested person is sent in custody to the police station are not "public servants" within the meaning of S. 21 of the Penal Code.[2]

5. **"May arrest".**—The words "may arrest" do not necessarily mean that the private person in whose presence a non-bailable and cognizable offence is committed should *himself* physically arrest the offender. He may *cause such offender* to be arrested by another person.[1]

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(3) (1923) 1923 Mad. 523 (526): 46 Mad. 605 (F. B.), *Gopal Naidu* v. *Emperor* (Discussing 1921 Mad. 458).

Note 3.

(1) (1907) 6 Cri. L. Jour. 10 (12): 29 All. 575, *Parridhan* v. *Emperor.*
(2) (1926) 1926 Pat. 53 (53), *Gokul Tatwa* v. *Emperor.*
(1933) 1933 Pat. 508 (511), *Abdul Aziz* v. *Emperor* (Offender seen in act of flight —Arrest by private person not legal).
(3) (1881) 3 All. 60 (61), *Empress* v. *Kallu.*
(1900) 27 Cal. 366 (367), *Kalai* v. *Kalu Chowkidar.*
(1922) 64 Ind. Cas. 371 (372): 1922 Lah. 73, *Atawal* v. *Emperor.*
[See also (1907) 5 Cri. L. Jour. 277 (278): 29 All. 877, *Emperor* v. *Debi.*
(1932) 1932 Lah. 263 (264), *Kesar* v. *Emperor.*]

(4) (1901) 23 All. 266 (267, 269), *Emperor* v. *Jhori.*
(5) (1908) 7 Cri. L. Jour. 188 (190): 35 Cal. 361, *Balai Dey* v. *Emperor.*
(1922) 1922 Lah. 73 (74), *Alwal* v. *Emperor.*
(6) (1920) 1920 Pat. 502 (504): 5 Pat. L. J. 129, *Raghunath Das* v. *Emperor.*
(7) (1924) 1924 Mad. 384 (385), *Arumuga Goundan* v. *Emperor.*

Note 4.

(1) (1916) 17 Cri. L. Jour. 529 (530): 1916 All. 253, *Jafar* v. *Emperor.*
(2) (1917) 18 Cri. L. Jour. 351 (352): 1917 U. B. 8: 2 Upp. Bur. Rul. 122, *King-Emperor* v. *Nga Paw E.*

Note 5.

(1) (1925) 1925 Cal. 884 (885): 52 Cal. 615, *Gauri Prosad Dey* v. *Chartered Bank of India, Australia and China.*

S. 59, Notes 6—9.

6. **How to make an arrest under this section.**—The arrest under this section must be carried out in the manner provided by S. 46, *ante* which is a general provision applying to all arrests under the Code.[1] The arresting person can use all necessary means to effect the arrest, including the wounding of the person arrested for the purpose of effecting the arrest.[2] But there is no right to cause the death of the person sought to be arrested unless he was committing an offence punishable with death or with transportation for life.[3]

7. **"Take such person or cause him to be taken in custody".**—The section as it stood before the Amendment thereof in 1923 contained only the words "take such person". It was, however, held that the words would also enable the arrested person being *sent in custody* to the police station and that it was not necessary that the person arresting should *himself* take the arrested person to the station.[1] The words "or cause to be taken in custody" were added by the amending Act of 1923 thereby giving effect to the said decisions.

A private person arresting another person under this section is bound to take him *without unnecessary delay* to a police-officer or in his absence to the nearest police-station. Where therefore, instead of doing so, he keeps the person arrested unnecessarily in his own custody without making any effort to hand him over to the police, he will be guilty of an offence under S. 342 of the Penal Code.[2]

8. **"Police-Officer".**—*See* S. 54, *ante*.

A Chowkidar is not a police officer and is not entitled to receive a person arrested under this section.[1] A Chowkidar under the Chota Nagpur Rural Police Act 1914 (B.O. Act I of 1914) is however a police-officer and can receive a person arrested under this section and detain him in custody.[2]

9. **Escape from custody.**—Where the arrest purported to be effected under this section is not lawful, as where the offence is not committed in the presence of the arresting person an escape or rescue from the custody is no offence.[1] Where the arrest is however lawful, an escape will be punishable under S. 224 of the Penal Code.[2] A rescue from lawful custody would be punishable under S. 225 of the Penal Code.[3]

Note 6.

(1) (1904) 1 Cri. L. Jour. 285 (287), *Emperor* v. *Kola Mepa Bhaga* (Kathiawar).
(2) (1893-1900) Low. Bur. Rul. 136 (138), *Empress* v. *Nga Taung*.
(1935) 1935 Pesh. 83 (83, 84), *Said Mahmud* v. *Emperor*.
(3) (1902) 1902 Pun. Re. No. 29, p. 79, *Bag Alias Bagi* v. *Emperor*.

Note 7.

(1) (1907) 6 Cri. L. Jour. 10 (11, 12): 29 All. 579, *Parridhan* v. *Emperor*.
(1901) 23 All. 266 (268), *Emperor* v. *Johri* (Obiter).
(1888) 11 Mad. 480 (482), *Empress* v. *Patadu*.
(2) (1926) 27 Cri. L. Jour. 1378 (1381) (Pat.), *Anant Prasad Ray* v. *Emperor*.
(1870) 1 Weir 338 (338).

Note 8.

(1) (1913) 14 Cri. L. Jour. 494 (495): 41 Cal. 17, *Purnachandra Kundu* v. *Hachanali Chowkidar*.
(1900) 27 Cal. 366 (367), *Kali* v. *Kalu Chowkidar*.
(1881) 3 All. 60 (61), *Empress* v. *Kallu*.
(1916) 17 Cri. L. Jour. 164 (165): 1916 Cal. 247, *Dirajeedat* v. *Emperor*.
(1914) 1914 Cal. 272 (273): 41 Cal. 17, *Purna Chandra* v. *Emperor*.
(2) (1932) 1932 Pat. 214 (215), *Chotu Hajjam* v. *Emperor*.

Note 9.

(1) (1897) 1 Cal. W. N. xcviii (98), *Durga Das* v. *Empress*.
(1882) 5 Mad. 22 (23), *Queen* v. *Bojjigu*.
(2) (1888) 11 Mad. 441 (442), *Empress* v. *Kutti*.
(1894) 17 Mad. 103 (104), *Empress* v. *Fakria*.
(3) (1883) 1883 All. W. N. 214 (214), *Empress* v. *Murlai Singh*.
(1885) 1 Weir 209 (209).

S. 60, Note 1.

60.* A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Persons arrested to be taken before Magistrate or officer in charge of police-station.

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF THE SECTION	1
FAILURE TO TAKE OR SEND ARRESTED PERSON BEFORE MAGISTRATE OR OFFICER IN CHARGE OF A POLICE STATION	2
SUFFERING ESCAPE FROM CUSTODY	3

Other Topics.

Detention without arrest. See Note 1, Pt. 2. **Report to the Magistrate.** See Note 2, Pt. 2.

1. Scope and object of the section.—A person arrested without warrant should be taken or sent *without unnecessary delay* before a Magistrate having jurisdiction in the case or before the officer in charge of a police-station. Section 61 provides that the person arrested should not be detained in police custody for more than 24 hours in the absence of a special order of a Magistrate under S. 167. The precautions laid down in these sections seem to be designed to secure that within not more than 24 hours some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be.[1]

***(CODE OF 1882—S. 60.)**

Person arrested to be taken before Magistrate or officer in charge of police station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

(CODE OF 1872—S. 101.)

Person arrested to be taken before Magistrate or officer in charge of police-station.

101. A police-officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

(CODE OF 1861—S. 109.)

Party arrested to be taken immediately before the proper authority.

109. A police-officer having made an arrest under this Chapter, shall take or send the person arrested without unnecessary delay before the Magistrate who has jurisdiction in the case, or before the officer in charge of a police-station.

Section 60—Note 1.

(1) (1924) 1924 Cal. 893 (895), *Dwarakadas* v. *Ambalal Ganpatram.*

S. 60, Notes 1—3.

A police-officer cannot detain any person in custody without arresting him. Any such detention will amount to a wrongful confinement within S. 340 of the Penal Code.[1-a] The practice of keeping, to all intents and purposes, a person in custody, but not producing him before a Magistrate under the colourable pretension that no actual arrest has been made, is a defiance of all provisions of law for the protection of the liberty of the subject and should not be tolerated.[2] Compare S. 81, *infra* as to arrests *under a warrant*.

2. **Failure to take or send arrested person before Magistrate or officer in charge of a police station.**—It is the duty of a police-officer making an arrest without warrant to take or send the arrested person without unnecessary delay before a Magistrate or before an officer in charge of a police-station. A violation of this duty will be an offence punishable under S. 29 of the Police Act 1861.[1]

Where a police-officer arrested a person without a warrant for a cognizable offence and being unable to take or send him to the Magistrate sent a report on which the Magistrate issued a warrant, it was held that the accused was legally brought before the Magistrate.[2]

3. **Suffering escape from custody.**—Where a police-officer negligently suffers a person in his custody to escape he will be guilty of an offence under S. 223 of the Penal Code.[1]

S. 61.

61.* No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Persons arrested not to be detained more than twenty-four hours.

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*(CODE OF 1882—S. 61.)

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under S. 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

(1-a) (1902) 4 Bom. L. R. 79, *Emperor* v. *Shamlal Jairam*.
(2) (1885) 1885 All. W. N. 59 (59) (F. B.), *Empress* v. *Madar*.
(1924) 1924 Rang. 173 (176): 1 Rang. 609, *Maung Lay* v. *Emperor*.

Note 2.

(1) [See (1865) 1 Weir 837 (837) (Case under S. 44 of the Madras District Police Act, 1859).
(2) (1868-69) 5 Bom. H. C. R. 99 (99) (Cr.), *Reg.* v. *Mahipya*.

Note 3.

(1) (1884) 6 All. 129 (133), *Empress* v. *Ashrai Ali*.

S. 61, Note 1.

SYNOPSIS.

SCOPE OF SECTION 1
"DETAIN IN CUSTODY"—MEANING OF 2
SPECIAL ORDER OF MAGISTRATE UNDER SECTION 167 .. 3
PLACE OF DETENTION DURING THE 24 HOURS .. 4
PERIOD OF 24 HOURS, COMPUTATION OF 5
"EXCLUSIVE OF THE TIME NECESSARY FOR THE JOURNEY" 6

Other Topics.

Custody should be continuous. See Note 1, Pt. 4.
Custody subsequent unlawful. See Note 1, Pt. 2.
Guilty knowledge in case of unlawful detention. See Note 1, Pt. 3.

1. Scope of section.—This section enacts that a person arrested without a warrant cannot be detained by the Police-officer arresting him

(1) for a longer period than under all the circumstances, is reasonable;

(2) in any case for a longer period than 24 hours except under a special order of a Magistrate under S. 167.

A police-officer is not justified in detaining a person for *one single hour* except upon some reasonable ground justified by the circumstances of the case[1] and under no circumstances can the period of such detention exceed 24 hours without a special order of a Magistrate under S. 167. At the expiration of 24 hours, unless the special order has been obtained the prisoner must, either be discharged, or sent on to the Magistrate. Any longer detention is absolutely unlawful.[2] The section is imperative and where a police officer is charged with

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(CODE OF 1872—S. 124, Para. 1.)

Accused not to be detained by police more than 24 hours without special authority.

124. No police-officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed 24 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

(CODE OF 1861—S. 152.)

Accused not to be detained by the Police beyond 24 hours without special authority.

152. No police-officer shall, without the special order of a Magistrate, detain an accused person in custody for longer period than, under all the circumstances of the case, is reasonable: such period in no case to exceed 24 hours. If the enquiry has not been completed within 24 hours, the officer in charge of the police-station shall, nevertheless, forward the accused to the Magistrate with a short despatch stating the offence for which the accused has been arrested, if there are grounds for believing that the accusation is well founded.

Section 61—Note 1.

(1) (1866) 6 Suth. W. R. 88 (89), *Queen* v. *Suprosunno Ghosaul* (The burden of proving such reasonable ground is on the arrestor).
(1869) 1869 Rat. 22 (22) (Unnecessary detention even for 24 hours not justified).
(2) (1867) 7 Suth. W. R. 3 (6) (Cr.), *Queen* v. *Tarinee Churan Chuttopadya*.
[See also (1870) 1870 Pun. Re. No. 86, pp. 56 (57), *Sewaram* v. *Crown*.]

S. 61, Notes 1—4.

having detained prisoners for more than 24 hours it is not necessary for the Crown to prove that he detained them with a guilty knowledge.[3] The section has, however no application where there has not been a *continuous detention* of 24 hours.[4] The law views with disfavour detention of any person in the custody of the Police.[4-a] The provisions of this section and of S. 167, *infra* are designed to prevent discoveries by means of duress and terror of wrongful confinement;[5] and to see that an accused person is brought before a Magistrate competent to try or commit with as little delay as possible.[6]

This section does not apply to the Police of Calcutta (*see* S. 1 *ante*). But this does not mean that there is power in the Calcutta Police to detain any person for an unlimited period, even if such police-officer is a Justice of the Peace.[7] The detention can only be until it is possible for them to produce him before a Magistrate subject to all just exceptions.[8]

2. "Detain in custody"—meaning of.—The detaining of a person in a particular place or the compelling of him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises that exterior will.[1] As to the meaning of the word "custody" as used in S. 27 of the Evidence Act see the undermentioned cases.[2] A detention through the exercise of moral force without the accompaniment of physical force or actual conflict, is sufficient to amount to confinement.[3]

3. Special order of Magistrate under S. 167.—*See* S. 167 *ante*.

4. Place of detention during the 24 hours.—There is no express provision in the Code as to the *place* of confinement during the period of detention by the Police-officer. But this will not enable a subordinate officer to confine the arrested person in any place which he might select. He should, if possible, be immediately sent to the police-station and be placed in the custody of the officer in charge of the station.[1]

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(3) (1873) 19 Suth. W. R. 36 (36), *Queen* v. *Basu Ramdas*.

(4) (1864) 1 Suth. W. R. 5 (5) (Cr.), *Indrobeer Thaba*.

(4-a) (1931) 1931 Lah. 476 (478): 12 Lah. 635, *Khairati Ram*, in the matter of.

(1931) 1931 Lah. 480 (480), *Emperor* v. *Ranbir Singh* (Approver cannot be detained in the custody of the Police].

(5) (1886) 1886 Rat. 254 (272, 273), *Queen-Empress* v. *Ravubai*.

(6) (1924) 1924 Cal. 476 (478): 51 Cal. 502, *Nagendranath Chakravarthy* v. *Emperor*.

(1888) 11 Mad. 98 (102), *Empress* v. *Engadu*.

[See also (1924) 1924 Cal. 893 (895), *Dwarakadas Haridas* v. *Amba Lal Ganpatram*.]

(7) (1926) 1926 Cal. 1121 (1132), *Muhammad Suliman* v. *Emperor* (Overruling ruling 1926 Jour. 190: 97 Ind. Cas. 945).

(1925) 1925 Cal. 587 (596): 52 Cal. 67, *Emperor* v. *Panch Kari*.

[See also (1925) 1925 Cal. 278 (283): 52 Cal. 319, *Subodh Chandra* v. *Emperor*.]

(8) (1926) 1926 Cal. 1121 (1132), *Muhammad Suliman* v. *Emperor*.

Note 2.

(1) (1864-66) 2 Mad. H. C. R. 396 (398), *Parankusan Narasayya Pantulu* v. *Captain R. A. C. Stuart*.

(2) (1931) 1931 Lah. 278 (279), *Jalla* v. *Emperor*.

(1924) 1924 Rang. 173 (176): 1 Rang. 609, *Maung Lay* v. *Emperor*.

(1934) 1934 Lah. 150: 15 Lah. 310, *Mt. Aishan Bibi* v. *Emperor*.

(3) (1881) 1 Weir 341 (341), *Acting Govt. Pleader* v. *Venkatachala Mudali*.

[See also (1885) 1885 All. W. N. 59 (F.B.), *Empress* v. *Madar*.]

Note 4.

(1) (1867) 7 Suth. W. R. 3 (6), *Behari Singh* v. *Queen*.

5. Period of 24 hours, computation of.—The 24 hours of detention under the section are to be counted up to the time when the accused person leaves the police station on the way to the Magistrate.[1] S. 61, Notes 5—6.

6. "Exclusive of the time necessary for the journey.—The time occupied on the journey to the Magistrate is not to be counted in the 24 hours, but it is the duty of the Magistrate to see that the time so occupied is reasonable with reference to the distance to be traversed and other local considerations.[1]

62.* Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise. S. 62, Note 1.

Police to report apprehensions.

1. Scope of the section.—This section provides that where the Police have by law the power to make an arrest without a warrant, the Police

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***(CODE OF 1882—S. 62.)**

62. Officers in charge of police stations shall report to the District Magistrate or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

(CODE OF 1872—S. 132, Para. 1.)

132. Officers in charge of police-stations shall report to the Magistrate of the District, or the Magistrate of the Division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under S. 93, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

Police to report apprehensions.

(CODE OF 1861—S. 160.)

160. Officers in charge of police stations shall report to the Magistrate of the District the cases of all persons apprehended within the limits of their respective stations, whether such persons shall have been admitted to bail or otherwise; * * * *

Police to report all apprehensions.

Note 5.
(1) (1869) Rat. 22 (22).

Note 6.
(1) (1869) Rat. 22 (22).

S. 62, Note 1.

must report such arrest.[1] The object of the section is to enable the District Magistrate to prevent illegalities in arrest by examining the reports of arrests made to him.[2] The term "Police report" under S. 190, *infra*, will include a report also under this section.[3] The provisions of this section do not apply to the Police in the Town of Bombay.[4]

S. 63, Note 1.

Discharge of persons apprehended.

63.* No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

1. Scope of the section.—A person arrested by a Police-Officer cannot be discharged except—

(1) on his own bond,

(2) on bail (Chap. 39) or

(3) under a special order of a Magistrate.[1]

As to the power of the Police to take bonds from the arrested person for appearance before themselves, *see* Ss. 496 and 497. As to the discharge of arrested persons in Bombay see the undermentioned case.[2]

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*(CODE OF 1882—S. 63.)

Discharge of person apprehended.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond or on bail, or under the special order of a Magistrate.

(CODE OF 1872—S. 132, Para. 2.)

Discharge of person apprehended.

No person who has been apprehended by a police-officer shall be discharged, except on bail, or on his own recognizance, or under the special order of a Magistrate.

(CODE OF 1861—S. 160.)

160. * * * * * * *

Police to report all apprehensions.

No person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of a Magistrate.

Section 62—Note 1.

(1) (1902) 26 Bom. 150 (158), *King-Emperor* v. *Sada*.

(2) (1886) Rat. 254 (261), *Empress* v. *Revubai*.

(3) (1910) 11 Cri. L. Jour. 150 (151): 1910 Pun. Re. No. 3, *Abdullah* v. *Emperor*.

(4) (1892) 16 Bom. 661 (665), *Queen-Empress* v. *Mona Puna*.

Section 63—Note 1.

(1) [See (1895) 19 Bom. 717 (724), *Raghavendra* v. *Kashinath Bhat*.

(2) (1892) 16 Bom. 661 (664), *Queen-Empress* v. *Mona Puna*.

S. 64, Notes 1—3.

64.* When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
JURISDICTION OF MAGISTRATE TO TRY CASE OF PERSON ARRESTED BY HIMSELF	2
"IN THE PRESENCE OF A MAGISTRATE"	3

1. **Legislative Changes.**—The words "within the local limits of his jurisdiction" and the words "he may himself arrest" did not occur in the corresponding sections of the Codes of 1861 and 1872.

2. **Jurisdiction of Magistrate to try case of person arrested by himself.**—*See* S. 556, *infra*.

3. **"In the presence of a Magistrate".**—The powers of a Magistrate to arrest are prescribed by this section and S. 65 of the Code.[1-a] This section applies only when an offence is committed in *the presence* of the Magistrate.[1] S. 65 applies only where the Magistrate is competent to *issue a warrant of arrest*.

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*(CODE OF 1882—S. 64.)

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

(CODE OF 1872—S. 108.)

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

Offence committed in Magistrate's presence.

(CODE OF 1861—S. 110.)

110. When any offence is committed in the presence of a Magistrate, such Magistrate may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

Arrest for an offence committed in the presence of a Magistrate.

Section 64—Note 3.

(1-a) (1920) 1920 Pat. 516 (517), *Dindayal Singh* v. *Emperor*, (1904) 1 Cri. L. Jour. 146 (151), *Emperor* v. *Daya Shankar Jeeukhram* (Kathiawar).

(1) (1902) 2 Weir 241 (242), *Re Rangachari*.

S. 65, Note 1.

65.* Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
ARREST OF WITNESS FOR GIVING FALSE EVIDENCE ..	2

Other Topics.

Competent to issue arrest warrant. See Note 1, Pt. 4.

May arrest or direct the arrest. See Note 1, Pt. 1.

1. Scope of the section.—It is a general principle of law that when the legislature empowers an officer to delegate an authority to do a certain act, to another person, it necessarily implies that the original authority to do such act is fully and completely in the officer himself, but that it is necessary, for the exigencies of business that it should be done, in the majority of cases, by persons acting under authority derived from him.[1] This section illustrates this principle and enacts that a Magistrate who can issue a warrant of arrest can himself make such arrest. For another illustration of the same principle *see* S. 105, *infra*.

A Magistrate has power under several sections of the Code to issue a warrant of arrest.[2] Thus a Magistrate taking cognisance of an offence under S. 190 can issue a warrant of arrest against the accused under S. 204 of the

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*(CODE OF 1882—S. 65.)

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

(CODE OF 1872—S. 166, Para. 2.)

Arrest in presence of Magistrate.

Any Magistrate may also at any time direct the arrest, in his presence, of any person for whose arrest he is competent to issue warrant.

(CODE OF 1861—S. 81.)

Magistrate issuing a warrant may personally superintend its execution.

81 * * * * * * .....

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The Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

Section 65—Note 1.

(1) (1907) 6 Cri. L. Jour. 60 (65, 66): 31 Bom. 438, *Emperor* v. *Kaitan Dunning Fernod*.

(2) See Ss. 107, 114 and 205.

Code. He can consequently himself make the arrest under this section.[3] Where, in a case, a Magistrate could issue a warrant of arrest only if he took cognisance of the case under S. 190 and there is nothing to show that he took such cognisance, he is not competent to act under this section and make an arrest.[4] A Magistrate purporting to take cognisance of an offence upon knowledge or suspicion that such offence has been committed, makes an arrest under this section, his action will be justified only if he acts *bona fide*, i.e., with due care and attention to the dictates of prudence and common sense.[5] **S. 65, Notes 1—2.**

2. Arrest of witness for giving false evidence.—It is improper to arrest a witness for the defence for giving false evidence while the evidence for the defence is being taken.[1]

66.* If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India. **S. 66, Note 1.**

Power, on escape, to pursue and retake.

SYNOPSIS.

	Note No.
PURSUIT FOR RE-ARREST	1
"BRITISH INDIA".	2

Other Topic.

Section applies to private persons also. See Note 1.

1. Pursuit for re-arrest.—Under S. 55 of the Code, any person authorised to make an arrest may, for the purpose of such arrest, pursue such person into any place in British India. This section provides that where *after*

***(CODE OF 1882—S. 66.)**

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Power, on escape, to pursue and retake.

(CODE OF 1872—Nil.)

(CODE OF 1861—S. 113.)

113. In order to re-take any person, as provided in the last preceding section, the police-officer or other person making such fresh pursuit may adopt the same measures as he might have adopted on the original taking.

May adopt the same measures as on original taking.

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(8) (1919) 1919 Mad. 30 (31), *Ramamurthi Iyer* v. *Parasaram Mangayya*.
[See also (1907) 6 Cri. L. Jour. 60 (64, 66): 31 Bom. 488.]

(4) (1902) 2 Weir 241 (242), Re *Rangachari*.
[See also (1906) 8 Cri. L. Jour. 426, *Nga Kun* v. *Emperor* (Magistrate not competent to try offence—*Held* he could not arrest under this section—Submitted expressed too widely).]

(5) (1904) 1 Cri. L. Jour. 146 (151), *Emperor* v. *Daya Shankar Jesukhram*.

Note 2.

(1) (1911) 12 Cri. L. Jour. 465 (467) (Rang.), *Nga Po Kya* v. *Emperor*.

S. 66, Notes 1—2.

arrest, the pursuer escapes or is rescued from custody, the person who had the custody may pursue him into any place in British India for re-arresting him.

The section applies both to Police-Officers and to private persons making arrests under the Code.

2. "**British India**".—*See* S. 1, *ante*.

S. 67.

67.* The provisions of sections 47, 48 and 49 shall apply to arrests under Section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

Provisions of Sections 47, 48 and 49 to apply to arrests under Section 66.

CHAPTER VI.

OF PROCESS TO COMPEL APPEARANCE.

A—Summons.

S. 68.

68.† (1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time by rule, direct.

Form of summons.

***(CODE OF 1882—S. 67.)**

67. The provisions of Ss. 47, 48 and 49 shall apply to arrests under S. 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

Provisions of sections 47, 48 and 49 to apply to arrests under S. 66.

(CODE OF 1872—Nil.)

(CODE OF 1861—S. 112.)

CHAPTER VII.

Of Escape and Re-taking.

112. If a person lawfully arrested under the provisions of this Act shall escape, or be rescued, it shall be lawful for the police-officer or other person from whose custody the person so arrested shall have escaped, or have been rescued, to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and to deal with sach person as such police-officer or other person might have done on an original taking.

Person arresting may retake on escape and deal with the party arrested as on original taking.

†**(CODE OF 1882—S. 68.)**

CHAPTER VI.

Of Processes to compel appearance.

A.—Summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time by rule, direct.

Form of summons.

(2) Such summons shall be served by police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant. S. 68.

Summons by whom served.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

SYNOPSIS.

	Note No.
I LEGISLATIVE HISTORY	1
II SCOPE OF THE SECTION	2
III DIFFERENCE BETWEEN SUMMONS AND WARRANT—	3
(1) DUTY OF COURT ON APPLICATION FOR SUMMONS ..	4
(*a*) FORM AND CONTENTS OF SUMMONS	5
(*b*) "SHALL BE IN WRITING"	6
(*c*) "SIGNED AND SEALED"	7
(*d*) BY WHOM TO BE SIGNED—HIGH COURT RULES ..	8
(2) EFFECT OF NOT OBSERVING THE FORMALITIES ..	9
(3) SUMMONS TO APPEAR AT A PLACE OUTSIDE BRITISH INDIA.	10
IV SERVICE OF SUMMONS	11

Such summons shall be served by a police-officer, or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

Summons by whom served.

This section applies to the police in the towns of Calcutta and Bombay.

(CODE OF 1872, Ss. 152 & 153.)

CHAPTER XII.

Of the Summons.

152. Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate and shall be signed and sealed by such Magistrate, and shall be in the form (*A*)—given in the second schedule to this Act, or to the like effect.

Form of summons.

153. A summons shall ordinarily be served through a police-officer; but the Magistrate issuing the summons may, if he sees fit, direct it to be served by any other person.

Summons by whom served.

(CODE OF 1861—Ss. 69 & 70.)

69. Every summons issued by a Magistrate to an accused person shall be in writing and shall be signed and sealed by such Magistrate, and shall be in the form (*A*) given in the appendix or to the like effect.

Summons, what it is to contain, and how to be directed.

70. A summons shall ordinarily be issued through a police-officer; but the Magistrate issuing the summons may, if immediate service be necessary and no police-officer be immediately available, direct the summons to be served by any other person.

Summons by whom to be served.

S. 68, Notes 1—5.
(1) BY WHOM SUMMONS IS TO BE SERVED 12
(2) SERVICE OF SUMMONS OF FEUDATORY STATES .. 13
V DISOBEDIENCES OF SUMMONS 14
(1) WHEN PERSON SUMMONED CAN DEPART .. 15
(2) ORDER TO APPEAR ON ADJOURNED DATE 16

Other Topics.

Accused not to be prejudiced by defective summons. See Note 9, F.N. 1.
Summons—Service through post. See Note 11, Pt. 3.
Summons to state that person cannot depart without leave. See Note 15, Pts. 1 & 2.
Summons to state the place of appearance and date and time. See Note 9, Pt. 1.

1. Legislative History.—

Difference with reference to the Code of 1882—

The words "or other public servant" in sub-S. (2) are new.

Difference with reference to the Code of 1872—

Sections 152 and 153 of the Code of 1872 were limited to the form of summons issued against *accused* persons only. This section applies to summons to *accused* as well as *other* persons.

2. Scope of the section.—Various sections of the Code provide for the *issue* of summons in various cases:—

Section 94 (to produce documents or things).
Section 145, Sub-S. (9) (to witness to attend or produce any document or thing).
Section 204 (to accused persons).
Sections 216 and 252 (to witnesses).
Sections 326 and 327 (to assessors and jurors).

This section enacts in what *form* all such summonses should be issued. Section 328 further enacts the form in which a summons to a *juror* or *assessor* should be issued.

The Chartered High Courts have under S. 107 of the Government of India Act and the non-chartered High Courts have under S. 554 of the Code; power to frame forms for every proceeding in Subordinate Criminal Courts and subject to such power the forms set forth in Sch. V of the Code may be used for the purposes therein mentioned with such variation as the circumstances of each case require (*see* S. 555, *infra*).

3. Difference between Summons and warrant.—*See* S. 75, Note 2, *infra*.

4. Duty of Court on application for summons.—*See* Ss. 204 and 252 *infra*.

5. Form and contents of summons.—Schedule V of the Code provides forms of summons in the following cases:—

Form 1.—Summons to an accused person. This summons should state shortly the *offence charged*. As a general principle an

accused person is entitled to have conveyed to him by the process whether summons or warrant information which should specify not only the technical designation of the offence but the acts for which the accused would have to answer.[1] In *Emperor* v. *Kunwar Ranvmjai Singh*[2] it was held that the form of summons should contain particulars of the place where and the time when the offence was committed as also the nature of such offence, and that in the absence of such particulars, the proceedings taken thereon if objected to, must necessarily be invalid. According to the High Court of Madras, however, it does not seem to be necessary to set out *all the facts* on which the accused is charged.[3]

S. 68, Notes 5—9.

Form No. 12.—Summons on information of a probable breach of the peace.

Form No. 31.—Summons to a witness. This summons must contain the place at which the day and the *time* of the day when the attendance of the witness is required.[4]

6. "Shall be in writing".—*See* S. 75, Note 3, *infra*.

7. "Signed and sealed".—A summons not *sealed* as required by this section is illegal. "Signed" in this section as well as in S. 75, *infra* denotes full signature and not merely the affixing of the initials of the officer. *See* S. 75, Note 3. As to the effect of not observing the formalities, *see* Note 9, *infra*.

8. By whom to be signed—High Court Rules.—The summons should be signed and sealed by the *Presiding officer* of such Court, or by *such other officer* as the High Court may, from time to time direct. See the rules framed by the various High Courts on this point.

9. Effect of not observing the formalities.—A person legally bound to attend the Court in obedience to a summons, but who intentionally disobeys the same is liable to be punished for an offence under S. 174 of the Penal Code.[1-a] In the case of a summons to an accused person it has been held by the High Court of Allahabad and the Chief Court of Oudh that a summons which does not state the particulars of the place where, the time when, and the nature of the offence charged, is *illegal* and may be disregarded by the person summoned,

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Section 68—Note 5.

(1) (1875) 24 Suth. W. R. 58 (59), *Ramsan Ali* v. *Durpo*.
[See also (1930) 1930 All. 595 (595), *Benarsi Das* v. *Emperor* (Summons under U. P. Prevention of Adulteration Act VI of 1912—Particulars of offence to be given).
(1931) 1931 All. 705 (705), *Bohra Reghubar Dayal* v. *Emperor* (Do.).]
(2) (1928) 1928 All. 261 (268), *Emperor* v. *Ranajai Singh*.
[See also (1875) 24 Suth. W. R. 55 (55) (Cr.), *Woozeer Singh* v. *Chairman, Howrah Municipality*.
(1933) 1933 Cal. 117 (117), *Ganesh Chandra Khan and Sons* v. *Corporation of Calcutta* (Summons under S. 386 (1) (*a*) of Calcutta Municipal Act —Place of offence to be specified).]
(3) (1909) 9 Cri. L. Jour. 108 (111): 32 Mad. 3, In re *Subramania*.
(4) (1883) 5 All. 7 (8), *Empress* v. *Ramsaran*.

Note 7.

(1) (1920) 1920 Mad. 852 (352), In re *Abdul Rahim*.
[See also (1888) 1 Weir 100 (100): 11 Mad. 137, *Kuppan*, In re (Cases under Madras Act III of 1869).]

Note 9.

(1-a) (1884) 1 Weir 84 (84).
(1882) 1 Weir 85 (85).

S. 68, Notes 9—13.

and that proceedings, if objected to, must necessarily be invalid.[1] The High Court of Madras has also held that a summons not *sealed* is illegal and that no sanction to prosecute can be granted against any person for disobeying such summons.[2] Where the summons omitted to specify the place at which the person summoned was required to attend, and on the failure of such person to attend the Court proceeded to dispose of the case *ex parte*, it was held by the same High Court that the Magistrate ought to set aside the *ex parte* order on an application therefor by the accused.[3] So also it has been held that a failure to attend in obedience to a summons is not an offence where it does not specify the place where the attendance is required.[3-a] According to the High Court of Bombay, however, it would appear that a defect of any kind in the summons is only an "error, omission or irregularity" which, under S. 537 of the Code is not sufficient to upset the finding and sentence, unless it has in fact occasioned a failure of justice, *i.e.*, unless it has unfairly affected the petitioner's defence on the merits.[4] *See also* Note 3, Pt. 10 to S. 75, *infra*.

10. **Summons to appear at a place outside British India.**—A summons directing a person to appear at a place outside British India is bad in law, and disobedience of such summons does not amount to an offence under S. 174, Indian Penal Code.[1]

11. **Service of summons.**—Sub-S. 2 enacts that the summons shall be *served by a Police-Officer*, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it, or other public servant.[1] As to who is a Police-Officer *see* Ss. 11 and 44 of Act 24 of 1859 and for the definition of "public servant" *see* S. 21 of the Indian Penal Code. Sections 69 to 73 deal with the *mode* of service.

A summons sent by *registered post* is invalid as not being in accordance with this section and a disobedience of such a summons is not an offence.[2] *See also* the undermentioned case.[3]

12. **By whom summons is to be served.**—*See* Note 11, *supra*.

13. **Service of summons of Feudatory States.**—There is no provision for the service in British India of summons issued by Courts of foreign and Feudatory States. Where a person commits an offence in a foreign state and takes refuge in British India the fugitive may be surrendered to that state if the provisions of the Indian Extradition Act (Act 15 of 1903) apply.

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(1) (1928) 1928 All. 261 (263), *Emperor* v. *Ranenjai Singh*.
(1934) 1934 Oudh 370 (371), *Lal Chand* v. *Emperor*.
[See also the following decision of the Calcutta High Court:—
(1875) 24 Suth. W. R. 55, *Woozeer Singh* v. *The Chairman, Howrah Municipality* (Date of offence not given—Opportunity if asked for should be given to accused to adduce evidence).]
(2) (1920) 1920 Mad. 352 (352), In re *Abdul Rahim*.
(3) (1874) 2 Weir 38 (39), *Anon*.
(3-a) (1872) 1 Weir 81 (81), High Court Proceedings, 20th December, 1872, No. 2231.
(1870) 1 Weir 82 (82), High Court Proceedings, 22nd December, 1870.
(1890) 1890 All. W. N. 1 (1), *Queen-Empress* v. *Hira Lal*.
(1883) 1883 All. W. N. 109 (109), *Empress* v. *Bolanath*.
(4) (1907) 31 Bom. 611 (625), *Emperor* v. *Jeevanji*.

Note 10.
(1) (1893) 16 Mad. 463 (463), *Empress* v. *Paranga*.

Note 11.
(1) (1900) 27 Cal. 457 (460), *Durga Charan Jemadar* v. *Empress*.
(2) (1897) 1 Cal. W. N. cxvi, *Sarat Chandra Ray Chowdhuri*.
(3) (1868) 9 Suth. W. R. Cr. Cir. No. 3 (3) (Summons on Medical subordinates to be served through Magistrate or other executive head of the district to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during their absence).

"When a person who has committed an offence in one country escapes to another, what is the duty of the latter with regard to him? Should the country of refuge try him in its own Courts according to its own laws, or deliver him up to the country whose laws he has broken? To the general question, international law gives no certain answer. Some Jurists, Grotius among them, incline to hold that a state is bound to give up fugitive criminals, but the majority appear to deny the obligation as a matter of *right* and prefer to put it on the ground of courtesy. And the universal practice of nations is to surrender criminals only in consequence of some special treaty with the country which demands them." (Prefatory note to the Extradition Act, 1870, 33 and 34 Vic. Ch. 52). S. 68, Notes 13—15.

14. Disobedience of summons.—*See* Note 9, *supra* and S. 174 of the Penal Code. The offence contemplated by the latter section is an omission to appear at a particular time and at a particular place before a *specified public functionary*. Where therefore on the date specified in the summons, the public officer was himself absent, no offence under S. 174 of the Penal Code is committed if the person summoned to appear before such public officer fails to attend the Court though intentionally.[1] Similarly, where the case is not taken up at all on the date stated in the summons failure to attend is not an offence.[1-a] If the public officer has no authority to issue the summons a disobedience of such a summons is no offence. Thus where 16 persons in the District of Kumaun were summoned by the Tahsildar Magistrate to appear before him to explain why they had refused to serve as coolies and upon their failure to appear, they were prosecuted for an offence under S. 174 of the Penal Code, it was held that the Magistrate had no authority to issue the summons for the purpose mentioned and that the accused were not guilty under the section.[2] Illness incapacitating a person from attending to his ordinary avocations is sufficient excuse for not attending in obedience to a summons.[3]

15. When persons summoned can depart.—Where the summons contains as in the case of a summons to a witness a direction that the person summoned should not depart without leave it is not lawful to the person to leave the Court without such permission.[1] But where there is no such direction the summons does not oblige him to remain waiting in attendance in Court for more than a reasonable time,[2] and if he departs after waiting for a reasonable time, no offence under S. 174, I.P.C. is committed.[3]

Note 14.

(1) (1897) 20 Mad. 81 (82), *Queen-Empress* v. *Krishtappa.*
(1-a) (1909) 10 Cri. L. Jour. 576 (577): 3 S. L. R. 155, *Emperor* v. *Lalu.*
(2) (1904) 1 All. L. Jour. 263 (265), *Gopia* v. *King-Emperor.*
[See also (1920) 1920 All. 304 (305), *Bihari Lal* v. *Emperor.*
(3) (1922) 1922 All. 82 (82), *Bohra Birbal* v. *Emperor.*

Note 15.

(1) (1883) 5 All. 7 (8), *Empress* v. *Ram Saran.*
(2) (1870) 14 Suth. W. R. 20 (21) Cr., *Queen* v. *Sutherland.*
(3) (1870) 14 Suth. W. R. 20 (21) Cr., *Queen* v. *Sutherland.*
(1886) 10 Bom. 93 (95), *Queen* v. *Kisan Bapu.*
[See also (1890) 1 Weir 99 (100), *Narayanappa, In re.*]

S. 68, Note 16.

16. Order to appear on adjourned date.—Where on the day fixed for the appearance of the accused, the case is not taken up and the Magistrate orally orders the accused to appear on another day, he is bound to do so and if he fails to do so will be punishable under S. 174, I.P.C.[1]

S. 69.

Summons how served.

69.* (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by registered post letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

***(CODE OF 1882—S. 69.)**

Summons how served. 69. The summons shall if practicable be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons. Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(CODE OF 1872—S. 154.)

Summons how served. 154. The summons shall be served on the accused personally, (in any district where he may be), by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned, or the person with whom the copy is left, shall sign a receipt therefor.

(CODE OF 1861—S. 71.)

Summons how to be served. 71. The summons shall be served on the accused personally, or in case the accused person shall not be found, it may be left for him with some adult male member of his family residing with him.

Note 16.

(1) [See (1870) 5 Mad. H. C. R. App. 15. *High Court Proceedings, 18th January,* 1870 (First appearance under bond for appearance). See (1886) 2 Weir 658 (659), In re *Haslavaram Subba Reddi* (Forfeiture of recognizance bond on accused's failure to appear on subsequent day is legal).]

S. 69, Notes 1—3.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SUMMONS HOW SERVED	2
PERSONAL SERVICE	3
SERVICE ON INCORPORATED COMPANY—Sub-Section 3	4
PREVENTING SERVICE OF SUMMONS IS AN OFFENCE	5
DISOBEDIENCE OF SUMMONS	6

Other Topics.

Difference between summons and warrants. See S. 75. Note 5, Pt. 1.

Refusal to sign the receipt of summons. See Service on Public servants. See S. 72.

1. Legislative changes.—

(1) The provision as to the necessity for the receipt to be signed by the person served, was newly added in the Code of 1872.

(2) Sub-Section 3 of the present section is new.

2. Summons how served.—This section and Ss. 70 to 72 *infra* deal with the *manner* of service of summons. The *proof* of service is dealt with by S. 74. Wherever practicable a summons should be served *personally* on the person to be summoned (S. 69). When such person cannot, by the exercise of due diligence be found, it should be served on an *adult male member* of his family, or in a presidency town on *his servant* (S. 70). If service cannot, after the exercise of due diligence, be effected in the manner prescribed by Ss. 69 and 70, a duplicate of the summons should be affixed to a conspicuous part of the house or homestead in which the person summoned ordinarily resides (S. 71). When the person summoned is the servant of the Government or of a Railway Company the summons should be sent to the Officer in which such person is employed to be served in the manner provided by S. 69 (S. 72). Where a summons is not served as prescribed by the Code, no conviction can be had against any person for disobedience of summons under S. 174 of the Penal Code.[1]

3. Personal service.—Whenever practicable it should be served *personally*. Substituted service cannot be resorted to unless, in spite of *reasonable diligence*, personal service is not practicable.[1] A personal service may be made either by *delivering* or *tendering* the summons but the tender must be a real tender of a document which is understood by the person to be served.[2] Merely *showing* the summons to the person to be served is not sufficient service.[3]

Section 69—Note 2.

(1) (1882) 1882 All. W. N. 52 (52), *Empress* v. *Todd*.

Note 3.

(1) (1928) 1928 Nag. 55 (1) (55), *Jadha* v. *Manik Lal*.

(2) (1928) 1928 All. 118 (119), *Budhua* v. *Emperor*.

(1868-69) 5 Bom. H. C. R. Cr. 20 (21), *Empress* v. *Karsanlal Danat Ram*.

(3) (1868-69) 5 Bom. H. C. R. Cr. 20 (21), *Empress* v. *Karsanlal Danatram*.

S. 69, Notes 4—6.

4. **Service on Incorporated Company—Sub-Section 3.**—Sub-Section 3 is new. A summons to an incorporated company or a body corporate may be served on the secretary, the President, and the members of the Managing committee.[1]

5. **Preventing service of summons is an offence.**—The *prevention* of the service of summons will amount to an offence under S. 173 of the Penal Code if the conditions of that section are satisfied. The mere refusal to receive the summons or to sign the receipt of summons is however not an offence under the section.[1] But a getting away from the serving officer with the intention of not allowing him to hold any communication at all, and shutting oneself up in the house will amount to "intentionally preventing service" within the meaning of S. 173 of the Penal Code. The question, whether there has been a preventing of personal service, is however, in each case, a question of fact.[2]

6. **Disobedience of summons.**—*See* Note 14 to S. 68.

S. 70.

Service when persons summoned cannot be found.

70*. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency town, with his servant residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(CODE OF 1872—S. 70.)

70. Where the person summoned cannot, by the exercise of due diligence, be found the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

(CODE OF 1872—S. 154.)

154. The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned, or the person with whom the copy is left, shall sign a receipt therefor.

Summons how served.

Note 4.

(1) (1929) 1929 Bom. 433 (436), *Bhalchandra* v. *Emperor*.

Note 5.

(1) (1886) 1886 All. W. N. 93 (93), *Emperor* v. *Ganga Ram* (Refusal to sign).
(1918) 1918 All. 409 (409): 40 All. 577, *Shadeo Rai* v. *Emperor*.
(1925) 1925 All. 322 (322), *Debigir Tapdhari* v. *Emperor*.
(1868-69) 5 Bom. H. C. R. Cr. 34 (35), *Reg.* v. *Kalya bin Fakir*.
(1878) 3 Cal. 621 (621), In re *Bhoobunechwar Dutt* (Refusal to sign receipt).
(1893) 20 Cal. 358 (359), *Queen* v. *Krishna* (Do.).
(1885) 5 Mad. 199 (200), *Queen* v. *Punamalai Nadan* (Refusal to receive).
(1918) 1918 Oudh 412 (412): 21 Oudh Cas. 150, *Chandika Prasad* v. *Emperor* (Refusal to accept service).
(1923) 1923 Rang. 146 (147): 1 Rang. 49, *U Thudamawara* v. *Emperor* (Refusal to accept tender).
(1920) 1920 U. B. 18 (19): 3 U. B. R. 202, *Zaphantis* v. *Emperor*.
(1926) 27 Cri. L. Jour. 142 (142) (All.), *Banwari* v. *Emperor*.
(2) (1928) 1928 All. 118 (119), *Budhan* v. *Emperor*.

S. 70, Notes 1—3.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
SERVICE ON SERVANT	2
SERVICE ON FEMALE MEMBERS OF THE FAMILY ..	3

Other Topics.

Affidavit as to service. See S. 74.
"Cannot be found." See "Note 1, Pts. 1 and 2.
Service on adult male member. See Note 2, Pt. 2.

1. Scope of the section.—The procedure prescribed by this section is to be followed when by the exercise of *due diligence,* the person summoned cannot be found. In such a case, the service may be made—

(1) by leaving one of the duplicates of the summons with some adult male member of his family or

(2) in a *Presidency Town,* with his servant residing with him.

In the absence of proof that the person summoned cannot, after exercise of due diligence be found, a service on an adult male member of the house or on his durwan is illegal.[1] The Court should have an affidavit from the person who was entrusted with the service, that he has made his best endeavours to effect personal service and that he has been unable to do so either on the ground that the person summoned has evaded service, or that he cannot be found.[2] *See also* S. 74 *infra.*

2. Service on servant.—It is only in a Presidency Town that a summons under the Code can be served on the *servant* of the person sought to be summoned. A summons for attendance as a juror for instance outside the Presidency Town cannot properly be served by leaving it with the servant of the person summoned.[1] It must be served by leaving the duplicate summons with the adult male member of his family.[2]

3. Service on female members of the family.—A service on *female* members of the family of the person to be summoned is not warranted by this section.[1]

(CODE OF 1861—S. 71.)

Summons how to be served.

71. The summons shall be served on the accused personally, or in case the accused person shall not be found, it may be left for him with some adult male member of his family residing with him.

Section 70—Note 1.

(1) (1932) 1932 Cal. 62 (62), *Mon Mohan Pande* v. *Corporation of Calcutta.*

(2) (1882) 1882 All. W. N. 170 (171), *Empress* v. *Sundar.*

Note 2.

(1) (1899) 1899 All. W. N. 13 (14), *In re Beharilal.*

(2) (1905) 2 Cal. L. J. 48n (48n), *Nandalal Dey* v. *Emperor.*

Note 3.

(1) (1926) 1926 Lah. 50 (50), *Swan Singh* v. *Emperor.*

S. 71, Notes 1—2.

71.* If service in the manner mentioned in sections 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when service cannot be effected as before provided.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"ORDINARILY RESIDES"	3
SERVICE ON MEDICAL OFFICERS	4
DISOBEDIENCE OF SUMMONS	5

1. Legislative changes.—

(1) The words "If service in the manner mentioned" have been substituted for the words "If the signature mentioned" which occurred in the corresponding section of the Code of 1882.

(2) The word "effected" has been substituted for the word "obtained."

2. Scope of the Section.—This section will apply only where, the service mentioned in Ss. 69 and 70, cannot after the exercise of due diligence, be effected. In other words unless the summons cannot after the exercise of due diligence be served *personally* as provided by S. 69 or on an *adult male*

***(CODE OF 1882—S. 71.)**

71. If the signature mentioned in Ss. 69 and 70 cannot by the exercise of due diligence, be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

(CODE OF 1872—S. 155.)

155. When the accused person cannot be found, and there is no adult member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person resides.

Service when accused cannot be found.

(CODE OF 1861—S. 72.)

72. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Mode of service if accused cannot be found etc.

member or servant as provided by S. 70, resort cannot be had to the provisions of this section.[1] S. 71, Notes 2—5.

3. "**Ordinarily resides**".—These words occur also in S. 20 of the Code of Civil Procedure. The interpretation thereof, in cases coming under that section, may usefully be considered in cases coming under this section also.[1] As to the meaning of the said words under S. 20 of the Civil Procedure Code *see* Notes 3 to 7 to S. 20 of the author's commentary on the Code of Civil Procedure.

4. **Service on Medical Officers.**—*See* Note 3 to S. 72.

5. **Disobedience of summons.**—*See* Notes 9 and 14 to S. 68.

S. 72.

Service on servant of Government or of Railway Company.

72.* (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

***(CODE OF 1882—S. 72.)**

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by S. 69, and shall return it to the Court with the endorsement required by that section.

Service on servant of Government or of Railway Company.

(CODE OF 1872—S. 158 Proviso.)

158. * * * * * *

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed; and such head shall thereupon cause the summons to be served on the person named therein.

Provisions in this Chapter, as to form, service and issue of summons, applicable to all summonses.

(CODE OF 1861—Nil.)

Section 71—Note 2.

(1) (1926) 1926 Cal. 1208 (1209), ***Beni Madhab Sapin*** v. ***Jadunath Sapin.***
(1928) 1928 Nag. 55 (55), ***Jadho*** v. ***Manik Lala.***
(1918) 1918 Nag. 46 (46), ***Tukaram Kunbi*** v. ***Punjabrao.***
[See also (1902) 6 Cal. W. N. 887 (888), ***Moni Lal*** v. ***Emperor.***]

Note 3.

(1) (1931) 1931 Pat. 160 (160), ***Mohammad Ejaz Hussain Khan*** v. ***The King-Emperor.***
(1918) 1918 Nag. 46 (46), ***Tukaram Kunbi*** v. ***Punjabrao.***

S. 72, Notes 1—3.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
SUMMONS TO OFFICERS OF RAILWAY POLICE	2
SUMMONS TO MEDICAL OFFICERS	3

1. **Scope of the Section.**—This section applies only to summonses issued by a *Court of Justice* and not to orders of Police Officers investigating a crime under Ch. 14 of the Code.[1] Whenever a summons is issued by one Court to another Court it should as a matter of courtesy be accompanied by a letter intimating, in all cases in which it may not be necessary to examine the judge or presiding officer himself, that the attendance of the ministerial officer to produce the records is all that is required.[2]

2. **Summons to officers of Railway Police.**—A summons to a Sub-Inspector of Railway Police should be served through the Superintendent of Railway Police for the District.[1]

3. **Summons to Medical Officers.**—Summonses on Medical Subordinate Officers should be served through the head of the office to whom he is subordinate.[1]

S. 73, Note 1,

73.* When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

1. **Service of summons outside local limits.**—There was no such provision in the Code of 1861 but the High Court of Madras held on an interpretation of some of the provisions of that Code, that the Court had such power.[1] This section was first introduced by Act IV of 1877. It prescribes how a summons is to be served at any place outside the local limits of its jurisdiction.

***(CODE OF 1882—S. 73.)**

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinariiy send such summons, in duplicate, to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

(CODES OF 1872 AND 1861—Nil.)

Section 72—Note 1.

(1) (1917) 18 Cri. L. Jour. 733 (734): 1918 Mad. 815, In re *Gumparthi Venkataramiah.*

(2) (1879) 2 Weir 781 (782).

Note 2.

(1) (1925) 1925 Pat. 553 (555), *Gouri Shankar* v. *Collector of Muzafferpur.*

Note 3.

(1) (1868) 9 Suth. W. R. Cri. 3 (3).

Section 73—Note 1.

(1) (1866) 3 Mad. H. C. Ap. 5 (6).

Obviously such place must be one to which the Code applies. There is no procedure provided even in this Code for service on a person in a place outside British India, as for instance in England.[2] S. 73. Note 1.

In the undermentioned case[3] in which the question arose as to the validity of the service of a rule in proceedings for *contempt of Court* on a person in the Native State of Baroda it was held such service, with the Gaiekwar's previous assent is valid service, when the parties so served were already represented by counsel in the British Court, and where the only object of the service beyond territory was to effect personal service.

S. 74, Note 1.

74.* (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of service in such cases, and when serving officer not present.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

1. **Scope of the Section.**—A service may be proved as provided by this section in the following cases:—

(1) Where the summons is served outside the local limits of the jurisdiction of the Court issuing it, or

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*(CODE OF 1882—S. 74.)

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by S. 69 or S. 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of service in such cases, and when serving officer not present.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

(CODE OF 1872 and 1861—Nil.)

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(2) (1927) 1927 Rang. 248 (248), *Nga Ba On v. Emperor.*

(3) (1870) 7 Bom. H. C. O. C. J. 172, *Hari Vallabdas Kalliandas v. Uttamchand Manickchand.*

S. 74, Note 1.

(2) Where the serving officer is not present at the hearing of the case.

Where the person summoned denies receipt of summons the summons cannot be said to have been sufficiently proved by the mere production of the summons with an endorsement of service. The serving officer should be examined as a witness.[1]

B—Warrant of arrest.

S. 75.

75.* (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the *seal* of the Court.

Form of warrant of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

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*(CODE OF 1882—S. 75.)

B.—Warrant of Arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Form of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

(CODE OF 1872—S. 159.)

CHAPTER XIII.

Of the warrant.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, shall be in the form (*B*) given in the second schedule to this Act, or to the like effect.

Form of warrant.

The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it, and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be made under section one hundred and ninety four or a warrant issued under section three hundred and three.

Effect of warrant of arrest.

Section 74—Note 1.

(1) (1889) 1 Weir 85 (85), In re *Odda Kolan-than.*

S. 75, Notes 1—2.

SYNOPSIS.

		Note No.
I	SCOPE OF THE SECTION	1
II	DIFFERENCE BETWEEN SUMMONS AND WARRANT ..	2
III	REQUISITES OF A VALID ARREST WARRANT ..	3
IV	FORM OF WARRANT	4
	(*a*) GENERAL WARRANT	5
	(*b*) SPECIAL WARRANT	5a
	(*c*) BLANK WARRANT	6
	(*d*) CONDITIONAL WARRANT	7
V	EFFECT OF ILLEGAL WARRANT..	8
VI	"UNTIL IT IS CANCELLED BY THE COURT ISSUING IT"	9
VII	"OR UNTIL IT IS EXECUTED"	10
VIII	MODE OF EXECUTING A WARRANT	11

Other Topics.

Cases when warrants may be issued. See Note 1.
Offence to be stated. See Note 3, Pt. 17
Power of a superior magistrate to direct re-issue warrant once cancelled. See Note 9, Pt. 3.
Power to cancel warrant and issue summons. See Note 9, Pt. 2.
Procedure on execution of warrant. See Ss. 81, 85.
Seal of the Court. See Note 3, Pts. 8, 9.
Signed by the Presiding officer. See Note 3, Pts. 1 and 4.
Warrant containing wrong description. See Note 3, Pt. 16.
Warrants under special act. See Note 3, F. N. 19.

1. Scope of the section.—This section deals with the *form* of a warrant of arrest issued under the Code. The conditions under which and the grounds on which warrants of arrest may be issued are to be found in various sections of the Code. Such as Ss. 90, 107 to 110, 204 or 480.

2. Difference between summons and warrant.—A warrant is an order addressed to a person, *usually a police officer*, to do any particular act such as the apprehension and production of an offender or the search for a thing.[1] A summons, on the other hand, is always addressed to the person who is required either to attend or to produce a document or thing.[1-a]

A warrant addressed to a Police-Officer to apprehend an offender and to bring him before a Magistrate is not "a summons, notice, or order" within the meaning of S. 172 of the Indian Penal Code.[2]

(CODE OF 1861—S. 76.)

CHAPTER V.

Of the warrant and its execution.

Form of warrant.

76. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the form (*B*) given in the Appendix, or to the like effect.

Section 75—Note 2.

(1) (1866) 5 Suth. W. R. 71 (72), *Queen* v. *Woomesh Chandra.*
(1872) 4 N.-W.P. 97 (99), *Queen* v. *Zahoor.*

(1-a) [See (1870) 1870 Pun. Re. No. 6, p. 11 (Summons directed to peon to produce a person is not legal).

(2) (1928) 1928 All. 232 (233): 50 All. 666, *Sheo Jangal* v. *Emperor.*
(1866) 5 Suth. W. R. 71 Cr. (72), *Queen* v. *Womesh Chandra.*
(1906) 3 Cri. L. Jour. 117 (118), *Majhi Mahd.* v. *Emperor.*

S. 75, Note 3.

3. **Requisites of a valid arrest warrant.**—A warrant of arrest in order to be valid must fulfil the following requirements:—

(*a*) *It must be in writing.*

(*b*) *It must be signed by the presiding officer.* A warrant which is not signed by the authority issuing it is invalid and any arrest made in execution of such warrant is *illegal.*[1] *See also* Note 9 to S. 68 *ante.*

The official designation of the person signing and the place of signing should appear on the face of the warrant.[2] A warrant signed by a Magistrate at a place outside the limits of his jurisdiction has been held to be *illegal.*[3]

The signature must be that of the *presiding officer* of the Court and not by any other Magistrate. Thus, a warrant signed by an Honorary Magistrate, who is not the Magistrate who has taken cognizance of the offence and on whose file the case is pending, is *invalid.*[4] The presiding officer need not, however, be the same Magistrate who has first taken cognizance of the case. The signature contemplated is that of the officer who is *actually presiding* at the time of the issue of the warrant.[5]

The signature should be made with a pen and not a *stamp* so that its authenticity may admit of proof. But the affixing of a signature by a stamp is only an *irregularity* which does not vitiate the warrant.[6] The signature should be by full name, but a signing by affixing *of initials* is only an *irregularity* which is cured by the provisions of S. 537 of the Code.[7]

(*c*) *It must be sealed.*—The reason for requiring the affixing of a seal is *firstly* to show that the instrument to which it is attached has not been issued without due deliberation and *secondly,* to prove the authority of the instrument.[8] An omission to affix the seal renders the warrant *invalid.*[9] In the undermentioned case[10] the Chief Court of Punjab has, however, taken a contrary view and held that the absence of a seal in a warrant is only an *irregularity*

(1890) 1890 Pun. Re. No. 28 Cr., *Allah Baksh* v. *Empress.*
(1881) Rat. Cr. 152 (153), *Queen-Empress* v. *Lakshmi.*
[See also (1863) 1 Bom. H. C. R. 38 (38), *Reg.* v. *Sardar* (Section 174, I. P. Code, does not apply to escape from custody under warrant of Civil Court).]

Note 3.

(1) (1918) 48 Ind. Cas. 340 (340): 1918 Pat. 282, *Mousi* v. *Emperor.*
(1896) 23 Cal. 896 (898), *Abdul Gafur* v. *Empress.*
(1895) 1895 Pun. Re. Cr. No. 11, *Benwari* v. *Empress.*
(2) (1872) 9 Bom. H. C. R. 154 (160), In re *James Hastings.*
(3) (1910) 11 Cri. L. Jour. 570 (571): 1910 Pun. Re. 23, *Girdhari Lal* v. *Emperor* (Warrant under the Gambling Act III of 1867. Distinguishing and explaining 1 Bem. 340).
(4) (1917) 18 Cri. L. Jour. 526 (526): 1917 Pat. 17, *Jagpat Koeri* v. *Emperor.*
(5) (1932) 1932 Pat. 175 (176), *Kartick Chandra* v. *Emperor* (Distinguishing and explaining 18 Cri. L. Jour. 526).
(1932) 1932 Pat. 171 (175), *Kartick Iyer* v. *Empress.*
(6) (1883) 6 Mad. 396 (398), *Subramanya Iyer* v. *Emperor.*
(7) (1918) 46 Ind. Cas. 523 (524): 1918 Pat. 613, *Bankey Behary* v. *Emperor* (Distinguishing and explaining 23 Cal. 896).
(1901) 5 Cal. W. N. 447 (448), *Abdul Sikdar,* In re (Endorsement by *initials* which is identified—Held valid).
[See also (1886) 8 All. 293 (294), *Empress* v. *Janki Prasad* (Warrant in execution of a decree).]
[But see (1896) 23 Cal. 896 (898), *Abdul Gafur* v. *Empress.*]
(8) (1872) 9 Bom. H. C. R. 154, In re *James Hastings.*
(9) (1915) 16 Cri. L. Jour. 336 (336): 1915 Cal. 737: 42 Cal. 708, *Mohajan Sheik* v. *Emperor.*
(1928) 1928 Lah. 332 (333): 9 Lah. 424, *Sobha Mal* v. *Emperor* (Warrant under S. 69, Punjab Revenue Act. Decision of single Judge following 42 Cal. 708).
(1894) 18 Bom. 636 (668, 669), *Alter Caufman* v. *Government of Bombay* (Warrant under Act III of 1864).
(1872) 9 Bom. H. C. R. 154, In re *James Hastings.*
(10) (1910) 11 Cri. L. Jour. 570 (571): 1910 Pun. Re. 23, *Girdarilal* v. *Emperor* (Search warrant issued under the

which can be cured by S. 537 and does not affect its validity. *See also* Note 9 to S. 68 *ante*. S. 75, Note 3.

(*d*) *It must be addressed to a police officer or other person.*—Under S. 77, *infra* every warrant of arrest should be directed to one or more police-officers or to any other person or persons. A blank warrant without specifying the addressee thereof is invalid.[11] It is, however, not always necessary that the *name* of the particular person addressed should be mentioned; a warrant addressed to the "Bailiff of the Court" without naming the Bailiff is perfectly legal.[12] But an *endorsement* of a warrant under S. 79 *infra* should be made by *name* to the person to whom it is endorsed.[13]

(*e*) *The person to be arrested must be clearly identified.*—A warrant should contain a distinct and unequivocal intimation to the person to be arrested that he is the individual meant to be apprehended[14] it should not merely bear the full name of the person to be arrested but also his description *i.e.*, the place where he resides if not also his occupation so that there may be no doubt as to his identity. A warrant to arrest "Solomon Moses" simply has been held to be defective as the name is not an uncommon one and there may be more than one having such a name.[15] Where a person is prosecuted for disobedience of a warrant of arrest, the onus is on the prosecution to show that the accused was the person against whom the warrant had been issued. In execution of a warrant made out against *D* son of *G* a certain *D* was arrested but was rescued therefrom—*D* was prosecuted for disobedience of warrant and in the course of the trial it appeared that the accused was the son of *R* and not of *G*. It was held that the arrest was not a legal one and that the accused was not guilty of disobedience.[16]

(*f*) *The Offence must be specified.*—A warrant which does not specify a punishable offence and which has been issued upon a statement not sufficient to make out any offence is illegal.[17]

(*g*) *The substance of the warrant should be notified.*—As required by S. 80 *infra* the person executing the warrant is bound to notify its substance to the person arrested. If not the arrest is *not legal*.[18]

Gambling Act III of 1867) (But see 1928 Lah. 832 referred to above).

(11) (1913) 14 Cri. L. Jour. 142 (143): 1913 Pun. Re. No. 16, *Emperor* v. *Gaman*.

(1924) 1929 All. 128 (129), *Jamna Prasad* v. *Emperor*.

[See also (1904) 1 Cri. L. Jour. 1091 (1092): 1904 Pun. Re. No. 16, *Mohammad Baksh* v. *King-Emperor* (Resistance to a Civil Court's warrant—Not addressed to Bailiff—Held warrant illegal).

(1932) 1932 All. 692 (692), *Fattu* v. *Emperor* (Do.).]

(12) (1915) 25 Ind. Cas. 828 (828): 1915 Mad. 225, *Abdul Rahim Saheb* v. *Emperor*.

(1914) 24 Ind. Cas. 175 (175): 1914 Mad. 55, In re *Abdul Rahiman Saheb*.

(13) (1900) 4 Cal. W. N. 85 (86), *Durga Tewari* v. *Rahman Baksh*.

[See also (1921) 1921 Lah. 236 (236), *Ghasita Mal* v. *Emperor*.]

(14) (1872) 9 Bom. H. C. R. 154, In re *James Hastings*.

(15) (1894) 18 Bom. 636 (669), *Alter Caufman* v. *Government of Bombay*.

[See also (1924) 1924 Cal. 959 (960): 51 Cal. 902, *Jogendra* v. *Hiralal*.]

(16) (1901) 28 Cal. 399 (400, 401), *Debi Singh* v. *Emperor*.

(17) (1871) 6 Beng. L. R. App. 129 (130), In the matter of *Bidhoomookee Dabee* (Warrant of arrest on charge of abduction should state the intent with which offence was committed).

(1866) 6 Suth. W. R. 73 (73), *Shewdyal Singh* v. *Girban Singh*.

(1875) 24 Suth. W. R. 58 (59), *Ramzan Ali* v. *Durpo* (Mere generic technical designation of the offence is not sufficient).

(1873) 20 Suth. W. R. 23 (30), *Abdul Kadir Khan* v. *Magistrate* (Do.).

(18) (1896) 23 Cal. 896 (898), *Abdul Gafur* v. *Empress*.

(1899) 26 Cal. 748 (750), *Satish Chandra Roy* v. *Jodu Nandan Singh*.

(1924) 1924 Mad. 555 (556): 47 Mad. 442, In re *Appaswamy Mudaliar*.

S. 75, Note 3. As to warrants issued under other special and Local Acts see the following cases.[19]

[See (1930) 1930 Mad. W. N. 1215 (1215), *Thammana Goundan* v. *Emperor* (A *village headman* is not entitled to notice before personal service of warrant to him).]

(19) *Warrant under Extradition Act.*

(1926) 1926 Lah. 411 (411): 7 Lah. 159, *Hansraj* v. *Crown* (Under S. 7, the Magistrate cannot enquire into the legality of the warrant).

(1915) 16 Cri. L. Jour. 31 (32): 1915 Cal. 426: 42 Cal. 793, *Gulli Sahu* v. *Emperor* (No revision lies against order executing an extradition warrant).

(1906) 4 Cri. L. Jour. 366 (367): 33 Cal. 1032, *Balthasar* v. *Emperor* (When bail can be allowed, discussed).

(1925) 1925 Pat. 112 (112), *Sadhak Gir* v. *Emperor* (Warrant not signed by political agent—Held void).

(1913) 14 Cri. L. Jour. 672 (675): 41 Cal. 400, *Emperor* v. *Gulli Sahu* (Held arrest illegal and procedure not warranted by law).

(1931) 1931 Oudh 394 (395), *Baijnath* v. *Emperor* (Held warrant valid).

(1910) 11 Cri. L. Jour. 622 (622), *Khadi Hussain* v. *Emperor* (Warrant under S. 13, Fugitive Offenders Act—Held arrest not illegal).

Warrant under Gambling Act.

(1933) 1933 Bom. 79 (79), *Vallibhai Ibruhim* v. *Emperor* (Warrant presumed to be properly issued. S. 144, Ill. (*e*) Evidence Act applies).

(1924) 1924 Oudh 403 (403), *Chotay Lal* v. *Emperor* (Do.).

(1930) 1930 All. 740 (740), *Parashram* v. *Emperor* (A presumption under S. 6 does not arise where warrant is illegal).

(1930) 1930 Bom. 350 (351), *Emperor* v. *Nanalal Dwarakdas* (Warrant issued to the Police Officer who has sworn on the complaint before the District Superintendent of Police—Held not illegal).

(1930) 1930 Bom. 49 (52): 54 Bom. 146, *Emperor* v. *Ismail Hirji* (Arrest by Police Officer *authorised to arrest by Commissioner of Police and in his presence* though not *within view is not illegal*).

(1909) 10 Cri. L. Jour. 3 (5): 3 S. L. L. R. 56, *Mithu* v. *Emperor* (Warrant must specify the officer—Such officer cannot delegate his authority).

(1929) 1929 All. 903 (903), *Faqira* v. *Emperor* (Search without a warrant illegal).

(1930) 1930 Oudh 403 (404), *Lachman* v. *Emperor* (To issue warrant to raid house where gambling goes on in Dewali is undesirable).

(1911) 12 Cri. L. Jour. 28 (29): 6 Nag. L. R. 168, *Emperor* v. *Umerkhan* (Irregularity in search will not vitiate conviction where there is independent evidence to support it).

(1879) 4 Cal. 659 (661), *Nazir Khan* v. *Probadh Dutta* (Even if search is illegal conviction can be sustained where there is independent evidence).

(1892-1896) Upp. Bur. Rul. Cr. 123, *Queen-Empress* v. *Nga Kan* (Do.).

Warrant under the Bombay Police Act.

(1871) 8 Bom. H. C. R. 1, *Reg.* v. *Nana Moroji* (Should be addressed to one or more superior Police Officers).

Warrant under S. 48 of the Calcutta Police Act.

(1926) 1926 Cal. 966 (968): 53 Cal. 718, *Walwekar* v. *Emperor.*

Warrant under the Public Demands Recovery Act.

(1926) 1926 Cal. 605 (606), *Salimaddin* v. *Emperor* (Time for execution can be extended by the officer issuing but not by Nazir).

(1910) 11 Cri. L. Jour. 128 (129): 37 Cal. 122, *Sheikh Naseer* v. *Emperor* (Resistance after the expiry of returnable date mentioned in the warrant—Held not illegal).

Warrant under S. 193 of the N.-W.P. Tenancy Act.

(1905) 2 Cri. L. Jour. 155 (156): 27 All. 491, *Emperor* v. *Narbadeswar.*

Warrant under the Income-tax Act.

(1921) 1921 Sind 51 (53): 16 S. L. R. 161, *Emperor* v. *Gulabrai* (Warrant of attachment).

Distress warrant under Bengal Municipal Act.

(1922) 1922 Pat. 532 (533): 1 Pat. 423, *Government Advocate, Bihar and Orissa* v. *Ganga Prasad* (Date of return not mentioned—Warrant not illegal).

(1871) 16 Suth. W. R. 1 (3), *Bissenssur* v. *Chatterjee* (Arrest warrant cannot be issued by Municipal Commissioner under Act III of 1864).

Warrant under Civil Procedure Code.

(1921) 1921 Cal. 79 (79), *Superintendent and Remembrancer of Legal Affairs* v. *Baroda Kanta* (Bailiff need not in the first instance show the warrant to the judgment-debtor).

(1923) 1923 Cal. 584 (585), *Harish Chandra Chaudhury* v. *Girdhar Sarkar* (Sheristadar signing warrant by order—Presumption is it is valid).

(1902) 6 Cal. W. N. 845 (846), *Deputy Legal Remembrancer* v. *Mir Sarwarjani* (Do.).

(1925) 1925 Mad. 613 (614), *Murugappa Naicker* v. *Emperor* (Prayer for sympolical possession only—*Warrant issued* for actual possession—Warrant is illegal).

(1931) 1931 Cal. 443 (444): 58 Cal. 940, *Rajani Kanta Saha* v. *Emperor* (Court ordering notice under O. 21, R. 22 and simultaneous warrant of arrest—Warrant not illegal).

(1932) 1932 Pat. 315 (317): 11 Pat. 743, *Puna Mahton* v. *Emperor* (Do.).

(1923) 1923 Mad. 687 (688), In re *Garapati Kottaya* (Execution of warrant by Amin after expiry of time for return fixed by Nazir but not by Court—Held resistance illegal).

(1932) 1932 All. 227 (228), *Jagannath* v. *Emperor* (No proper delegation by the officer empowered to arrest—Held arrest illegal).

(1918) 47 Ind. Cas. 868 (870): 1918 Cal. 4, *Gahar Mahammad* v. *Pitambar Das* (Decree for restitution of conjugal rights—Warrant issued to seize the wife and deliver her bodily to her husband—Held warrant illegal).

(1918) 47 Ind. Cas. 876 (877): 1919 Cal. 914, *Abdul Wazed* v. *Emperor* (Wife not entitled to previous notice before issue of a warrant in execution of a decree for restitution of conjugal rights).

4. Form of warrant.—As to form of a warrant under this section see Schedule V, Form No. 2. A strict adherence to the form prescribed tends to prevent the warrant being granted irregularly and without enquiry as to whether the circumstances justify its issue.[1] S. 75, Notes 4—8.

Where any special or local Act does not provide a form of the warrant of arrest, the form prescribed by the Code should be adopted.[2]

5. General warrant.—A general warrant or a warrant to apprehend all persons committing a particular offence is not authorised by the Code and is *illegal*.[1] Similarly a warrant to search any house which the police-officer to whom it is directed may think fit is *illegal*.[2]

5-a. Special warrant.—In the case of a special warrant the only person who can execute it is the officer named in the warrant. A warrant which can be endorsed over to another officer for execution is not a special warrant.[1]

6. Blank warrant.—A blank warrant, or a warrant not addressed to any officer or person is invalid. (See note 3(d) *supra*).

7. Conditional warrant.—A warrant which provides that the person against whom it is issued should do a particular thing and that, if he does not do so, he should be arrested is invalid. Thus, a warrant which contains an order that if *A* does not remove himself forthwith from British India, he should be arrested is *illegal*.[1]

8. Effect of illegal warrant.—Proceedings taken in pursuance of an illegal warrant[1] or a warrant issued without jurisdiction[2] are void and resistance to the officer executing such a warrant is not punishable. But an irregularity or defect in the warrant does not vitiate the warrant. (*vide* S. 537).

As to what are illegalities and irregularities in a warrant, *see* Note 3, *supra*.

Note 4.

(1) (1864) 1 Suth. W. R. Cr. Cir. 7 (7).
(2) (1894) 18 Bom. 636 (668), *Altar Caufman v. Government of Bombay.*
[See also S. 5, *ante*.]

Note 5.

(1) (1872) 9 Bom. H. C. R. 154 (160), *In re James Hastings.*
(1895) 1895 Pun. Re. No. 11, *Benwari v. Queen-Empress.*
(1924) 1924 Lah. 247 (248), *Raja Ram v. Emperor* (Following 1895 Pun. Re. No. 11).
(2) (1912) 13 Cri. L. Jour. 832 (832): 35 All. 1, *Hargobind v. Emperor.*

Note 5-A.

(1) (1929) 1929 Bom. 157 (160): 53 Bom. 367, *Emperor v. Thavarmal Rupchand.*

Note 7.

(1) (1894) 18 Bom. 636 (659, 667), *Altar Caufman v. Government of Bombay.*
[See also (1870-71) 6 Mad. H. C. R. App. 24 (25) (Conditional direction as to punishment illegal).
(1866-67) 4 Bom. H. C. R. Cr. 37, *Reg. v. Jomabin Babu.*

Note 8.

(1) (1907) 11 Cal. W. N. 836 (838), *Babu Haidar v. Emperor.*
(1905) 2 Cri. L. Jour. 64 (65): 1905 Pun. Re. No. 10, *Emperor v. Himayat Ali* (Not an offence under S. 186, I. P. C.).
(1918) 44 Ind. Cas. 742 (743): 1918 Lah. 332: 1918 Pun. Re. 9, *Attar Singh v. Crown.*
(1897) 24 Cal. 320 (324), *Empress v. Jogendranath.*
(1928) 1928 Mad. 624 (625): 51 Mad. 873, *Paruvathia Pillai v. Emperor* (Requirements of S. 77 not fulfilled —Held warrant illegal).
(1819) 22 R. R. 378, *Margate Peer Co. v. Hanman*, cited in 1924 Cal. 1 (8).
(1933) 1933 Mad. W. N. 725 (726, 727), *Seetharamiah v. Emperor* (Distraint warrant for arrears of land revenue).
(1934) 1934 Mad. 206 (207), *Subbaramiah v. Emperor* (Civil warrant).
(1933) 1933 All. 759 (761), *Emperor v. Tohta.*
(2) (1928) 1928 Bom. 184 (185, 186): 52 Bom. 151, *Shripad Chandavarkar, In re.*
(1926) 98 Ind. Cas. 416 (416) (All.), *Pahalwan Singh v. Emperor.*
(1872) 3 N.-W.P. 317 (318), *Queen v. Oomrao Singh.*

S. 75, Notes 9—11.

9. "**Until it is cancelled by the Court issuing it**".—A warrant of arrest remains in force until it is cancelled by the court issuing it.[1] The Court has a *discretion* on sufficient cause being shown to cancel the warrant and issue a summons instead.[2] When once the Court that issues a warrant cancels it, it ceases to be effective. A District Magistrate has thus no power to direct a Sub-Divisional Magistrate to re-issue a warrant cancelled by him.[3]

10. "**Or until it is executed**".—The fact that the returnable date mentioned in the warrant has expired does not effect its executability after that period.[1] When the law has not fixed any period, the presumption is that it retains its validity until it is executed.[2] Similarly a warrant on which there is an endorsement for bail to be taken for the appearance of an accused on a certain date does not lapse on the expiry of that date. It is only the direction to take bail that lapses but the warrant continues in force.[3]

The force of a warrant of arrest is, however, at an end when the accused is arrested and brought before the Magistrate.[4] A person should not be arrested after he had surrendered and been released on bail.[5]

11. **Mode of executing a warrant.**—See Ss.76-80 *infra*. The provisions of the Code relating to the issue and execution of a warrant apply in general to warrants issued under special Acts in the absence of any contrary provision thereunder.[1] *See* S. 5, *ante*.

S. 76.

Court may direct security to be taken.

76*. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer

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***(CODE OF 1882—S. 76.)**

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken.

Note 9.

(1) (1927) 1927 Lah. 744 (745), *Linton* v. *Crown*.
(2) (1908) 8 Cri. L. Jour. 187 (187): 1 S. L. R. Cr. 69, *Imperator* v. *Mussammat Janat*.
(1908) 8 Cri. L. Jour. 454 (454), *Musammat Prem Kaur* v. *Mai Shamnath*.
(3) (1897) 1 Cal. W. N. 650 (651), In re *Gurucharan Aich*.
(1917) 18 Cr. L. Jour. 1001 (1001): 1917 All. 296, *Saharulla Chowdhurry* v. *Kendna Santhal* (Following 1 Cal. W. N. 650).

Note 10.

(1) (1928) 1928 Pat. 466 (466): 7 Pat. 478, *Emperor* v. *Binda Ahir*.
(2) (1904) 1 Cri. L. Jour. 227 (231): 28 Bom. 129, *Emperor* v. *Allomiya* (Jacob, J. dissenting—Warrant under S. 6, Bombay Gambling Act).
(3) (1909) 10 Cri. L. Jour. 479 (480) (Cal.), *Ransan Singh* v. *Emperor*.
(4) (1872) 17 Suth. W. R. Cr. 55 (55), *Muthooranath Chuckerbutty* v. *Heera Lal Doss*.
(1869) 13 Suth. W. R. Cr. 1 (5), *Purnachandra Banerjee*, In re.
(1876) 25 Suth. W. R. Cr. 8 (8), In re *Zuhuruddeen Hossein*.
[See also (1868-69) 5 Bom. H. C. R. (Cr.) 31 (34), *Reg.* v. *Surkya valad Dhakul*.
(5) (1917) 18 Cri. L. Jour. 526 (526): 1917 Pat. 17, *Jagat* v. *King-Emperor*.

Note 11.

(1) [See (1908) 7 Cri. L. Jour. 19 (21): 30 All. 60, *Emperor* v. *Kashi* (Warrant under Act III of 1867 governed by the provisions of the Code).]

to whom the warrant is directed shall take such security and shall release such person from custody. S. 76.

(2) The endorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
CONTENTS OF ENDORSEMENT	2
"TIME AT WHICH HE IS TO ATTEND BEFORE SUCH COURT"	3
ENDORSEMENT FOR BAIL ON PERSONAL RECOGNISANCE..	4

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

(CODE OF 1872—S. 160.)

Magistrate may direct bail to be taken.

160. It shall be in the discretion of the Magistrate, in issuing a warrant for arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail, in a sum to be fixed by the Magistrate for his appearance before the Magistrate on a specified day (which sum and day shall be named in such endorsement), to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

Bail-bond to be forwarded.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

(CODE OF 1861—S. 181.)

Magistrate may direct bail to be taken.

181. It shall be in the discretion of the Magistrate in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct by endorsement on the warrant that, if such person be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate to be named in the warrant on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the person from custody. In the event of bail being given, the officer shall forward the bail bond to the Magistrate.

S. 76, Notes 1—5.

Note No.
ARRESTING OFFICER'S POWERS TO REFUSE RECOGNISANCE 5
WARRANT OF ARREST FOR PRODUCTION OF PERSON BEFORE POLICE-OFFICER, IF LEGAL 6
"MAY IN ITS DISCRETION" 7
POLICE-OFFICER IF CAN TAKE BOND FOR APPEARANCE BEFORE HIMSELF 8

Other Topics.

Applicability to witnesses. See Note 1, Pt. 1.
Bailable warrant in non-bailable cases. See Note 7.
Deposit in cash. See S. 513.
Duration of bailable warrant. See Note 3, Pt. 1.

1. Scope of the section.—This section provides for the issue of "bailable warrants." It is not limited to warrants of arrest issued against an *accused* person but applies to all warrants of arrest. Thus a warrant of arrest issued against a recalcitrant *witness* may direct release on security.[1]

2. Contents of endorsement.—The endorsement for taking security must state:—

(1) The number of the sureties.
(2) The amount of the bonds.
(3) The time at which the person sought to be arrested is to attend the court.

A warrant not complying with these requirements is not in proper form.[1]

As to the form of the endorsement. *See* form No. II, Sch. V.

3. "Time at which he is to attend before such Court".—Where the date on which the person to be arrested is to attend before the court passes without the person being arrested, the *direction for bail* lapses, though the warrant itself continues in force and the person may be arrested even after that date. S. 75 and this section must be read together.[1]

4. Endorsement for bail on personal recognisance.—Where an endorsement directs the release of the arrested person on his *personal* recognisance, the police-officer executing the warrant is not authorised to take *security* from any person and a bond so taken will be void.[1]

5. Arresting officer's powers to refuse recognisance.—Where an endorsement for taking a bond has been made on the warrant of arrest, the arresting officer has only to see whether the sureties offered are worth the amount stated in the endorsement. He has no power to enquire whether the

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Section 76—Note 1.
(1) (1881) 2 Weir 39 (39).

Note 2.
(1) (1870) 7 Bom. H. C. R. 50 (55), *Reg.* v. *Vyankat Rao.*

Note 3.
(1) (1909) 10 Cri. L. Jour. 479 (480) (Cal.), *Ranshan Singh* v. *Emperor.*

Note 4.
(1) (1906) 6 Cri. L. Jour. 275 (276) (Lah.), *Kala Singh* v. *Emperor.*

person under arrest is good for the amount of the security or whether the sureties are persons who are able to keep *control over the person arrested*.[1] S. 76, Notes 5—8.

6. Warrant of arrest for production of person before police-officer if legal.—This section and S. 81 must be read together and so reading them it is clear that a Magistrate is only competent to issue a warrant of arrest for production of a person before his *own court* and not before a police-officer.[1]

7. "May in its discretion".—*See* the under mentioned case.[1]

8. Police officer if can take bond for appearance before himself.—*See* Ss. 497 and 499 *infra*.

77*. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same. S. 77.

Warrants to whom directed.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrants to several persons.

***(CODE OF 1882—S. 77.)**

77. A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrants to whom directed.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrants to several persons.

(CODE OF 1872—Ss. 161 & 164.)

161. The warrant shall ordinarily be directed to a police-officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no police-officer be immediately available, direct it to any other person.

Warrants to whom directed.

164. A warrant may be directed to several persons. and, when so directed, may be executed by all, or by any one or more of such persons.

Warrants to several persons.

Note 5.

(1) (1926) 1926 Cal. 961 (962): 53 Cal. 962, *Bisseswar Roy* v. *Emperor*.

Note 6.

(1) (1897) 24 Cal. 820 (828), *Queen-Empress* v. *Jogendranath Mukerjee*.

Note 7.

(1) (1911) 12 Cri. L. Jour. 430 (431) (Mad.), *Marula Sidda Sivamulu* v. *Emperor*.

S. 77, Notes 1—3.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"SHALL ORDINARILY BE DIRECTED TO ONE OR MORE POLICE-OFFICERS"	2
WARRANT, WHEN MAY BE DIRECTED TO PERSONS OTHER THAN POLICE-OFFICERS	3
WARRANT UNDER THE BOMBAY GAMBLING ACT ..	4

Other Topics.

Omission of the name of the police-officer. See Note 2, Pt. 1.

1. Legislative changes.—Under the Code of 1861 the warrant was required to be directed "to a police-officer". The section was altered in the later Codes so as to enable a warrant to be directed to *one or more* police-officers or persons.

2. "Shall ordinarily be directed to one or more police-officers".—This section merely directs that a warrant shall be ordinarily directed to one or more police-officers. It does not say that the *name* of that police-officer as well as his *designation* is to be inserted in the warrant. A warrant addressed therefore, to "the sub-inspector of police of *X*" is perfectly legal.[1] The section is directory and not mandatory and a substantial compliance with its provisions is sufficient.[2]

This section has been held to apply also to cases coming under S. 10 of the Burma Gambling Act (I of 1899).[3] *See* also S. 5 *ante*.

3. Warrant, when may be directed to persons other than police-officers.—A warrant may be directed to persons other than police-officers, but the following conditions are necessary in order to enable the Court to do so:—

(1) There must be the necessity to arrest.
(2) The necessity must be for *immediate* arrest and
(3) No police officer should be immediately available.[1]

(CODE OF 1861—Ss. 77 & 79.)

Warrants to whom to be directed.

77. A warrant shall ordinarily be directed to police-officer, but the Magistrate issuing a warrant may if immediate service be necessary and no police-officer be immediately available, direct the warrant to any other person.

To several persons jointly.

79. A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

Section 77—Note 2.

(1) (1918) 1918 Pat. 613 (615), *Nawab Chowdhry* v. *Loknath Singh.*
(1924) 1924 Rang. 383 (384), *Ma Kin* v. *Emperor.*
[But see (1922) 1922 Oudh 224 (225): 25 Oudh Cas. 111, *Emperor* v. *Shankar Dayal* (Name not given; warrant held *irregular*).]
(2) (1896) 1896 Pun. Re. No. 1 Cr. p. 7, *Muhammad Yusufuddin* v. *Empress.*
(3) (1893-1900) L. B. R. 547 (547), *Empress* v. *Nga Po Nyun.*

Note 3.

(1) (1870) 13 Suth. W. R. 27 (32), *Surrendro Nath Roy.*
(1928) 1928 Mad. 624 (625): 51 Mad. 873, *Pasuvathi Pillai* v. *Emperor.*

4. Warrant under the Bombay Gambling Act.—*See* the undermentioned cases.[1] S. 77, Note 4.

S. 78.

78*. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or subdivision for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, etc.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

***(CODE OF 1882—S. 78.)**

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any land-holder, farmer, or manager of land with his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder, farmer, or manager, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under S. 76.

(CODE OF 1872—S. 162.)

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land, for the arrest of any escaped convict, proclaimed offender, or a person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person for whose arrest it was issued enter on or be in his estate, farm or land under his charge.

Note 4.

(1) (1930) 1930 Bom. 49 (54): 54 Bom. 146, *Emperor* v. *Ismail Hirji*.
(1930) 1930 Sind 59 (60): 23 S. L. R. 441, *Asudomal* v. *Emperor* (No delegation of special warrant to another).
(1929) 1929 Bom. 157 (160): 53 Bom. 367, *Emperor* v. *Thavarmal Rupchand* (Do.).
(1909) 10 Cri. L. Jour. 3 (4): 3 S. L. R. 56, *Crown* v. *Mithu* (Do.).
(1930) 1930 Bom. 350 (351), *Emperor* v. *Nanalal Dwarka Das* (Section 6 of the Bombay Gambling Act).

S. 79, Note 1.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to police-officer.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
APPLICABILITY OF THE SECTION TO WARRANTS UNDER OTHER LAWS	2
SPECIAL WARRANT	2-a
"DIRECTED TO ANY POLICE-OFFICER" ..	3
"BY ANY OTHER POLICE-OFFICER"	4
ENDORSEMENT—HOW MADE	5
"BY THE OFFICER TO WHOM IT IS DIRECTED OR ENDORSED"	6

Other Topics.

Initialling of endorsement. See Note 5, Pt. 4.

Process Servers—if police-officers. See Note 4 Pt. 1.

1. Legislative Changes.—Under the Code of 1861, the warrant could be endorsed only by the person to whom the warrant was *directed*. The endorsee could not re-endorse it to any other police-officer. The words "by the officer to whom it is directed *or endorsed*" now show that such re-endorsement can be made.

Should the person against whom such warrant is issued to be arrested, he shall be made over to the nearest police-officer with the warant, and such police-officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

(CODE OF 1861—Nil.)

***(CODE OF 1882—S. 79.)**

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

Warrant directed to police-officer.

(CODE OF 1872—S. 165.)

165. A warrant directed to a police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

Warrant directed to police-officer.

(CODE OF 1861—S. 80.)

80. A warrant directed to a police-officer may also be executed by any other police-officer whose name shall be endorsed upon the warrant by the officer to whom the warrant is directed.

Police-officer may endorse warrant to another officer.

S. 79 Notes 2-6.

2. Applicability of the section to warrants under other laws.—*See* S. 5 of the Code and the undermentioned cases.[1]

2-a. Special warrant.—A special warrant can be executed only by the officer named in it and cannot be endorsed over to any other officer for execution.[1]

3. Directed to any police-officer.—*See* Note 2 to S. 77, *ante*.

4. By any other police-officer.—An endorsement under this section can be made only to a *police-officer*. Process servers cannot be properly regarded as police-officers.[1] This section extends the authority to execute a warrant only to a police-officer whose name is *endorsed* on the warrant. An endorsement to the Sub-Inspector of a particular *thana* will not enable a Head constable who is temporarily in charge of the *thana*, to execute the warrant.[2]

5. Endorsement—how made.—The essential thing about the endorsement is that it should be in *writing*. The direction that the endorsement should be written *upon the warrant* itself is not of such vital importance and it is immaterial if the writing is on the warrant or on a separate piece of paper. It is further not necessary that the authorisation should be addressed to the *endorsee* so long as the authorisation is clear.[1] The endorsement of the warrant should state the *name* of the endorsee. It is not necessary that the official designation of the endorsee should also be given, even though Form No. 2 of Sch. 5 seems to suggest that both the name and the designation should be given.[2] An endorsement to "the officer in charge of a police station" without the *name* of such officer being given is not sufficient.[3]

An endorsement should obviously be signed by the endorser. It is desirable that such signature should be a full signature. But an endorsement by merely subscribing initials is not invalid.[4]

6. "By the officer to whom it is directed or endorsed".—The endorsement must be made only by the police-officer to whom the warrant is directed or endorsed. A warrant directed to a Sub-Inspector cannot be endorsed by the Head constable unless he was at that time actually filling the office of the Sub-Inspector.[1]

Section 79—Note 2.

(1) (1908) 7 Cri. L. Jour. 19 (20, 21): 30 All. 60, *Emperor* v. *Kashinath* (Gambling Act 1867—Section applies).

(1895) 1895 Pun. Re. Cr. No. 22, *Vir Singh* v. *Empress* (Do. Act—Section does not apply).

(1928) 1928 Mad. 624 (625): 51 Mad. 873, *Pasupathia Pillai* v. *Emperor* (Madras Forest Act—Section does not apply).

(1920) 1920 L. B. 49 (49, 50), *Pothwai* v. *Emperor* (Burmah Gambling Act—Section does not apply).

(1909) 10 Cri. L. Jour. 3 (5): 3 S. L. R. 56, *Emperor* v. *Mithu* (Bombay Prevention of Gambling Act (IV of 1887)—Section does not apply).

(1920) 1920 All. 150 (151): 42 All 385, *Mahadep* v. *Emperor*.

Note 2-a.

(1) (1929) 1929 Bom. 157 (160): 53 Bom. 367, *Emperor* v. *Thavarmal Rupchand*.

Note 4.

(1) (1900) 27 Cal. 457 (460), *Durga Charan Jemadar* v. *Queen-Empress*.

(2) (1913) 14 Cri. L. Jour. 142 (143): 1913 Pun. Re. 16, *Emperor* v. *Gaman* (Search warrant under S. 100, *infra*.).

Note 5.

(1) (1931) 1931 Sind 89 (92, 93 and 94): 25 S. L. R. 117, *Mangaram Jeramdas* v. *Emperor*.

(2) (1932) 1932 Pat. 171 (172, 173), *Kartik Chandra* v. *Emperor*.

(3) (1899-1900) 4 C. W. N. 85 (86), *Durga Tewari* v. *Rahman Buksh*.

(4) (1900-1901) 5 Cal. W. N. 447 (448), *Abdul Sikdar* v. *Mathu Singh*.

Note 6.

(1) (1900) 27 Cal. 457 (459, 460), *Durga Charan Jamedar* v. *Empress*.

S. 80, Note 1.

80*. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Notification of substance of warrant.

SYNOPSIS.

	Note No.
SHALL NOTIFY THE SUBSTANCE	1
SHOW HIM THE WARRANT IF SO DESIRED	2
EFFECT OF NON-COMPLIANCE WITH THE SECTION ..	3

Other Topics.

Warrant to be in possession of the officer. See Note 2, Pt. 2. What amounts to Valid Notification. See Note 2, Pt. 4.

1. Shall notify the substance.—The police-officer or other person executing a warrant of arrest is bound to notify the substance of the warrant to the person sought to be arrested.[1] The object of this is to give the person sought to be arrested a reasonable opportunity of knowing on what charge he was being arrested and before which Court he was to appear so that he may take steps for arranging for his defence.[2] An arrest made without notifying the substance of the warrant as required by this section is illegal.[3] But where the person arrested has a reasonable opportunity of knowing on what charge he is being arrested, the requirements of the section is satisfied and the police-officer need not go through the formality of explaining the particulars of the warrant to the accused.[4]

***(CODE OF 1882—S. 80.)**

Notification of substance of warrant.

80. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, *shall show him* the warrant.

(CODE OF 1872—S. 176.)

Notification of substance of warrant.

176. A police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person to be arrested, and if required to do so, shall show the warrant to such person.

(CODE OF 1861—S. 90.)

Notification of substance of warrant.

90. A police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

Section 80—Note 1.

(1) (1896) 23 Cal. 896 (898), *Abdul Gafur* v. *Empress.*
(2) (1918) 1918 Pat. 613 (615), *Bankey Behari Singh* v. *Emperor.*
(3) (1912) 13 Cri. L. Jour. 590 (590) (Cal.), *Shyama Churan Mujumdar* v. *Emperor.*
(4) (1918) 1918 Pat. 613 (616), *Bankey Behari Singh* v. *Emperor.*
(1932) 1932 Pat. 171 (173), *Kartik Chandra Maity* v. *Emperor.*

S. 80. Notes 1-3,

It is not necessary that the officer or other person arresting another under a warrant, should in his report state the fact of his having notified the substance of the warrant as required by this section.[5] As to applicability of section to arrest under the written *orders* of a police-officer, under S. 56, see S. 56, N. 6.

2. Show him the warrant if so desired.—The person sought to be arrested is entitled to see if the person arresting has authority to do so and to ask for inspection ot the warrant.[1] So the police officer should not proceed to arrest without having the warrant in his possession.[2] It is enough however, if he has the warrant in his possession available for inspection; it is not necessary to show the same *unless so required*.[3] When so required the warrant must be shown in such a manner as to give the person arrested an opportunity to *read* the same. Thus where the police-officer merely held the warrant in his hand along with other warrants without allowing the person arrested to read the same it was held that requirements of the section were not satisfied.[4]

3. Effect of non-compliance with the section.—It has been seen in Note 1 *ante* that an arrest without complying with the requirements of the section is illegal. It has also been seen that the requirements of the section are satisfied if either the substance of the warrant is notified by the arrestor or, the warrant is shown to the person arrested to enable him to understand the contents thereof. An arrest under a warrant may also be supported under the provisions of S. 46, sub-S. 2 even without a notification of the substance of the warrant under this section.[1] Except in the above *case* an arrest made without complying with the requirements of the section is illegal and a resistance or obstruction thereto is no offence.[2]

The illegality of an arrest will not however, vitiate a conviction for any substantive offence with which the person arrested is charged, unless there is a failure of justice within S. 537 of the Code.[3]

S. 81.

81*. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of S. 76 as to security) without unnecessary delay bring the person arrested

Person arrested to be brought before Court without delay.

*(CODE OF 1882—S. 81.)

Person arrested to be brought before Court without delay.

81. The police officer or other person executing a warrant of arrest shall (subject to the provisions of S. 76 as to security), without unnecessary delay, bring the person arrested before the Court, before which he is required by law to produce such person.

(5) (1932) 1932 Pat. 171 (173), *Kartik Chandra Maity* v. *Emperor*.

Note 2.

(1) (1896) 18 All. 246 (248), *Empress* v. *Dalip and others*.
(1924) 1924 Mad. 555 (556): 47 Mad. 442, *Appaswamy Mudali*, In re.
(1910) 11 Cri. L. Jour. 128 (129): 37 Cal. 122, *Sheikh Nasur* v. *Emperor*.
(2) (1916) 17 Cri. L. Jour. 418 (414): 1916 All. 58: 38 All. 506, *Aijaz Husain* v. *Emperor*.
(3) (1918) 1918 Oudh 162 (162), *Tribhawan* v. *Emperor*.
(4) (1899) 26 Cal. 748 (750), *Satish Chandra Roy* v. *Jodu Nandan Singh*.

Note 3.

(1) (1929) 1929 Cal. 174 (175): 56 Cal. 831, *The Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Darbesh Ali*.
(2) (1896) 23 Cal. 896 (898), *Abdul Gafur* v. *Empress*.
(1899) 26 Cal. 748 (750), *Satish Chandra Rai* v. *Jodu Nandan Singh*.
(1912) 13 Cri. L. Jour. 590 (591) (Cal.), *Shyamachuran Mujumdar* v. *Emperor*.
(3) (1917) 18 Cri. L. Jour. 666 (667): 1917 All. 85, *Rangpal* v. *Emperor*.

S. 81. Notes 1-3.

before the Court before which he is required by law to produce such person.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
ARREST UNDER THE CITY OF BOMBAY POLICE ACT (ACT IV OF 1902)	3
FETTERS ON ARRESTED PERSON	4

Other Topics.

Before the Court. Not before the police officer. See S. 76.
Bring the Person before the Court. Note 2, Pt. 1.
Executing warrants of arrest. See S. 46.
Further detention. Note 2.
Unnecessary delay after arrest. See S. 61 N.

1. Legislative Changes.—The words "required by *this Act*" which occurred in the corresponding sections of the Codes of 1861 and 1872 were substituted by the words "required by *law*" in S. 81 of the Code of 1882. There is no difference between the Code of 1882 and the present Code, in this respect.

2. Scope of the section.—S. 60 *ante* requires that a police-officer making an arrest *without warrant* shall without unnecessary delay take or send the person arrested to the Magistrate having jurisdiction or before the officer in charge of a police-station. This section requires that a police-officer or other person executing a *warrant of arrest* should bring the person arrested before the Court without unnecessary delay.[1] The Magistrate has then no authority to further detain him in custody or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him or in some other form which can be put upon the record and which is sufficient to justify him in sending the prisoner to prison.

3. Arrest under the City of Bombay Police Act (Act IV of 1902).—This Code does not apply to the police in the city of Bombay, *see* S. 1. Under

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(CODE OF 1872—S. 183.)

Person arrested to be brought before Magistrate.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

(CODE OF 1861—S. 97.)

Party arrested to be brought immediately before the Magistrate.

97. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

Section 81—Note 2.

(1) (1873) 20 Suth. W. R. 23 (30), *Abdul Kadir* v. *Magte* (There was a similar provision under S. 14 of the Presidency Jails Act XII of 1867, afterwards repealed. See *Ram Coomar Dutt*, 2 Ind. Jur. N. S. 340).

the City of Bombay Police Act (IV of 1902) a person, though arrested under a requisition from the Presidency Magistrate is in the custody, not of the Magistrate but of the police.[1]

S. 81. Notes 3-4.

4. **Fetters on arrested person.**—As a general Rule a person brought before the Court should be relieved of his chains when brought before a Court for trial, or as a witness. The display of fetters will have a prejudicial effect against him in the eyes of the jurors or assessors. The Court may order the fetters to be removed unless satisfied by a representation from the proper officer that they are necessary.[1]

Where warrant may be executed.

82*. A warrant of arrest may be executed at any place in British India.

S. 82, Notes 1-3.

SYNOPSIS.

	Note No.
MAY BE EXECUTED IN BRITISH INDIA	1
BRITISH INDIA	2
ARREST OF PERSON OUTSIDE BRITISH INDIA ..	3

1. **"May be executed in British India".**—See generally Notes to S. 58 under which a police officer may for the purpose of arresting *without warrant* pursue the person to be arrested, into any place in British India.

2. **"British India".**—*See* S. 1.

3. **Arrest of Person outside British India.**—*See* S. 54, Note 11.

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*(CODE OF 1882—S. 82.)

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

(CODE OF 1872—S. 167.)

Where warrant may be executed.

167. A warrant issued by a Magistrate shall ordinarily be executed in the district in which it was issued.

But if the person against whom the warrant is issued escapes, goes into, or is, in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

(CODE OF 1861—S. 83.)

Where a warrant of a Magistrate must be executed.

83. A warrant issued by a Magistrate shall ordinarily be executed (unless it be specially otherwise provided) within the jurisdiction of the Magistrate of the District in which it was issued.

Note 3.

(1) (1925) 1925 Bom. 387 (388): 49 Bom. 628, *P. B. Ponde* v. *Emperor*.

Note 4.

(1) (1869) 4 Mad. H. C. App. 69 (69).
(1871) 8 Bom. H. C. R. 126 (151), *Reg.* v. *Kasinath Dinkar Govind Narain.*

S. 83.

83*. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded for execution outside jurisdiction.

*(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

*Sub-S. 2, so far as it applies to the Police in the Town of Bombay has been repealed by the City of Bombay Police Act, 1902.

***(CODE OF 1882—S. 83.)**

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and if practicable, cause it to be executed within the local limits of his jurisdiction.

(CODE OF 1872—S. 168, Paras. 1 & 2, & 170. Para. 1.)

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

Magistrate may issue warrant for execution in places outside his jurisdiction.

If the warrant is to be so endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

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170. A Magistrate or police-officer to whom a warrant is directed for execution shall execute the same, or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant.

Procedure by Magistrate before whom arrested person is brought.

(CODE OF 1861—Ss. 86 & 87.)

86. It shall be competent to a Magistrate issuing a warrant for the arrest of a person out of his jurisdiction, to direct the warrant to the Magistrate of the District in which such person is, or is supposed to be, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he

Warrant to be endorsed may be sent by post.

SYNOPSIS.

	Note No.
SCOPE AND APPLICATION	1
LANGUAGE OF WARRANT	2

S. 83, Notes 1—2.

Other Topics.

Applicability to warrants under Act XIII of 1859. Note 1, Pt. 1. Competency to endorse warrants—Power of Magistrates. See Sch. III, Cl. 2.

1. Scope and application.—This section read with S. 5, sub-S. 2, applies also to warrants issued under any other law, except when it is otherwise provided by such Law. See Notes to S. 5 *ante* and the undermentioned cases.[1]

2. Language of warrant.—Warrants issuing out of a Magistrate's Court should be written in the language in ordinary use in the district in which it is held, that is to say, (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a District where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language, or into English. Moreover, in such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution.[1]

S. 84.

Warrant directed to police-officer for execution outside jurisdiction.

84*. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement

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shall endorse his name on such warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the person named in the warrant be apprehended, he shall be carried before the Magistrate who endorsed the warrant, and shall be dealt with by such Magistrate as provided in S. 84 of this Act.

Warrants for execution within limits of Supreme Court to be addressed to Chief Commissioner or Magistrate of Police.

87. A warrant issued under the last preceding section for execution within the local limits of a Supreme Court of Judicature, shall be directed to the Chief Commissioner of Police or to a Police Magistrate, who shall proceed in the manner provided in S. 84 of this Act.

*(CODE OF 1882—S. 84.)

Warrant directed to police officer for execution outside jurisdiction.

84. When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Section 83—Note 1.

(1) (1897) 20 Mad. 285 (288), *Queen-Empress* v. *Kattayan* (Warrant under Workmen's Breach of Contract Act (XIII of 1859).
(1897) 20 Mad. 457 (460), *Queen-Empress* v. *Muthayya* (Do.).
(1897) 20 All. 124 (124), *Gauri Shankar* v. *Mata Prasad* (Do.).
(1898) 1898 Pun. Re. No. 11, page 27, *Empress* v. *Chetu* (Do.).
(1896) 1896 Pun. Re. No. Cr. 17, *Mana Lal* v. *Vahia* (Do.).

Note 2.

(1) (1871) 18 Suth. W. R. Cr. Cir. 9 (1).

S 84. either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town of *Calcutta.

*The letter "s" and the words "and Bombay" were repealed by S. 2 (1) of the City of Bombay Police Act, 1902.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

(CODE OF 1872—Ss. 168 & 170.)

Magistrate may issue warrant for execution in places outside his jurisdiction.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

If the warrant is to be so endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a police-officer, to be taken either to a Magistrate, or to a police-officer not below the rank of an officer in charge of station, in whose local jurisdictions the warrant is to be executed.

Procedure by Magistrate before whom arrest-

170. A Magistrate or a police officer to whom a warrant is directed for execution shall execute the same, or cause it to be executed and any Magistrate before whom a person is brought under the pro-

S. 84, Note 1.

1. Legislative Changes:—

Difference between the Codes of 1861 *and* 1872.—Under the Code of 1861 a warrant could be executed in any place even if it was out of jurisdiction. The Code of 1872 provided that a Magistrate may direct a warrant to be executed outside his local jurisdiction either *after endorsement* by a Magistrate within whose local jurisdiction it is to be executed or *without such endorsement*. In the former case the warrant may be sent by *post* to such Magistrate. In the latter case it may be entrusted to a police-officer to be taken to such Magistrate or to a police-officer not below the rank of a police-officer in charge of a station within whose jurisdiction it is to be executed.

Difference between the Codes of 1872 *and* 1882.—Under the Code of 1882 if a warrant is to be executed outside the local limits of the jurisdiction of the Magistrate issuing the warrant, the police-officer to whom it is directed, should ordinarily take it for endorsement to a Magistrate or to a police-officer not below the rank of an officer in charge of a station within whose jurisdiction it is to be executed. If the obtaining of the endorsement will cause delay which is likely to prevent execution, the warrant could be executed without endorsement.

Difference between the Codes of 1882 *and* 1898.—S. 84 of the Code of 1882 applied also to the police in the Town of Bombay. The present section as amended by Bombay Act 4 of 1902 does not apply to the police in Bombay.

Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail, for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word "Magistrate" includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

(CODE OF 1861—S. 84.)

84. When any person against whom a warrant is issued by a Magistrate shall escape, go into, or be in any place out of the jurisdiction of the Magistrate issuing such warrant, the warrant may be executed in such place; and if the person against whom the warrant is issued is arrested in such place, the police-officer, or other person executing the warrant, shall carry him before the Magistrate of the District, or some other Magistrate within whose jurisdiction the arrest was made. If the offence with which the person arrested is charged be bailable, and such person shall be willing and ready to give bail for his appearance before the Magistrate by whom the warrant was issued, the Magistrate before whom such person is brought, shall take bail of such person for his appearance accordingly, and shall release him from custody, and forward the recognizance or other bail-bond to the Magistrate by whom the warrant was issued. If the offence be not bailable, or if the person arrested be unable to find bail, he shall be forwarded to the Magistrate by whom the warrant was issued. If the arrest be made within the local limits of the jurisdiction of a Supreme Court of Judicature, the person accused, when arrested, shall be taken before the Chief Commissioner of Police, or a Police Magistrate. Such Chief Commissioner or Police Magistrate shall forward the person arrested to the Magistrate by whom the warrant was issued, or if the offence with which the person arrested is charged be bailable, shall admit him to bail, and shall forward the recognizance or other bail-bond to such Magistrate.

Warrant executed in another jurisdiction.

If arrest be made within jurisdiction of a Supreme Court.

S. 85, Note 1.

Procedure on arrest of person against whom warrant issued.

85.* When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under S. 76, be taken before such Magistrate or Commissioner or District Superintendent.

The section, so far as it applies to the police in the Town of Bombay, is repealed by S. 2 (1) of the City of Bombay Police Act, 1902.

1. **Legislative Changes**:—

(1) Under the Code of 1861, the person arrested had to be taken in the first instance to the Magistrate who issued the warrant where the place of arrest was within 20 miles from the place at which the warrant was issued. In other cases he had to be taken before the Magistrate of the District or some other Magistrate within whose jurisdiction the arrest was made.

(2) Under the Code of 1872, the arrested person had to be taken before the Magistrate in whose local jurisdiction the arrest was made unless,

(*a*) the Magistrate issuing the warrant was within 20 miles of the place of arrest or

(*b*) He is nearer to the place of arrest than the Magistrate within whose jurisdiction the arrest was made.

(3) In the Code of 1882, the words "or Commissioner of Police" were added after the words "nearer than the Magistrate".

(4) In the present Code the words "or District Superintendent of Police or the Commissioner of Police in a Presidency Town"

***(CODE OF 1882—S. 85.)**

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under S. 76, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued.

(CODE OF 1872—S. 169.)

169. If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

Procedure on arrest of person against whom warrant was issued.

have been substituted for the words "or Commissioner of Police". S. 85, Note 1.

86.* (1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: S. 86, Note 1.

Procedure by Magistrate before whom person arrested is brought.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under Section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under Section 76.

The section, so far as it applies to the police in the town of Bombay, is repealed by S. 2 (1) of the City of Bombay Police Act, 1902.

1. Legislative Changes.—The words "Magistrate, District Superintendent or Commissioner" have been substituted in the present section for the words "Magistrate or Commissioner" which occurred in S. 86 of the Code of 1882.

(CODE OF 1861—S. 85.)

If arrest be made within 20 miles, person arrested may be carried before the Magistrate who issued the warrant.

85. If the place of arrest, under the last preceding section, be within twenty miles from the place at which the warrant was issued, the person arrested may be carried, in the first instance, before Magistrate who issued the warrant.

***(CODE OF 1882—S. 86.)**

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under S. 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security as the case may be, and forward the bond to the Court which issued the warrant.

Procedure by Magistrate before whom person arrested is brought.

Nothing in this section shall be deemed to prevent a police-officer from taking security under S. 76.

S. 87.

C.—Proclamation and Attachment.

87.* (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court

Proclamation for person absconding.

(CODE OF 1872—S. 170.)

170. A Magistrate or police-officer to whom a warrant is directed for execution shall execute the same, or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

Procedure by Magistrate before whom arrested person is brought.

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word "Magistrate" includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

(CODE OF 1861—S. 84.)

84. When any person against whom a warrant is issued by a Magistrate shall escape, go into, or be, in any place out of the jurisdiction of the Magistrate issuing such warrant, the warrant may be executed in such place; and if the person against whom the warrant is issued is arrested in such place, the police-officer, or other person executing the warrant, shall carry him before the Magistrate of the District, or some other Magistrate within whose jurisdiction the arrest was made. If the offence with which the person arrested is charged be bailable, and such person shall be willing and ready to give bail for his appearance before the Magistrate by whom the warrant was issued, the Magistrate before whom such person is brought, shall take bail of such person for his appearance accordingly, and shall release him from custody, and forward the recognizance or other bail-bond to the Magistrate by whom the warrant was issued. If the offence be not bailable, or if the person arrested be unable to find bail, he shall be forwarded to the Magistrate by whom the warrant was issued. If the arrest be made within the local limits of the jurisdiction of a Supreme Court of Judicature, the person accused, when arrested, shall be taken before the Chief Commissioner of Police, or a Police Magistrate. Such Chief Commissioner or Police Magistrate shall forward the person arrested to the Magistrate by whom the warrant was issued, or if the offence with which the person arrested is charged be bailable, shall admit him to bail, and shall forward the recognizance or other bail bond to such Magistrate.

Warrant executed in another jurisdiction.

If arrest be made within jurisdiction of a Supreme Court.

***(CODE OF 1882—S. 87.)**

C.—Proclamation and Attachment.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a special place and at a specified time not less than thirty days from the date of publishing such proclamation;

Proclamation for person absconding.

may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. S. 87.

(2) The proclamation shall be published as follows:—

(*a*) It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be fixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestated in which such person ordinarily resides or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(CODE OF 1872—Ss. 171 and 353, Para. 1.)

Proclamation for person absconding.

171. If any person accused of an offence not coming within section one hundred and forty-eight absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

S. 87.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
PROCLAMATION—WHEN CAN BE ISSUED	2
"HAS ABSCONDED OR IS CONCEALING HIMSELF"	3
"NOT LESS THAN 30 DAYS FROM THE DATE OF PUBLISHING"	4
PUBLICATION OF THE PROCLAMATION—SUB-S. 2	5
STATEMENT IN WRITING BY COURT—SUB-S. 3	6
REVISION	7

Other Topics.

Absconding—meaning of. See Note 3.
After taking evidence or not. See Note 2, Pt. 4.
Any court—all Magistrates. See Sch. III, 1, Cl. 4.
Burden of proof. See Note 5, Pts. 4-6.
Effect of absence of statement in writing. See Note 6, Pt. 1.
Effect of not giving 30 days. See N 4, Pts. 2 & 3.
May issue even in summons cases and against any person. See Note 1.
Person deemed to be in contempt. See N. 7, Pts. 2 & 3.
Preservation of proclamation and compliance with formalities. See Note 6, Pt. 2.
Punishment for absconding. See S. 174, I.P.C.
Scope of the section. See Note 2.
Shall be affixed etc., See Note 5, Pt. 1.
Shall be punished. See Note 5, Pt. 1.
Simultaneous issue of proclamation and attachment. See S. 88, N. 3, Pt. 2.
Warrant has been issued. See Note 2, Pt. 2.

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353. If such warrant cannot be executed, and the Court or Magistrate considers that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

Procedure when warrant cannot be served.

(CODE OF 1861—Ss. 183 and 189.)

183. If any person accused of an offence absconds or conceals himself, so that upon a warrant issued against him he cannot be found, the Magistrate shall, if satisfied that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring such person to appear to answer the complaint within a fixed period not less than thirty days. The proclamation shall be publicly read in some conspicuous place of the town or village in which such person usually resides, and shall be affixed on some conspicuous part of the ordinary place of abode of such person, or on some conspicuous place of such town or village. A copy of the proclamation shall also be affixed on some conspicuous part of the Courthouse of the Magistrate.

Proclamation for an absconding party.

189. If the warrant cannot be served, and the Magistrate is satisfied that the witness absconds or conceals himself for the purpose of avoiding the service thereof, the Magistrate may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode, and if such witness shall not attend at the time and place named in such proclamation, the Magistrate may order the attachment of any moveable property belonging to such witness to such amount as he shall deem reasonable, not being in excess of the amount of costs of attachment and of any fine to which such witness may be liable under the provisions of the following section. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorise the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed.

If warrant cannot be served.

S. 87, Notes 1—3.

1. Legislative Changes.—S. 183 of the Code of 1861 and S. 171 of the Code of 1872, corresponding to this section did not apply to summons cases and no proclamation or attachment could issue in such cases.[1] The present section applies to *any person against whom a warrant has been issued.*

2. Proclamation—when can be issued.—The processes of proclamation and attachment are exceptional remedies and should not be issued as a matter of course whenever a warrant fails of its effect.[1] It is necessary that the following conditions are satisfied:

(*a*) A warrant should have been *legally issued* against a person. Where the warrant issued by a Magistrate is without jurisdiction[2] or does not fulfil the requirements of law as where the provisions of S. 90 of the Code are not complied with,[3] the issue of a proclamation under the section would be *illegal.*

(*b*) The Court issuing the proclamation must have reason to believe, or in other words must *satisfy itself* by evidence or otherwise, that the person against whom the warrant has been issued has *absconded* or is *concealing himself* for the purpose of avoiding the execution of the warrant.[4]

3. "Has absconded or is concealing himself".—From the mere fact that a person is *absent* it should not be readily assumed that he is an absconder without due enquiry and notice.[1] Nor can a person be said to be absconding or concealing himself where he files a petition against the order issuing the warrant and takes steps to procure an order of a Superior Court that he should be allowed to remain on bail after such warrant has been issued.[2] The mere fact that an accused person absconded is not sufficient proof of his guilt.[2-a]

As to the meaning of the word "abscond" as used in S. 172 of the Penal Code see the undermentioned case.[3] As to the power of the Court to proceed in the absence of an absconding accused, see notes under S. 512.

Section 87—Note 1.

(1) (1865) 3 Suth. W. R. 34 (35) (Cr.), *Queen* v. *Muddan Mohan Podder.*
(1868) 9 Suth. W. R. 70 (70), Re *Hossein Manjee.*

Note 2.

(1) (1865) 3 Suth. W. R. 63 (63) (Cr.), *Bishonath Sarkar.*
(2) (1912) 13 Cri. L. Jour. 796 (797) (Bom.), In re *Ramjibhai Waghjibhai* (Warrant issued under S. 114 not authorised).
(1893) 1893 Pun. Re. No. 15, *Kanwar Singh* v. *Empress.*
(3) (1909) 3 Ind. Cas. 575 (576): 5 Nag. L. R. 125, *Yasin Khan.*
(4) (1922) 1922 Lah. 475 (476, 477), *Qamar Din* v. *Emperor.*
(1878) 10 Beng. L. R. App. 14 (17), *Ram Kishore Slin,* In re.
(1866) 6 Suth. W. R. 73 (74) (Cr.), *Shewdayal Singh* v. *Griban Singh.*
[See (1897) 19 All. 64 (67), *Ferzand* v. *Hanuman* (High Court referred with disapproval to the Magistrate having issued a proclamation under S. 87 without waiting for the return of the warrant).]

Note 3.

(1) (1866) 2 Weir 40.
[See (1925) 1925 Lah. 101 (102), *Ahmad Din* v. *King-Emperor* (A certificate granted by a qualified doctor is sufficient evidence of accused's inability to attend, unless the certificate is to be disregarded for any reason).]
(2) (1922) 1922 Lah. 475 (476, 477), *Qamar Din* v. *Emperor.*
(2-a) (1910) 11 Cri. L. Jour. 557 (558) (Cal.), *Asfar Sheikh* v *Emperor.*
(1866) 5 Suth. W. R. 28 (30), *Queen* v. *Sorab Roy.*
(1915) 1915 Lah. 106 (107), *Ahmed* v. *Emperor.*
(1931) 1931 Lah. 38 (41), *Mahla Singh* v. *Emperor.*
(1930) 1930 Oudh 324 (327), *Chandrika Prasad* v. *Emperor.*
(1918) 1918 Pat. 146 (151), *Ritbaran Singh* v. *Emperor.*
(1927) 1927 Pat. 257 (260), *Devandra Battacharya* v. *Emperor.*
[See (1921) 62 Ind. Cas. 545 (571) (Bom.), *Gangaram Hari Parit* v. *Emperor* (Such facts tend to show that the absconding person is guilty —But evidence to explain his conduct is admissible).]
(3) (1882) 4 Mad. 393 (397), *M. Srinivasa Iyengar* v. *Queen.*
[See (1905) 2 Cal. L. Jour. 625 (625), *Majhi Mamud* v. *Emperor* (Absconding to evade arrest under warrant is no offence *under* S. 172, Indian

S. 87, Notes 4—5.

4. **"Not less than 30 days from the date of publishing".**—The proclamation issued under this section should fix a date not less than thirty days *from the date of publication* for the appearance of the absconder. Otherwise the proclamation is *illegal*.[1] The section is imperative in this respect and a non-compliance therewith will render the proclamation and all further proceedings in pursuance thereof null and void.[2] Thus, where the proclamation requiring the absconder to appear on the 11th December, was *issued* on the 6th November but was actually *published* in the village only on the 15th November of the same year it was held that the proclamation was wholly illegal and that the further proceedings based thereon were also illegal and liable to be set aside in revision by the High Court.[3]

5. **Publication of the proclamation—sub-S. 2.**—The requirement as to publication in accordance with clauses (*a*), (*b*) and (*c*) of sub-S. 2 is mandatory and a non-compliance therewith will render the proclamation null and void.[1] It has however been held in the undermentioned case[2] that a non-compliance with clause (*c*) is only an *irregularity* curable under S. 537 of the Code. It is submitted that this decision is not correct. There is no reason why this clause should be less imperative than the other clauses, and the decision is opposed to the general trend of view expressed in other decisions.[3]

No *presumption* under S. 114, Illustration (*e*) of the Evidence Act can be drawn that the requirements of the section have been duly observed and proclamation published as provided therein.[4] The reason is that the principle applies only to all acts performed by the Court in the exercise of *jurisdiction* and not to acts which are themselves conditions precedent to the exercise of jurisdiction.[5] "Where it appears in the face of the proceedings that the

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Penal Code.

(1866) 5 Suth. W. R. 71 (72), *Queen* v. *Womesh Chunder Ghose* (Do.).
(1875) 7 N.-W.P. 302 (302), *Queen* v. *Amirjan* (Do.).
(1872) 4 N.-W.P.H.C.R. 97, *The Queen* v. *Zahoor Ali Khan* (Do.).
(1890) 1890 Pun. Re. No. 28, p. 96, *Ali Baksh* v. *The Empress* (Do.).
(1881) Rat. 152 (153), *Queen-Empress* v. *Lakshmi*.

Note 4.

(1) (1907) 17 Mad. L. Jour. 438 (439), In re *Subba Naicken*.
(1873) 19 Suth. W. R. 12 (14), *Ramkishore Sain*, In re.
(1920) 1920 Lah. 330 (333), *Emperor* v. *Multan Singh*.
(1907) 6 Cri. L. Jour. 332 (333) (Mad.), In re *Subba Naicken*.
[But see (1934) 1934 Lah. 987 (988), *Hansraj* v. *Emperor* (Failure to do is only an irregularity curable under S. 537).]
(2) (1895) 5 Mad. L. Jour. 215 (217), In re *Koathoor Subbayya's estate*.
(1905) 9 Cal. W. N. 296 (n), *Shambunath* v. *King-Emperor* (Monies realised under the illegal proclamation ought to be refunded).
(1905-1906) 3 L. B. R. 116 (116), *King-Emperor* v. *Poni*.
(3) (1895) 19 Mad. 3 (6), *Queen-Empress* v. *Subbarayan*.

Note 5.

(1) (1919) 54 Ind. Cas. 994 (995): 1920 Lah. 330, *Emperor* v. *Multan Singh*.
(1916) 35 Ind. Cas. 974 (976): 1916 Lah. 49: 1917 Pun. Re. No. 6, *Mala Singh* v. *Emperor* (Non-publication in village).
(1895) 19 Mad. 3 (5), *Empress* v. *Subbarayar* (Non-publication in village within 30 days).
(1900) 22 All. 216 (218), *Abdullah* v. *Jitu* (Non-compliance with cl. (*a*).)
(1912) 14 Ind. Cas. 757 (758), *Emperor* v. *Jina Badhar* [Evidence not sufficient to show that formalities were observed—Order for confiscation of property set aside).
(1919) 1919 Lah. 57 (59): 1919 Pun. Re. No. 32, *Emperor* v. *Multan Singh*.
[See (1905) 27 All. 572 (574, 575), *Mian Jan* v. *Abdul* (Sale under attachment under S. 88 set aside at suit by accused).
(1904) 1904 All. W. N. 159 (159, 160), *Abdul* v. *Kazim Begam* (Do.).]
[But compare (1868) 9 Suth. W. R. 27 (28), *In Revision Proceeding in the case of Madhasuran Singh* (Where fact of proclamation was not denied held that proof of compliance with legal requirements was not necessary).]
(2) (1917) 42 Ind. Cas. 595 (596): 1917 Lah. 438: 1917 Pun. Re. No. 39, *Malli* v. *Crown*.
(3) See cases cited in Foot-note (1), *supra*.
(4) (1884) 7 Mad. 436 (438), In the matter of the petition of *Pandyanayak*.
(5) (1886) 13 Cal. 197 (199), *Malchus* v. *Broughton*.

inferior court *has jurisdiction* it will be intended that the proceedings are regular: but. . . . if this does not so appear or is left in doubt no such intendment will be made.''[6] S. 87, Notes 5—7.

As to forms of proclamation *see* Form Nos. 4 and 5 of Schedule V.

6. Statement in writing by Court—sub-S. 3.—It is only where a statement in writing is recorded under Sub-S. 3 that it will be conclusive evidence as to the fulfilment of the requirements of the section. Where there is no such statement on the record and there is nothing to show that the provisions of Sub-S. 2 have been complied with, the proclamation cannot be considered to be in accordance with Law.[1] Similarly, where neither the proclamation nor a copy of it is preserved and the record does not show that all the legal formalities have been complied with, an order of confiscation passed under S. 88 would be illegal and liable to be set aside.[2] The burden of proving that there was due proclamation under this section is upon the prosecution.[3]

Where the validating order under this sub-section is itself defective and does not state that the proclamation has been duly published *on a specified date*, it cannot be taken to be conclusive evidence of due publication and the Court is not precluded from going behind the order and questioning the legality of the proclamation.[4]

7. Revision.—When the proclamation does not comply with the requirements of the section, it is *illegal* and the proceedings can be set aside in Revision.[1] But an accused person against whom a proclamation has been issued must, *until he has surrendered*, be regarded as in contempt and the High Court will not entertain any application on his behalf.[2] Even after surrendering, the proper procedure for the accused is to apply to the Magistrate himself in the first instance and a Revision will lie from the Magistrate's decision on such application.[3]

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(6) (1884) 7 Mad. 436 (438), In the matter of the petition of *Pandyanayak*.

Note 6.

(1) (1900) 22 All. 216 (218), *Abdullah* v. *Jitu*.
(2) (1912) 13 Cri. L. Jour. 293 (294) (Bom.), *Emperor* v. *Jina Bahadur*.
(3) (1884) 7 Mad. 436 (438), In re *Pandyanayak*.
(1916) 32 Ind. Cas. 670 (671): 1917 Mad. 652, In re *Kayambu Tevan*.
(4) (1920) 54 Ind. Cas. 994 (997): 1920 Lah. 330: 1919 Pun. Re. No. 32, *Emperor* v. *Multan Singh*.

Note 7.

(1) (1896) 19 Mad. 3 (6), *Empress* v. *Subbarayar*.
(1920) 54 Ind. Cas. 994 (996): 1920 Lah. 330: 1919 Pun. Re. No. 32, *Emperor* v. *Multan Singh*.
(1917) 42 Ind. Cas. 595 (596): 1917 Lah. 438: 1917 Pun. Re. No. 39, *Malli Crown*.
(2) (1870) 2 N.-W.P.H.C. 441 (443), *Queen* v. *Bisheshur Pershad* (High Court refused to interfere in revision on the above ground).
[See also (1872) 17 Suth. W. R. 10 Cr., In re *Chunder Bhon Singh* (Where property was attached without observing the formalities required by law, the High Court declined to quash the attachment, being of opinion that the plea of informality could be considered on the surrender of the *fugitive*).]
(3) (1870) 2 N.-W.P.H.C. 441 (443), *The Queen* v. *Besheshur Pershad*.

S. 88.

Attachment of property of person absconding.

88. (1) The Court issuing a proclamation under S. 87 may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

Attechment of property of person absconding.

88.* (1) The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

***(CODE OF 1882—S. 88.)**

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under S. 87, order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

S. 88.

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by any order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

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(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the

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Procedure.	Procedure 1882.
(*h*) by all or any two of such methods, as the Court thinks fit.	(*h*) by all or any two of such methods, as the Court thinks fit.
(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.	(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.
(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil	(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil

benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

(CODE OF 1872—Ss. 172 and 353, Paras. 2 and 3.)

Attachment of property of person absconding.

172. Such Magistrate may order the attachment of any property, moveable or immovable, or both, belonging to the person so absconding or concealing himself.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver; or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

Procedure when warrant cannot be served.

353. * * * *

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of

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(6-*A*) *If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:*

Enquiry into claims and objections.

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6-*B*) *Claims or objections under sub-section* (6-*A*) *may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with*

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costs of attachment and of any fine to which the witness may be liable under the provisions of the following section.

Such order shall authorize the attachment of any moveable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any moveable property without the jurisdiction of the said Court or Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

S. 88.

the Provisions of sub-S. (2), *in the Court of such Magistrate.*

(6-*C*) *Every such claim or objection shall be inquired into by the Court in which it is preferred or made:*

Provided, that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(6-*D*) *Any person whose claim or objection has been disallowed in whole or in part by an order under sub-S.* (6-*A*) *may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.*

(6-*E*) *If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.*

(CODE OF 1861—Ss. 184 and 189.)

Attachment of the property of absconding party.

184. The Magistrate may, at the same time, order the attachment of any moveable or immovable property belonging to the person absconding of concealing himself. Such order shall not authorize the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

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(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment *and until any claim preferred or objection made under Sub-section* (6-*A*) *has been disposed of under that sub-section*, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

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attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed. The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases by seizure under the order of the Magistrate or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person, as the Magistrate shall deem proper. If the absent person shall not appear within the time specified in the proclamation, the property under attachment shall be declared to be at the disposal of Government, but shall not be sold until the expiration of six calendar months, unless such property is of a perishable nature, or it shall be considered by the Magistrate that the sale would be for the benefit of the owner.

189. If the warrant cannot be served, and the Magistrate is satisfied that the witness absconds or conceals himself for the purpose of avoiding the service thereof, the Magistrate may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode, and if such witness shall not attend at the time and place named in such proclamation, the Magistrate may order the attachment of any moveable property belonging to such witness to such amount as he shall deem reasonable, not being in excess of the amount of costs of attachment and of any fine to which such witness may be liable under the provisions of the following section. Such order shall not authorise the attachment of any property out of the jurisdiction of the Magistrate by whom it is made, but it shall authorize the attachment of property in the jurisdiction of any Magistrate by whom such order is endorsed.

If warrant cannot be served.

S. 88. Note 1.

SYNOPSIS.

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Time of making order of forfeiture. See Note 7, F.N. 1.
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What Magistrates empowered. See Sch. III, Cl. 5.

1. Legislative Changes:—

(1) The provision relating to the investigation of claims of third parties contained in Clauses 6-A to 6-D are new. In the absence of a similar provision under the old Codes, it was held in the undermentioned cases[1] that criminal Courts could not entertain and enquire into the claims of third parties whose only remedy was to file a separate suit in a Civil Court, and all that the Criminal Courts could do was to stay the sale of the property seized to give the claimants time to establish their rights in a Civil Court. The addition of Clauses 6-A to 6-D, which are drawn up on the model of Order 21, Rules 58 to 63 of the Code of Civil Procedure, empowers the Criminal Courts to entertain and investigate the claims of third parties and also gives effect

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Section 88—Note 1.

(1) (1884) 6 All. 487 (488), *Queen-Empress* v. *Sheodihal* (Following 7 W. R. Cr. 35).
(1867) 7 Suth. W. R. 35 (36), *Queen* v. *Kissoree Patar*.
(1872) 17 Suth. W. R. 10 (10), *Re Chunder Bhon*.
(1875) 23 Suth. W. R. 30 (31), *In re Ghumundee Singh*.
(1897) 20 Mad. 88 (89), *Queen-Empress* v. *Kandappa Goundan*.
(1908) 7 Cri. L. Jour. 81 (81): 4 L. B. R. 109, *Su We* v. *King-Emperor*.
(1893-1900) L. B. R. 324 (326), *Golab Singh* v. *Abdul Rasid*.

to the view expressed in the undermentioned case[2] decided before the amendment of 1923. S. 88, Notes 1—4.

(2) The words "at any time" in Clause 1 have been newly added under the present Code. As to the effect of the amendment see Note 3 below.

(3) Under the Code of 1861, the property of the absconder had to be *declared* to be at the disposal of the Government. No declaration was made necessary under the later Codes.

2. Which Court can order attachment.—It is only the *Court issuing the proclamation* that is empowered to order an attachment under this section. If the property to be attached is in a District outside that of the Magistrate issuing the order the order must be *endorsed* by the District Magistrate or Chief Presidency Magistrate within whose jurisdiction the property sought to be attached is situate.[1]

3. Stage at which attachment can be ordered.—Under the Code of 1882 an order for attachment could not be made until after the proclamation under the previous section was issued.[1] Under the present Code, having regard to the altered language of Cl. 1, the Court is empowered to order the attachment *at any time.* The Court can thus issue a proclamation against an absconding offender under S. 87 and *simultaneously* order the attachment of his property under this section.[2]

4. Property which can be attached.—The words "order the attachment of any property moveable or immovable" are *enabling* and not restrictive and the Court can attach both moveable *and* immovable property at the same time.[1]

Attachment of undivided interest of a coparcener in a joint Hindu family.—It has been decided by a Full Bench of the High Court of Madras[2] that there is nothing in the section to restrict the meaning of the word "property" and that it includes the rights and interests of persons who, as members of an undivided family, are entitled to the property of the family. What has to be attached under the section in such a case is the *share* of the defaulting member, which is of course subject to the rights of the other members of the family, and may be realized by a Receiver in a suit for partition or otherwise.

The effect of such an attachment is not to sever the interest of the absconder from the date of attachment and vest his share or property in the Government. By attaching his property the Government simply takes

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(2) (1911) 12 Cri. L. Jour. 392 (392): (1910) U. B. R. 66, *Nga Po Aung* v. *Emperor*.

Note 2.

(1) (1930) 1930 Pat. 347 (347), *Ganu Shukul* v. *Emperor*.

Note 3.

(1) [See (1897) 19 All. 64 (67), *Farzand Ali* v. *Hanuman Prasad*.]
[See also (1893) 6 C. P. L. R. 38 (39) (Cr.), *Empress* v. *Mulchand Pemraj* (It is illegal to wait till the period specified in the proclamation has expired and to order attachment, because that proclamation has not been obeyed).]

(2) (1901-02) 6 Cal. W. N. 680 (681): 29 Cal. 417, *Bai Lal Chowdhuri* v. *Emperor*.
[See (1869) 4 Mad. H. C. R. App. xlviii, *Anon*. (Under the Code of 1861 also an attachment could be ordered at the same time as the proclamation).]

Note 4.

(1) (1868-69) 4 Mad. H. C. R. App. 48 (48).

(2) (1917) 1917 Mad. 866 (367): 39 Mad. 831 (F.B.), *The Secretary of State* v. *Rangasamy Iyengar* (Approving Cr. Rev. Case No. 560 of 1893 and overruling 2 Weir 43).
[See also (1917) 18 Cri. L. Jour. 1037 (1038), *Bisi Behari* v. *Emperor* (Property of the family cannot be attached. The share of the absconder ought to be attached).]

S. 88, Notes 4—7.

the position of the absconder and it is liable to fluctuations by subsequent births in the family. Thus, a son born to the absconder subsequent to the attachment of his share and before sale is entitled to have his share freed from the attachment.[3]

Attachment of ancestral land in the Punjab.—In the case of *ancestral land* in Punjab, having regard to the customary law prevailing there, all that can be attached in proceedings under this section is the *life interest* of the absconder. On the death of the absconder the lands attached must be released in favour of his heirs.[4] Hence, a suit by the collaterals after the death of the absconder to recover back the properties from the purchaser at a sale held under this section is competent.[5]

5. **Mode of attachment.**—Sub-S. 3 prescribes the mode of attachment in the case of *moveable* property and sub-S. 4 the mode of attachment in the case of *immovable* property. The doors of a house are part of the furniture and are moveable property, but the frames embedded in the walls or the floor are to be considered immovable property and the action of a police officer executing a warrant of attachment under this section in digging the walls or floors to remove them is not correct and amounts to an *irregularity*. It has been held that resistance to the officer under such circumstances does not amount to an offence under S. 332, I.P.C.[1]

6. **Attachment by Civil Court.**—The right, title and interest in the property of the absconder cannot be said to pass on to the Government the moment the absconder fails to appear on the date fixed for his appearance. The words "the property *under attachment* shall be at the disposal of the Government" in sub-S. 7 show that the property will be at the disposal of the Government only from the date of *attachment*. Hence, where the actual attachment by the Criminal Court was subsequent to an attachment made by the Civil Court, a sale held in pursuance of the former cannot affect the rights of the attaching decree-holder in the latter Court. Such a sale is also affected by *lis pendens*.[1] But if, on the other hand, the attachment by the Criminal Court is prior in point of time to that of the Civil Court, the former prevails over the latter.

Illustration.

A, who had been accused of an offence absconded and his property was attached by the Magistrate under this section on 7—8—1878. Subsequently, the same property was attached by *B* in execution of a money decree against *A* in a Civil Court and sold on 15—1—1879, *B* himself being the purchaser. On 21—4—1880, *C* purchased in a sale held by the Magistrate. *Held* in a suit for possession by *B* against *C* that the title obtained by *C* under the Magistrate's sale was superior to the title of *B*.[2]

7. **Forfeiture of attached property.**—Under the Code of 1861 the property under attachment had to be *declared* to be at the disposal of the Gov-

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(3) (1917) 1917 Mad. 366 (367): 39 Mad. 831, *Secretary of State* v. *Rangasamy Iyengar* (Decided by the Bench after the opinion delivered by the Full Bench).

(4) (1925) 1925 Lah. 629 (630), *Shah Muhamad* v. *Emperor*.

(1908) 1908 Pun. W. R. 19, pp. 88, 92, *Sadhu Singh* v. *Secretary of State for India* (Following 18 P. R. 1908 and 52 P. R. 1915).

(5) (1915) 80 Ind. Cas. 71 (72): 1915 Lah. 12: 1915 Pun. Re. 52, *Niamat Ali* v. *Secretary of State for India*.

Note 5.

(1) (1930) 1930 Pat. 387 (387), *Ramji Ahir* v. *Emperor*.

Note 6.

(1) (1929) 1929 Bom. 200 (200), *Narayan Kondaji Tenkar* v. *Govind Krishna Abyankar*.

(1912) 13 Cri. L. Jour. 568 (569): 6 Low. Bur. Rul. 57, *Subramanya Chetty* v. *Emperor*.

(2) (1883) 9 Cal. 861 (863), *Golam Abed* v. *Toolseram Bera*.

ernment if the absent person did not appear within the time specified in the proclamation and the undermentioned cases[1] laid down the circumstances in which such a declaration should or should not be made. Under the present Code no such declaration is necessary and the property comes under the disposal of the Government: S. 88, Notes 7—9.

(1) if the absentee fails to appear on the specified date and
(2) the property has been attached.

The words "at the disposal of the Government" mean that the properties come under the absolute control of the Government to dispose of or deal with it in whatever manner it may seem most appropriate and convenient.[2] The title of the absconder to the property confiscated is thereafter put an end to and he cannot maintain a suit for possession of the confiscated property unless it be that he has otherwise acquired a title to the property subsequent to the order of confiscation.[3]

The position of the Government in relation to the property attached is not simply that of an attaching decree-holder. It is at least analogous to that of a Receiver in possession and management. The Government has such an interest in the property as to entitle it to remain in possession and is a necessary party under O. 34, R. 1 of the Code of Civil Procedure in a suit brought to enforce a mortgage over the property. If the Government is not impleaded as a party to such a suit, the right of the Government as well as a purchaser from the Government to redeem the mortgage is not lost.[4]

If the proclaimed person appears or is arrested within the time specified in the proclamation, the attachment will cease.[5] [See sub-S. 6-E].

8. Sale of attached property:—*Sale of land subject to lease.* Where there is an outstanding valid lease in favour of a third person at the time of attachment under this section, and the lessee prefers a claim, the proper order to make is to sell the property subject to the right of the lessee to remain in possession until the expiry of the term of the lease.[1]

9. Setting aside sale.—The Code does not contemplate and contains no provision for sales once held under the section being set aside. Even the High Court, cannot, in the exercise of its powers of Revision, set aside the sale on the ground of any material irregularity or illegality as against the

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Note 7.

(1) (1873) 19 Suth. W. R. 12 (14), In re *Ramkishore Sein.*
(1866) 5 Suth. W. R. 8 (8), Re *Jhundoo.*
(1865) 3 Suth. W. R. 63 (63), *Bishonath Sircar* (If by mistake or by inadvertance the order is not passed, it can be passed even after the absconder has appeared).
(1865) 3 Suth. W. R. 34 (35), *Queen* v. *Muddan Mohun Podar.*
(1866) 6 Suth. W. R. 79 (79), *Sheodayal Singh* v. *Guban Singh.*
(1866) 6 Suth. W. R. 73 (74), *Sheodayal Singh* v. *Giban Singh.*
(1867) 8 Suth. W. R. 61 (62), *Baijoo* v. *Guhan.*
(2) (1868) 9 Cal. 861 (863), *Golam Abed* v. *Toolsuram Bera.*
(1875) 23 Suth. W. R. 30 (31), In re *Ghumndee Singh* (Restitution of property cannot be claimed by mere *application* by party. Proper remedy is by suit against Government).
(3) (1923) 1923 Bom. 198 (198, 199), *Dattaji Nana* v. *Narayana Rao.*
(4) (1930) 1930 Mad. 1017 (1020), *Alagammal* v. *Sadasiva Padayachi.*
(5) (1934) 1934 Pat. 181 (182): 13 Pat. 317, *Suraj Narain Prasad Singh* v. *Emperor.*

Note 8.

(1) (1908) 8 Cri. L. Jour. 260 (262): 1908 Pun. Re. 9, *Ilam Din* v. *Emperor.*

S. 88, Notes 9—10

purchaser who is a stranger to the proceedings.[1] It is however open to the absconder to apply under the next following section for the recovery of the net sale proceeds provided the requirements of that section are satisfied.[2]

As to whether a separate civil suit lies to set aside a sale see Note 10 *infra*.

10. Suit to recover property from auction-purchaser whether lies:—

(*a*) *Suit by the Proclaimed offender.*—There is a conflict of judicial opinion as to whether a suit lies at the instance of the proclaimed offender to recover the property sold under the section on the ground that the proclamation and sale were in contravention of the provisions of Ss. 87 and 88. Where the proclamation failed to state the time within which and the place at which the absconder should present himself to avert the sale of the property it was held by the High Court of Allahabad in the undermentioned case[1] that the proclamation was a *nullity*, the order for sale thereon was *illegal* that the sale passed no estate whatsoever to the purchaser, and that the property could be recovered in a civil suit. It was also held that S. 89 of the Code applied only to cases where there was a good and legal proclamation and did not bar a suit where the proceedings were without jurisdiction and absolutely null and void.

The High Court of Lahore has, on the other hand, held in the undermentioned case[2] that such a suit is not competent and the same should be held to be impliedly barred under S. 9 of the Code of Civil Procedure. This is based on the reasoning that the legislature does not contemplate a sale once effected being set aside, that Ss. 87 to 89 form a complete Code by themselves and that the remedies provided therein to afford relief to a person who considers himself aggrieved are exclusive and exhaustive subject only to the right of appeal, if any, and the powers that the High Court may exercise in his favour under its revisional and inherent powers under Ss. 435 and 561-A of the Code. The decision, however, seems to proceed on the view that a non-compliance with S. 87 is only an *irregularity* a view which is not shared by other High Courts and even by the same High Court in other cases.[3] If the decision be taken to have laid down that even in cases of want of *jurisdiction* there is no remedy by way of a civil suit, it is submitted that it cannot be accepted as correct. The general principle of law is that it is only where a court acting under the powers conferred by a special enactment exercises powers *in conformity* with the provisions that its acts may not be liable to challenge in Civil Courts. They do not enjoy a similar immunity when they can

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Note 9.

(1) (1900) 22 All. 216 (219), *Abdullah* v. *Jitu*.
(1911) 12 Cri. L. Jour. 142 (143): 1911 Pun. Re. 8, *Emperor* v. *Gaman*.
[But see (1866) 6 Suth. W. R. 79 (79), *Sheodayal Singh* v. *Griban Singh*.]

(2) (1924) 1924 Lah. 420 (421), *Emperor* v. *Fazaldad*.
(1883) 9 Cal. 861 (863), *Golam Abed* v. *Toolsuram Bere*.

Note 10.

(1) (1904) 1 Cri. L. Jour. 616 (617, 618) (All.), *Abdul* v. *Kazim Begam* (Approved in Letters Patent Appeal —27 All. 572).
(1905) 2 Cri. L. Jour. 247 (249): 27 All. 572, *Mian Jan* v. *Abdul*.

(2) (1928) 1928 Lah. 562 (564, 565, 566), *Deva Singh* v. *Fazaldad*.
[See also (1867) 8 Suth. W. R. (Civ.) 207 208, *Bukhooree Singh* v. *The* Government (A case of the Calcutta High Court).]

(3) [See (1895) 19 Mad. 3 (6), *Empress* v. *Subbarayar*.
(1909) 3 Ind. Cas. 575 (576): 5 Nag. L. R. 125, *Yasinkhan* v. *Emperor*.
(1920) 54 Ind. Cas. 994 (995): 1920 Lah. 330: 1919 Pun. Re. 32, *Emperor* v. *Multan Singh*.
(1912) 14 Ind. Cas. 757 (Bom.), *Muthusami Naidu* v. *Emperor*.]

be challenged on the ground that they have been taken either in *excess of* or in *contravention* of the powers so conferred.[4] S. 88, Notes 10--11.

(*b*) *Suit by third parties.*—If third persons, *i.e.*, persons other than the absconder claim to have any interest in the property which is not liable to attachment, it is open to them to prefer a claim under the section within six months from the date of attachment. If the claim is disallowed, the section provides that a suit can be filed within a year from the date of dismissal of the claim. The remedy of preferring a claim under the section is not however exclusive but merely *permissive* and on the principle of the decision of the Judicial Committee in *Kanhya Lal* v. *The National Bank* (I.L.R. 40 Cal. 598) a case decided under the Code of Civil Procedure, a third person is not bound to prefer a claim but he can straightaway file a suit to set aside the sale proceedings. If the property has been declared to be at the disposal of the Government, he is entitled to maintain a suit against the Government and the latter is also responsible for mesne profits for the period during which the property was at its disposal especially in a case where in spite of notice the Government did not repudiate its connection with the property.[5]

11. Order on claim whether open to Revision.—An order passed by a Magistrate refusing to release the property from attachment on a claim preferred by a third person, is a *proceeding* within the meaning of S. 435 of the Code and is subject to revisional jurisdiction of the High Court.[1]

S. 89.

Restoration of attached propery.

89.* If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the

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*(CODE OF 1882—S. 89.)

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of S. 88 appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court

Restoration of attached property.

that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold the net proceeds of the sale, or if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

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(4) [See (1908) 35 Cal. 859 (864), *Chairman of Giridh Municipality* v. *Shaik Chandra*.
(1890) 17 Cal. 590 (604): 5 Sar. 391: 17 Ind. App. 40 (P.C.), *Secretary of State for India* v. *Fahamidannissa Begam*.
(5) (1901) 28 Cal. 540 (544, 545), *Secretary of State for India in Council* v. *Jogat Mohini Dassi*.

Note 11.

(1) (1924) 1924 Lah. 617 (619), *Santasingh* v. *Emperor*.
(1908) 8 Cri. L. Jour. 260 (262): 1908 Pun. Re. 9, *Ilam Din* v. *Emperor*.

S. 89. purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

(CODE OF 1872—Ss. 173 and 354.)

Restoration of forfeited property.

173. When any person whose property has come under the disposal of Government under section one hundred and seventy-two appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or, if he is not tried in, or committed for trial for that offence to, either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

Release of attached property of witness appearing and satisfying Court or Magistrate.

354. If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.

Sale of property of witness not appearing or not satisfying Court or Magistrate.

If such witness does not appear, or, appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section one hundred and seventy-two of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

(CODE OF 1861—Ss. 185 and 190.)

Restoration of property declared to be forfeited.

185. When any person whose property shall have been declared to be at the disposal of Government under the last preceding section shall, within two years after the attachment of the property, surrender himself, and shall upon trial before a competent Court, prove to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of evading justice, such property, or if the same shall have been sold the proceeds thereof, shall be restored to him.

If on attachment witness appear and satisfy Magistrate, his property to be released from attachment.

190. If the witness shall appear and satisfy the Magistrate that he did not abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as he shall deem fit. If such witness shall

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"WITHIN TWO YEARS FROM THE DATE OF THE ATTACHMENT"	2
WHO CAN APPLY UNDER THE SECTION	3

Other Topics.

Appeal and Revision. See S. 405, Note 1, Pt. 7.
Appears voluntarily or is apprehended. See Note 1.
Forfeiture of Property. See Note 1, F.N. 1.
Net proceeds of the sale. See Note 1, Pt. 8.
Proves to the satisfaction of the Court. See Note 2, Pt. 4.

1. Scope of the Section.—The section provides for a remedy to the absconder if—

(1) He appears either voluntarily or is apprehended and brought before the Court *within* 2 *years from the date of attachment and*

(2) He satisfies the Court that

(*a*) he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, *and*

(*b*) that he had not such notice of the proclamation as to enable him to attend within the time specified therein.[1]

Provided these conditions are satisfied, he is entitled to a restoration of the property attached, where it has not been sold, or to *the net sale proceeds* if the property has already been sold.[2] There is a conflict of opinion as to whether the *illegality of the proclamation* is a ground for an application under

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If he do not appear or satisfy Magistrate, property to be sold.

not appear, or appearing, shall fail to satisfy the Magistrate that he did not abscond or conceal himself for the purpose of avoiding the service of the warrant, and that he had not such notice of the proclamation as aforesaid, it shall be lawful for the Magistrate to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Magistrate may impose upon such witness under the provisions of S. 172 of the Indian Penal Code. If the witness shall pay to the Magistrate the costs and fine as aforesaid, the Magistrate shall order the property to be released from attachment.

Section 89—Note 1.

(1) [See (1926) 1926 Lah. 662 (663), *Butta Singh* v. *Emperor*.]
(1865) 3 Suth. W. R. 63 (63), Re *Bishonath Sircar* (The onus of proof is on the absconder).
(1865) 3 Suth. W. R. 34 (35), *Queen* v. *Muddun Mohan* (Do.).
(1866) 5 Suth. W. R. 8 (8), Re *Jhundoo* (Enquiry ought to be held and the applicant given an opportunity to show cause against confiscation).
(1872) 18 Suth. W. R. Cr. 33 (34), *Government of Bengal* v. *Meersrivar Jan* (Subsequent conviction of the absconder under S. 174, I. P. Code, is a bar to the proof of such facts).
(1934) 1934 Lah. 987 (988), *Hansraj* v. *Emperor* (Proof of both the elements necessary).
(1867) 7 Suth. W. R. 40 (40), *Queen* v. *Madhoosurum* (If it is not proved that accused applying for restoration did not abscond, he cannot succeed though the case against him had been struck off).
(1868) 9 Suth. W. R. 27 (28), In re *Madhasurun Singh* (If he does not prove these two factors, the Government need not prove the legality of the proclamation).
(2) (1924) 1924 Lah. 420 (421), *Emperor* v. *Fazal Dad*.
(1911) 12 Cri. L. Jour. 142 (143): 1911 Pun. Re. 8, *Emperor* v. *Gaman*.

S. 89, Notes 1—2.

this section. According to the High Court of Allahabad[3] and the undermentioned cases of Lahore High Court[4] this section prescribes a remedy where there is a *good and legal* proclamation but affords no facility for contesting the legality of the proclamation. A different view, however, has been taken by the Lahore High Court in the case cited below[5] according to which an application under this section will lie on the ground that the proclamation did not comply with the provisions of law. It is submitted that the latter view is not correct. The grounds and conditions for an application under this section are specified in the section and these do not include the illegality of the proclamation. There is no principle by which a ground not specified in the section can be assumed to be included in it.

Independent of this section, however, the High Court can in the exercise of its *revisional jurisdiction*, go into the question of the legality of the proclamation and do any of the following things:—

(1) Where the property has *not been sold*, it may set aside the attachment and order restoration of the property to the applicant.

(2) Where the property *has been sold* it may order the delivery of the net sale proceeds to the applicant.[6] The High Court can also under its *inherent powers* order the attachment to be raised and the property restored in proper cases.[7]

Where the attached property has been sold, the applicant for restoration is only entitled to the sale proceeds.[8]

As to whether a *suit* will lie against the purchaser for restoration of the property on the ground of the illegality of the proclamation see S. 88, Note 10.

2. "Within two years from the date of the attachment".—The words "within two years from the date of the attachment" qualify not only the word "appears" but also the word "proves" which is connected with the word "appears" by the conjunction "and".[1] It is therefore not sufficient that the absconder should merely *appear* before the Court within the period of two years. He should also "prove" to the satisfaction of the Court within the said period that he did not abscond or conceal himself and that he had no notice of the proclamation.[2] It has been held in the undermentioned case[3] that even if the absconder appears and *applies* under this section within two years of the attachment the conditions of the section are not satisfied unless he also actually *proves* within the period that he did not abscond and did not

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(3) (1900) 22 All. 216 (219), *Abdullah* v. *Jitu* (Sale not set aside as property had vested in third party).

(4) (1916) 35 Ind. Cas. 935 (937): 1916 Lah. 49: 1917 Pun. Re. 6, *Mala Singh* v. *Emperor* (22 All. 216 followed).

(1920) 54 Ind. Cas. 994 (996): 1920 Lah. 330: 1919 Pun. Re. 32, *Emperor* v. *Multan Singh*.

(1934) 1934 Lah. 987 (988), *Hansraj* v. *Emperor* (No *inherent* power to set aside attachment).

[See also (1928) 1928 Lah. 562 (564), *Dewa Singh* v. *Fazal Dad* (Assumed).]

(5) (1917) 42 Ind. Cas. 595 (596): 1917 Lah. 438: 1917 Pun. Re. 39, *Malli* v. *Emperor*.

(6) (1920) 54 Ind. Cas. 994 (996): 1920 Lah. 330: 1919 Pun. Re. 32, *Emperor* v. *Multan Singh*.

[See also (1917) 42 Ind. Cas. 595 (596): 1917 Lah. 438: 1917 Pun. Re. 39, *Malli* v. *Emperor*.

(1905) 9 Cal. W. N. ccxcvi, *Shambunath* v. *King-Emperor*.

(1896) 19 Mad. 3 (6), *Queen-Empress* v. *Subharayan*.]

(7) (1926) 1926 Lah. 662 (663), *Buta Singh* v. *Emperor*.

(8) (1924) 1924 Lah. 420 (421), *Emperor* v. *Fazal Dad*.

Note 2.

(1) (1913) 14 Cri. L. Jour. 237 (237) (Bom.), In re *Nilakanth Ramachandra*.

(2) (1913) 14 Cri. L. Jour. 237 (237) (Bom.), In re *Nilakanth Ramachandra*.

(3) (1926) 1926 Lah. 662 (663), *Buta Singh* v. *Emperor* (14 Cri. L. Jour. 237 approved).

know of the proclamation. It is submitted that this is not correct. The section does not refer to any *application*, but the word "proof" in the section must be taken to include an *offer to prove i.e.*, an *application* under the section.[4] To expect the absconder not only to *apply* but also to *prove* the matters alleged within the specified period would be to make him responsible for any delay that may be caused by the Court in posting the matter for enquiry. S. 89, Notes 2–3.

Where no application is made under this section within two years from the date of the attachment, it has been held that the High Court has no *inherent power* under S. 561-A to order restoration. The proper remedy in such a case is to apply to the Government.[5] Where property is forfeited to the Government, it can re-grant it to any one it thinks fit.[6]

3. Who can apply under the section.—The fact that the person whose property has been attached did not abscond or conceal himself or that he did not know of the proclamation is a matter particularly within his own knowledge and the section therefore requires that he should himself *appear and prove* such allegations, even if an *application* is made on his behalf under this section.[1]

D—Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90*. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest— S. 90.

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*(CODE OF 1882—S. 90.)

D.—Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any peron other than a juror or assessor issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded, or will not obey the summons; or

(*b*) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

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(4) (1913) 14 Cri. L. Jour. 237 (237) (Bom.), In re *Nilakanth Ramachandra*.
(1924) 1924 Bom. 485 (485), *Gurunath Narayan Betgori*, In re (Application must be within 2 years).
(1916) 35 Ind. Cas. 974 (977): 1916 Lah. 49: 1917 Pun. Re. 6, *Mala Singh* v. *Emperor* (Application after two years—S. 89 inapplicable).

(5) (1924) 1924 Bom. 485 (485, 486), *Gurunath Narayan Betgori*, In re.
[Compare (1926) 1926 Lah. 662 (663), *Butta Singh* v. *Emperor* (High Court has inherent power to remove attachment when provisions of S. 87 have not been complied with).]

(6) (1923) 1923 Bom. 198 (199), *Dattaji Nana Patil* v. *Narayan Rao Bhimrao Patil*.

Note 3.

(1) (1913) 14 Cri. L. Jour. 237 (237, 238) (Bom.), In re *Nilakanth Ramachandra*.
[See however (1909) 10 Cri. L. Jour. 260 (260) (Mad.), *Ramiah* v. *Government of Mysore* (*Application* must be made by *absconder himself*. His legal representatives have no *locus standi* to do so—Decision of the Mysore High Court).]

S. 90. (*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

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(CODE OF 1872—S. 148, Paras. 2, Ss. 150, 156, 352, 355, and S. 494, Para. 1.)

148. * * * *

In what cases a summons may issue.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

Warrant to arrest, if summons not obeyed.

or, if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

156. A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such summons or after default made by him so to appear, issue a warrant of arrest against such person.

Issue of warrant in addition to summons.

352. If a Court or a Magistrate has reason to believe that any witness whose attendance is required will not attend to give evidence—without being compelled to do so, it or he may, instead of issuing a summons, issue a warrant of arrest in the first instance.

When warrant of arrest may issue in first instance.

355. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate, upon proof of the summons having been duly served, may issue a warrant under his hand and seal, to bring such person before him to testify as aforesaid.

Arrest of person disobeying summons.

494. If the person summoned does not attend at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest.

Warrant of arrest.

(CODE OF 1861—Ss. 73, 188, 191, 257, 260 and 285.)

73. A Magistrate may (notwithstanding such summons), either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

Notwithstanding summons, warrant may issue in certain cases.

188. If the Magistrate shall see reason to believe that such witness will not attend to give evidence without being compelled to do so, it shall be lawful for such Magistrate, instead of issuing a summons, to issue his warrant in the first instance.

In what cases warrant in the first instance.

191. If any person summoned to give evidence, shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, it shall be lawful for the Magistrate, upon proof of the summons having been duly served, to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid.

If he do not obey the summons, then warrant.

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure. S. 90, Note 1.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"MAY. . . . ISSUE A WARRANT FOR HIS ARREST" ..	2
"AFTER RECORDING ITS REASONS IN WRITING"	3
FORM OF WARRANT	4

Other Topics.

Bail to arrested witness. See Note 2, Pt. 6.
Form of warrant under the section. See Sch. V, No. 7.
May issue. See Note 2, Pts. 1 & 2.
Proof of service of summons in time. See Note 2, Pt. 4.
Warrant cannot issue where summons cannot issue. See Note 1, Pts. 1-3.

1. Scope of the Section.—This section enacts that, in cases where it may issue a summons under the Code, it may under the circumstances specified

CHAPTER XV.

Of Cases triable by The Magistrate in which A Summons on complaint shall ordnarily Issue.

257. Whenever a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed or is suspected to have committed any offence triable by such Magistrate and punishable under the Indian Penal Code with imprisonment for a period not exceeding six months, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

Summons shall issue.

Provided that, if the Magistrate shall be satisfied or have reason to believe that the accused person is about to abscond, he may, instead of issuing a summons, issue his warrant in the first instance for the arrest of such accused person.

When warrant may issue.

260. If the person served with a summons shall not appear before the Magistrate at the time mentioned in such summons, and the Magistrate shall be satisfied that such summons was duly served in what shall be deemed by the Magistrate to be a reasonable time before the time therein appointed for appearing to the same, or if it shall appear to the Magistrate that after due diligence the summons could not be served according to the provisions of this Act, the Magistrate may issue his warrant to apprehend the accused person.

If summons be not obeyed, warrant.

285. If the person summoned shall not attend on the day appointed, the Magistrate or other officer as aforesaid, if satisfied that the summons has been duly served, may issue a warrant for his arrest. Provided that, whenever it shall appear to the Magistrate or other officer as aforesaid, upon the report of a police officer or upon other credible information, the substance of which report of information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person.

Warrant of arrest.

S. 90, Notes 1—2.

in Clauses (*a*) and (*b*) of the section issue a warrant of arrest. Where, the Court has *no power* to issue a summons at all, it cannot, under this section, issue a warrant of arrest. Thus, where an accused has been discharged under S. 253 of the Code by a Subordinate Magistrate, the District Magistrate cannot issue a warrant for his arrest. The reason is that he has no power to issue a summons to the accused while the order of discharge remains in force.[1] Similarly, the Court cannot issue a warrant under this section for the arrest and appearance of a witness before a police-officer investigating a case inasmuch as the Code does not authorise the Court to issue a summons for the appearance of a witness before a police-officer.[2] On the same principle, it has been held that the Court cannot issue a warrant of arrest against a *party* who fails to appear in pursuance of an *order* passed under S. 145, Cl. 1 of the Code.[3]

2. "May. . . . issue a warrant for his arrest".—This section does not authorise a Court to issue warrants by wholesale without discrimination in lieu of summonses.[1] The section gives only a *discretion* to the Court to issue a warrant of arrest and such discretion should be exercised *judicially* upon a consideration of the materials before the Court which would justify the conclusion that the person against whom the warrant is sought to be issued will either not obey the summonses or is keeping out of the way to evade service of summons or that he has, after being duly served, deliberately disobeyed it. Where the discretion is improperly exercised and none of the conditions contained in Cl. (*a*) or Cl. (*b*) are present, the issue of a warrant is illegal.[2] Thus the Court, ought not in a case under S. 498 of the Penal Code straightway without issuing a summons issue a warrant of arrest to procure the appearance of the complainant's wife as a witness.[3] Where summons has been served and the summoned person does not appear, the Court must be satisfied that the summons has been *duly served in good time* before issuing a warrant for his arrest. The report of a police-station writer, it has been held, is not admissible as evidence of due service under Cl. (*b*).[4]

A person is not justified in absenting himself in response to a summons on the ground that he has sent a telegram intimating to the Court through his *Mooktear* that the High Court has stayed further proceedings in the matter. The Court will be justified in issuing a warrant for arrest in such a case.[5]

A witness arrested under a warrant and brought before a Magistrate should not be treated as criminals, but should be enlarged on bail.[6]

Section 90—Note 1.

(1) (1893) 1893 Pun. Re. No. 15, *Kanwar Singh* v. *Queen-Empress*.

(2) (1897) 24 Cal. 320 (324), *Emperor* v. *Jogendranath*.

[See also (1871) 16 Suth. W. R. Cr. 1 (2, 3), In re *Bissesur Chatterjee* (Magistrate has no power under Bengal Act III of 1864 to issue warrant to a person who may fail to appear in answer to a summons under S. 27 of that Act).]

(3) (1900) 5 Cal. W. N. 71 (72), *Kafatullah* v. *Feruzuddin*.

[See also (1925) 1925 Cal. 822 (824): 52 Cal. 721 (F.B.), *Narendra Chandra* v. *Sabar Ali* (A party in proceedings under S. 145 is not an *accused* person).

(1925) 1925 Cal. 1040 (1042, 1043), *Ishan Chandra* v. *Hridoy* (Do.).]

Note 2.

(1) (1870) 13 Suth. W. R. 1 (5, 6), In re *Purna Chandra Banerji*.

(2) (1909) 3 Ind. Cas. 575 (576): 5 Nag. L. R. 125, *Yasin Khan* v. *Emperor*.

(1870) 14 Suth. W. R. 20 (20), *Queen* v. *Sutherland*.

(3) (1907) 6 Cri. L. Jour. 275 (275), *Kala Singh* v. *Emperor*.

(4) (1905-1906) 3 L. B. R. 116 (116), *King-Emperor* v. *Po Ni*.

[See also (1867) 7 Suth. W. R. 37 (37), Re *Abdoor Ruhman*.]

(5) (1917) 20 Ind. Cas. 142 (143) (Cal.), *Chandi Prasad* v. *King-Emperor* (Warrant issued in proceedings under S. 107).

(6) (1905) 2 Weir 39 (39).

S. 90, Notes 3—4.

3. "**After recording its reasons in writing**".—There is a conflict of judicial opinion as to whether the provision in the section requiring the Court to record its reasons in writing before issuing a warrant of arrest is mandatory or is merely directory, and as to whether an omission to do so is an illegality which would vitiate the warrant or is a mere irregularity which is cured by the provisions of S. 537 of the Code. On the one hand, it has been held by the High Court of Madras[1] and the Chief Court of Punjab[2] that the recording of reasons in writing is a necessary preliminary to the exercise of *jurisdiction* under the section and the failure to do so vitiates the warrant. The High Court of Allahabad[3] and a Full Bench of the High Court of Calcutta[4] have, on the other hand, held that an omission to record reasons in writing amounts only to a violation of a directory provision and is a mere irregularity which can be cured by S. 537.

4. **Form of warrant.**—For form of warrant under this section, see Schedule V, Form No. 7.

S. 91.

Power to take bond for appearance.

91*. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
WITH OR WITHOUT SURETIES	2
VERBAL ORDER FOR APPEARANCE	3

Other Topics.

Bond by Mukhtear. See Note 1, Pt. 3.

"May require such person". See Note 1, Pt. 2.

1. **Scope of the section.**—There was no section corresponding to this in the Codes of 1861 and 1872 and it was held that a Magistrate had no power

*(CODE OF 1882—S. 91.)

Power to take bond for appearance.

91. When any person, for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond with or without sureties, for his appearance in such Court.

(CODES OF 1872 AND 1861—Nil.)

Note 3.

(1) (1916) 33 Ind. Cas. 308 (309): 1916 Mad. 1063: 38 Mad. 1088, In re *Karuthan Ambalam*.

(2) (1918) 48 Ind. Cas. 971 (972): 1919 Lah. 67, *Bala Singh* v. *Emperor*. [See also Oudh S. C. 99, *Empress* v. *Anant Prasad*.

(3) (1921) 59 Ind. Cas. 415 (416): 1920 All. 245, *Mahar Singh* v. *Emperor*.

(4) (1924) 1924 Cal. 1 (8, 9, 17): 51 Cal. 1 (F.B.), *The Government of Assam* v. *Sahebulla* (11 Ind. Cas. 593 overruled).

S. 91, Notes 1—3.

to take recognizances from witnesses to appear before himself for an adjourned date.[1] Under the present section it is clear that the Court may require any person present in Court,

(1) for whose appearance it can issue a summons or

(2) for whose arrest it can issue a warrant

to execute a bond for his appearance before the Court. Thus a bond for appearance may be taken from an accused person charged with an offence[2] or from a witness. In the undermentioned case[3] it was held that a bond may be taken under this section even from a Mukhtear for the appearance of a witness.

This section, however, deals only with the power to require persons to execute bonds for appearance before *the Court taking the bond.* But there are other provisions in the Code enabling one Magistrate to take a bond from a person for appearance before another Court.[4] See Ss. 86 *ante* and 217 *infra.*

2. **With or without sureties.**—It is in the discretion of the Court to require a person to execute a bond for appearance with or without sureties. In the case of a witness who is not in any way disinclined to appear when called for by the Magistrate, an ordinary recognisance is enough and he should not be called upon to furnish bail for his appearance.[1]

3. **Verbal order for appearance.**—A verbal order given to a witness by a Court, to attend on a particular day is a valid order, the disobedience of which will be an offence punishable under S. 174 of the Penal Code.[1]

S. 92. **92***. When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Arrest on breach of bond for appearance.

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*(CODE OF 1882—S. 92.)

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

(CODE OF 1872—S. 208, Para. 2.)

208. * * * *

Adjournment.

If on the day to which such hearing or such further hearing has been adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

(CODE OF 1861—Nil.)

Section 91—Note 1.

(1) (1868) 4 Mad. H. C. App. 6 (6).
(1868) 4 Mad. H. C. App. 17 (17).
(2) (1919) 1919 All. 158 (158), *Gurdin* v. *Emperor.*
(3) (1901) 1901 All. W. N. 35 (35, 36), *Kazim Husain,* In re.
(4) (1900) 2 Bom. L. R. 589 (591), *Queen-Empress* v. *Nihal Chand.*

Note 2.

(1) (1893) 21 Cal. 642 (663, 664), *Queen-Empress* v. *Sagal Samba.*

Note 3.

(1) (1870) 1 Weir 87 (88).
(1872) 1 Weir 88 (88).

1. Arrest on breach of bond for appearance.—It is the duty of the person for whose appearance a bond has been given to appear at the time when he is bound to appear.[1] The section will not, however, apply to a case where *prior* to the time *fixed for the appearance*, arrest by warrant is sought to be effected.[2]

S. 92, Note 1.

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

93*. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

S. 93.

1. Scope of the section.—A Magistrate is competent, under this section read with S. 90 *ante* to admit to bail a recalcitrant witness against whom he may legally issue a warrant of arrest under S. 90.[1]

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*(CODE OF 1882—S. 93.)

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter, relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

(CODE OF 1872—S. 158, Para. 1 and S. 185.)

Provisions in this chapter, as to form, service and issue of summons applicable to all summonses.

158. The provisions relating to summons, its issue and service, contained in this chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

185. The provisions relating to a warrant and its execution, contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

(CODE OF 1861—Ss. 75 and 99.)

Provisions in this Chapter relating to a summons and its issue applicable to all summonses.

75. The provisions relating to a summons and its issue contained in this Chapter, shall be applicable to every summons issued under this Act.

Provisions in this Chapter relating to a warrant and its issue applicable to all warrants.

99. The provisions relating to a warrant and its issue contained in this Chapter, shall be applicable to every warrant issued under this Act.

Section 92—Note 1.

(1) (1919) 1919 All. 158 (158, 159), *Gurdin v. Emperor*.

(2) (1916) 17 Cri. L. Jour. 132 (133): 1916 Mad. 1063: 38 Mad. 1088, Re *Karuthan Ambalam*.

Section 93—Note 1.

(1) (1881) 2 Weir 39 (39).

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A—Summons to Produce.

S. 94.

Summons to produce document or other thing

94*. (1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer, a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

***(CODE OF 1882—S. 94.)**

CHAPTER VII.

Of processes to compel the production of Documents and other moveable property and for the Discovery of persons wrongfully confined.

A.—Summons to produce.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Summons to produce document of other thing.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, Ss. 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

S. 94.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

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(CODE OF 1872—S. 365.)

Of securing Documentary evidence.

Procedure for obtaining production of document required as evidence.

365. Whenever an officer in charge of a police-station, or any Court, considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, such officer or Court may issue a summons to the party in whose keeping such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

(CODE OF 1861—NIL.)

S. 94. Notes 1—3.

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1. **Legislative Changes.**—The words "or any parcel or thing" in sub-S. 3 were newly added in the Code of 1898.

2. **Scope of the section.**—Chapter VI *ante* deals with processes to compel *the personal attendance* of persons before the Court. This chapter deals with processes to compel the production of *documents or things* before the Court or a police-officer. In order, however, to compel the production of a document or thing before a Court or a police-officer, it is essential that such production is *considered necessary or desirable* for the purpose of any investigation, inquiry, trial or other proceeding under the Code by or before such court or officer.[1-a] But it is not necessary that such investigation, inquiry, trial or other proceeding should be *pending* before such court or officer at the time the process for production is issued. It may be issued even before proceedings of any kind are initiated and in view of an enquiry 'about to be made' by him under the Code.[1]

S. 257 *infra*, which provides that an accused person is entitled at the particular stage mentioned therein to apply to the Court to call for the production of any document or thing, does not control or limit the power of the Court to exercise its discretion in using the machinery provided by this section.[2] This discretion given by this section may be exercised in a trial under the provisions of Chapter 21 before the trial has reached the stage indicated by S. 257, *infra*.[3]

3. **"Court"—meaning of.**—*See* Note 3, to S. 96.

Section 94—Note 2.

(1-a) (1910) 11 Cri. L. Jour. 525 (526), *Hari Charan Goral* v. *Srish Chandra Sadhukhan*.
(1911) 12 Cri. L. Jour. 175 (177), *Mulchand* v. *King-Emperor*.
(1908) 7 Cal. W. N. 522 (524), *Purna* v. *Sashi*.
(1934) 1934 Nag. 142 (143): 30 Nag. L. R. 298, *Emperor* v. *Arakswami*.
(1935) 1935 Sind 13 (19), *Muhammad Rahim* v. *Emperor*.
(1) (1912) 13 Cri. L. Jour. 693 (700) (P.C.), *Clarke* v. *Brojendra* (Case under S. 96; but the same principle applies to this section also. In this view the cases in 22 Bom. 949 and 1897 Rat. 880 holding a contrary view must be deemed to be no longer good law).
(1935) 1935 Sind 13 (19), *Mohammad Rahim* v. *Emperor* (Any party may apply at any stage).
(2) (1935) 1935 Sind 13 (18, 19), *Mohammad Rahim* v. *Emperor*.
(3) (1935) 1935 Sind 13 (18, 19), *Muhammad Rahim* v. *Emperor*.

S. 94. Notes 4—7.

4. "Document or thing".—The words 'document or thing' are general and cover every document or thing provided the production and inspection thereof are considered necessary or desirable or will serve the ends of justice in any investigation, inquiry, trial or other proceeding before a court or police-officer.[1] In *H. H. the Nizam of Hyderabad* v. *Jacob*,[2] Ameer Ali J., observed as follows:—

"Having regard to the words of the section, it seems to me a Magistrate has the power of calling upon any person to produce any document or thing in that person's possession or power which has any connection with the offence which happens to be under investigation or enquiry. Of course he cannot call for anything and everything from anybody and everybody. The thing called for must have some relation to, or connection with, the subject matter of the investigation or inquiry or throw some light on the proceeding or supply some link in the chain of evidence".

Thus, the words "document or thing" will include not only documents or things which form the subject of the offence under investigation but also those which are or can be used as evidence in support of the prosecution.[3]

See also Note 7 under S. 96 *infra*. For definition of term 'document' see S. 3, Clause 16, General Clauses Act (Act X of 1897) and S. 3, Indian Evidence Act.

5. Effect of converting the thing the subject matter of an offence, into cash.—*A* was paid 1,70,000 rupees in 17 notes of Rs. 10,000 each. In respect of these notes *A* was accused of criminal breach of trust. The accused thereafter cashed 5 of these notes through a third party. On an application under this section against the accused and the third person for the production of this amount, it was held that if the proceeds could be reasonably *connected* with the subject matter of the charge, the Magistrate has power to order their production in Court.[1]

6. Is necessary or desirable.—The question whether the production of a document or thing is necessary or desirable is one to be decided by the Court before issuing the summons.[1] It may be that the document or thing called for, may turn out to be wholly irrelevant to the inquiry but so long as it is *considered* necessary or desirable for the purposes of the inquiry, the power is there.[2]

7. "Such Court".—It is only the Court or the police-officer before which or whom an investigation, inquiry, trial or other proceeding is pending or is about to take place that is competent to issue a summons under this section. Therefore, a Magistrate, cannot on a telegram from another Magistrate request-

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Note 4.

(1) (1914) 1914 Lah. 587 (590): 1914 Pun. Re. No. 36, *Municipal Committee* v. *Jhang* V. *Md. Hayat.*

(2) (1892) 19 Cal. 52 (64), *Nizam of Hyderabad* v. *Jacob.*

[See also (1889) 13 Mad. 18 (21), *Queen-Empress* v. *Mahant of Tirupathi* (They must have some important and material bearing on the case).]

(3) (1903) 5 Bom. L. R. 980 (982), *Lakhmidas Naranji*, In re.

(1934) 1934 Bom. 74 (76): 58 Bom. 152, *Lloyds Bank, Ltd.*, In re.

Note 5.

(1) (1892) 19 Cal. 52 (62), *Nizam of Hyderabad* v. *Jacob.*

Note 6.

(1) (1903) 5 Bom. L. R. 980 (982), *Lakhmidas Naranji*, In re.

(1888) 15 Cal. 109 (141), *Ahmed Mahomed*, In re.

[See also (1920) 1920 Cal. 349 (349): 47 Cal. 647, *Pratt* v. *King-Emperor.*]

(2) (1892) 19 Cal. 52 (64), *Nizam of Hyderabad* v. *Jacob.*

S. 94, Notes 7—12.

ing him to seize certain books of account of a person in the jurisdiction of the former issue a summons for their production before himself.[1]

8. "**May issue summons**".—The word "may" indicates that the issue of a summons under this section is in the *discretion* of the Court. The discretion is to be exercised judicially in the sense that, in determining whether the production of a particular document or thing is necessary or desirable, the Court has to satisfy itself that the document or thing has a bearing upon, and is relevant to the case.[1]

9. **To whom summons or order should be issued.**—The words of the section are of the widest possible character. Any person in whose possession or power a document or other thing which the Court considers necessary or desirable is, may be summoned to produce it.[1] It is not necessary that such person should be a *party* to the proceedings.[2] Thus the Court can make an order for discovery against a person *suspected* though not *accused* of an offence[2-a] or against a third party such as a solicitor[3] or against the police.[4]

10. **Where the document or thing is in the possession of an accused person.**—The word "person" in this section includes accused persons also.[1] An order for production under this section can therefore be made against such persons also[2] and this can be done notwithstanding that such production might tend to incriminate them.[3]

11. **Person having a lien on the thing ordered to be produced.**—The mere fact that the person in possession of the articles ordered to be produced, has a lien over them, does not affect the power of the Court to order their production and is not a sufficient reason for their non-production.[1]

12. **Summons or order to attend and produce.**—In making an order for production the Magistrate must exercise a judicial discretion and he should not make such an order unless there are materials before him to justify his doing so.[1-a] The summons should not be general in terms but distinctly specify the particulars of the documents or thing called for.[1]

Note 7.

(1) (1897) Rat. 880 (880), Re *Permanand* (So far as this case holds that the enquiry etc., must be *pending*, it is not good law in view of the Privy Council decision in 13 *Cri. L. Jour.* 693).

Note 8.

(1) (1903) 5 Bom. L. R. 980 (982), *Lakmidas Naranji*, In re.
(1934) 1934 Bom. 74 (76): 58 Bom. 152, *Lloyds Bank Ltd.*, In re.

Note 9.

(1) (1888) 15 Cal. 109 (122), *Ahmed Mahomed*, In re.
(2) (1892) 19 Cal. 52 (64), *Nizam of Hyderabad* v. *Jacob.*
(2-a) (1919) 1919 Lah. 207 (207), *Bhim Singh* v. *Emperor.*
(3) (1892) 19 Cal. 52 (64), *Nizam of Hyderabad* v. *Jacob.*
(4) (1925) 1925 Mad. 424 (425), *Chanlet*, In re (Order for production of inquest report for the purpose of granting copies to the accused).

Note 10.

(1) (1914) 1914 Lah. 587 (589): 1914 Pun. Re. No. 36, *Municipal Committee Jhang* v. *Muhammad Hayat* (Dissenting from 12 Cri. L. Jour. 98). [See also (1927) 1927 Cal. 93 (95), *Paresh Chandra* v. *Jogendra Nath Roy.*]
(2) (1918) 1918 Pat. 590 (592), *Damri Ram* v. *Emperor.*
(1887) 15 Cal. 109 (125, 141), *Ahmed Mahomed*, In re.
(1892) 19 Cal. 52 (64), *Nizam of Hyderabad* v. *Jacob.*
(1913) 20 Ind. Cas. 229 (230) (Cal.), *Bisser Misser* v. *Emperor* (12 Cri. L. Jour. 8 not followed).
(1927) 1927 Cal. 93 (95), *Paresh Chandra* v. *Jogendra Nath Roy.*
[But see (1908) 8 Cri. L. Jour. 224 (225) (Cal.), *Ishwar Chandra Ghoshal* v. *Emperor.*]
(3) (1912) 13 Cri. L. Jour. 493 (494): 37 Mad. 112, *Surey Kondareddi* v. *Emperor* (8 Cri. L. Jour. 224 not followed).

Note 11.

(1) (1892) 19 Cal. 52 (61), *Nizam of Hyderabad* v. *Jacob* (Referred to *R. V. O.'Dormall*, 7 *C. and P.* 138; *R.* v. *Rooney*, 7 *C. and P.* 515).

Note 12.

(1-a) (1888) 15 Cal. 109 (141), *Mohammad Jackariah* v. *Ahmad.*
(1) (1887) 15 Cal. 109 (135), *Muhammad Jackariah* v. *Ahmad.*

S. 94. Notes 13—16.

13. Person summoned if a witness.—A person summoned merely to produce a document or thing may cause it to be produced instead of himself attending the Court personally. Even when the person summoned merely to produce a document or thing appears in Court for its production, he does not thereby become a *witness* and he cannot be cross-examined unless and until he is cited as witness in the proceedings. See S. 139 of the Evidence Act.

14. Seizure of account books by the police.—A Magistrate on taking cognizance of a complaint, may if he thinks that any account books forming the subject matter of the charge, are necessary or desirable for the purposes of an enquiry or trial thereon, issue a *summons* for their production under this section but he is not competent to pass an order directing the police to take possession of the same.[1]

15. Inspection of things or documents produced.—The jurisdiction of the Court to order the production of a document or thing carries with it the jurisdiction to allow the parties to *inspect* the documents or things produced[1]; but the inspection must be made in Court after their production and not in any other place. Thus where the accused kept his account books in his Solicitor's office, the Magistrate cannot make an order for inspection thereof in the Solicitor's office. They must first be produced in Court.[2] The inspection ought to be made in the presence of the person producing the document or thing and the Magistrate should give definite instructions as to where and when the inspection is to be held and by which officer.[3]

16. Documents produced, if can be compelled to be put in evidence.—S. 163 of the Evidence Act enacts as follows:—"When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so."

It has been held in the case cited below[1] that this rule does not apply to *criminal proceedings* the reason being that the Civil Procedure Code makes specific provision for inspection of documents of the opposite party under certain circumstances, while the Criminal Procedure Code is silent on the matter. It has accordingly been held that when the accused is summoned to produce a document under this section and the same is inspected by the prosecution the accused cannot insist upon the prosecution putting it in evidence and that it is for the prosecution to determine whether it is to be put in evidence or not.

(1911) 12 Cri. L. Jour. 8 (9): 38 Cal. 304, *Baj Rangi Gope* v. *Emperor.*

Note 14.

(1) (1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Hari Charan Goral* v. *Girish Chandra Sadukhan.*

Note 15.

(1) (1888) 15 Cal. 109 (128, 143), *Muhammad Jackriah* v. *Ahmad* (The prosecution was allowed to inspect).

(1914) 1914 Lah. 587 (588), *Municipal Committee Jhaung* v. *Muhammad Hayat* (Do.).

(1935) 1935 Sind 13 (20), *Muhammad Rahim* v. *Emperor.*

(2) (1903) 5 Bom. L. R. 978 (980), In re *Lakhmidas.*

(3) (1920) 1920 Cal. 349 (350), *Pratt* v. *Emperor.*

Note 16.

(1) (1888) 15 Cal. 109 (126, 143), *Mohammad Jackariah* v. *Ahmad.*

[See also (1933) 1933 Bom. 65 (65): 60 Cal. 341, *Sham Das Kapur* v. *Emperor* (A case under S. 164 of the Evidence Act).]

S. 94, Notes 17—22.

17. **Security for production.**—The section does not enable a court to demand security for the production of the articles, when required. The Court can only issue a summons for their production in Court.[1]

18. **Ss. 123 and 124, Evidence Act.**—The sections referred to, are as follows:—

Section 123.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Section 124.—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

19. **"Parcel or thing"—in custody of Postal or Telegraph authorities.**—The words "or any parcel or thing" are new. As to the production of any letter or postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authorities, see S. 95 *infra*.

20. **Form of summons—Summons to produce public records.**—See Rules framed by the various High Courts under S. 554 of the Code. According to the Rules of the Bombay High Court a Magistrate requiring the production in evidence of documents recorded in a Court of Justice or in the custody of any public officer, should in his communication to such Court or officer state clearly whether he requires the entire records or any particular paper or papers; also at what time and place the papers, if not previously sent by post, must be produced and whether any Subordinate officer will be required to attend for the purpose of proving them. The communication should be signed and sealed in the same way as a summons. As a rule it is not desirable that a Magistrate should send for the original papers in which copies will serve the purpose and in which the person requiring the production of the papers is in a position to obtain certified copies[1] (Bom. H. C. Cir. Orders 1931, Page 38, S. 43.).

21. **Effect of non-compliance with an order under the section.**—If the summons under this section is not complied with, a search warrant may be issued under S. 96.[1] Failure to attend and produce the document or thing summoned for, is punishable under S. 175 of the Penal Code. But where a summons is issued without the Court considering it necessary or desirable for the purposes of any investigation, trial or other proceeding, it is illegal and a disobedience thereof is not punishable under S. 175 of the Penal Code.[2]

22. **Revision.**—The High Court has ample powers under Ss. 435 and 439 to interfere in revision where a Magistrate has either refused to exercise a discretion vested in him by law or has exercised that discretion in an improper

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Note 17.

(1) (1903) 7 Cal. W. N. 522 (524), *Purna Chandra* v. *Sashi Bhusan.*

Note 20.

(1) Bom. H. R. No. 45: Gaz. 1879 pp. 471-475.

Note 21.

(1) (1903) 5 Bom. L. R. 978 (979), *Lakhmidas*, In re.
(1888) 15 Cal. 109 (122), *Ahmed Mahomed*, In re.
(1914) 1914 Lah. 587 (589): 1914 Pun. Re. No. 36, *Municipal Committee Jhaung* v. *Muhammad Hayat.*
(1912) 13 Cri. L. Jour. 493 (494): 37 Mad. 112, *Surey Konda Reddy* v. *Emperor.*
(2) (1918) 1918 Pat. 590 (592), *Damri Ram* v. *Emperor.*

manner or on improper grounds. Therefore where a Magistrate refused erroneously to make an order for production of certain currency notes in the possession of the accused and his Solicitor, the High Court set aside the order and directed the Magistrate to proceed according to law.[1] S. 94, Note 22.

95.* (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs. S. 95.

Procedure as to letters and telegrams.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

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*(CODE OF 1882—S. 95.)

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court, or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

Procedure as to letters and telegrams.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for, and to detain, such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

(CODE OF 1872—S. 369.)

369. The last preceding section shall not authorize any Magistrate, other than the Magistrate of the District, to grant a search warrant for a letter in the custody of the Postal Department;

Procedure as to letter in custody of Postal department.

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for and to detain any such letter, pending the orders of the Magistrate of the District; and the Magistrate of

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Note 22.

(1) (1892) 19 Cal. 52 (60), *Nizam of Hyderabad* v. *Jacob.*

S. 95, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
SCOPE	2

1. **Legislative History**.—There was no provision in the Code of 1861 corresponding to this section. The second paragraph of S. 369 of the Code of 1872 provided for the causing of a search and the delivery of, any *letter* in the custody of the *postal* department. There was a similar provision in S. 146 of Act IV of 1877 which applied to the Presidency towns to which the Code of 1872 did not apply.

Difference between the Codes of 1872 *and* 1882.—The Code of 1882 enacted the provisions of S. 369, Cl. 2 of the Code of 1872 and S. 146 of Act IV of 1877, in S. 95 with the following material changes.

(1) The word "*document*" was substituted for the word "*letter*" so as to include letter, post card, telegram or any other document.

(2) The words "*investigation inquiry, trial or other proceeding*" for the words "*criminal inquiry*" is consequent on a similar change in S. 94 *supra*.

(3) The *High Court* and the *Court of Session* were newly invested with power to act under this section.

Difference between the Codes of 1882 *and* 1898.—The section remains same except for the addition of the words "*parcel or thing*" after the word "*document*" whenever it occurs in the section.

2. **Scope.**—*See* S. 96, Note 8.

B—Search Warrants.

S. 96.

When search warrant may be issued.

96.* (1) Where any Court has reason to believe that a person to whom a summons or order under S. 94 or a requisition under S. 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition, or

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the District may, if he thinks fit, direct the Postal authorities to deliver up any such letter.

(CODE OF 1861—Nil.)

***(CODE OF 1882—S. 96.)**

96. Where any Court has reason to believe that a person to whom a summons or order under S. 94, or a requisition under S. 95, Para. 1, has been or might be addressed, will not or would not produce the document or other thing as required by such summons or requisition,

When search-warrant may be issued.

or where such document or other thing is not known to the Court to be in the possession of any person.

where such document or thing is not known to the Court to be in the possession of any person, or S. 96

where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

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or where the Court considers that the purposes of any inquiry, trial, or other proceeding under this Code, will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph Authorities.

(CODE OF 1872—Ss. 366, 368, Paras. 1 to 3, S. 369, Para. 1.)

When warrant for search for documents may issue.

366. If there appears reason to believe that the person to whom the summons is addressed will not produce it as directed in the summons, such officer or Court may issue a search-warrant for the document in the first instance.

CHAPTER XXVII.

OF SEARCH-WARRANTS.

Search-warrant when grantable.

368. When a Magistrate considers that the production of anything is essential to the conduct of an inquiry into an offence known or suspected to have been committed, or to the discovery of the offender,

or when he considers that such inquiry or discovery will be furthered by the search or inspection of any house or place,

he may grant his search-warrant; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate of the District.

Procedure as to letter in custody of Postal Department.

369. The last preceding section shall not authorize any Magistrate, other than the Magistrate of the District, to grant a search-warrant for a letter in the custody of the Postal Department.

S. 96. *SYNOPSIS.*

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LEGISLATIVE CHANGES	1
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(CODE OF 1861—S. 114.)

CHAPTER VIII.

OF SEARCH-WARRANT.

When grantable by a Magistrate.

114. When a Magistrate shall consider that the production of anything is essential to the conduct of an enquiry into an offence known or suspected to have been committed, he may grant his warrant to search for such thing; and it shall be lawful for the officer charged with the execution of such warrant to search for such thing in any house or place within the jurisdiction of such Magistrate.

Other Topics.

Complainant should be examined on oath. See Note 10, Pt. 1.
Condition precedent to issue of search. See Note 4, Pt. 4.
Delay in search. See Note 10, Pt. 5.
Magistrate may act on credible information. See Note 10, Pt. 4.
Proceedings of Magistrate not empowerd. See S. 8.
Search-warrants before proceedings are initiated. See Note 3, Pt. 3.
Stay of execution. See Note 18, Pt. 2.
Telegram cannot be acted upon. See Note 10, Pt. 3.
What Magistrates empowered. See Note 11, Sch. III, Cl. 8.

1. Legislative Changes.—

Difference with reference to the Code of 1882.—The words "Parcel or other thing" in the last paragraph of the section are new.

Difference with reference to the Code of 1872.—

(1) Under S. 366 of the Code of 1872, a search warrant could be issued in respect of a *document* only where a summons has *actually been issued* for its production. Under this section it may be issued if the Court has reason to believe that a person *who might be addressed* would not produce the document.

(2) Under S. 368 of the Code of 1872, a search warrant in respect of a *thing* could be issued only where the Magistrate considers it necessary for an enquiry *into an offence* known or suspected to have been committed. Under the present section read with Ss. 94 and 95 it may be issued where it is considered necessary for the conduct of any *enquiry, trial,* or *other proceeding* under the Code.

2. Scope of the section—

The following are some of the other provisions of the Code relating to searches:—

(1) Ss. 47 to 50—Search of place entered by persons sought to be arrested.

(2) Ss. 51 and 52—Search of arrested persons.

(3) S. 98—Search for stolen property, forged documents, etc.

(4) S. 99-A—Search of certain forfeited publications.

(5) S. 100—Search of persons wrongfully confined.

(6) S. 105—Search in the presence of a Magistrate in cases in which the latter can issue a search warrant.

(7) S. 165—Search by police officers.

This section deals with the issue of search warrants by a Court for the search for a document or thing required for the purposes of any investigation, enquiry or trial (for the production of which an order may be made under Ss. 94 or 95 *ante*) or for making a *general* search. Thus the first two clauses of sub-S. 1, relate back to and are governed by the provisions of Ss. 94 and 95

S. 96, Notes 2—4.

ante,[1] *but* the third clause which provides for a general search is independent of those sections.[2] A search warrant under this section can be issued only when the Court has reason to believe

(1) that the person who is or might be summoned or requisitioned to produce a document under Ss. 94 and 95 *ante* will not or would not produce it or

(2) that the document or thing is not known to be in the possession of any person or

(3) that a general inspection or search is necessary.

3. "Court".—For the sake of brevity the Code uses the terms "Court" and "Magistrate" generally, if not always, as convertible terms.[1] In other words a Magistrate acting judicially is a Court within the meaning of the Code.[2] It has been held by their Lordships of the Privy Council that it is not necessary that in order that action may be taken under this section, there should be any proceedings *pending* before such Magistrate, and that Schedule V, Form 8 shows that a search warrant may be issued before proceedings of any kind are initiated and in view of an enquiry *about to be made*.[3] In view of this decision the undermentioned cases[4] holding a contrary view are no longer law.

4. "Has reason to believe".—The act of issuing a search warrant is a judicial act[1-a] and therefore, before issuing it, the Magistrate is bound to apply his mind to the facts and weigh the circumstances and then make up his mind on the question.[1] A mere statement in an affidavit that, in the opinion of the deponent, a summons may not have the desired effect[2] or a mere statement by a police-officer that it is necessary to issue a search warrant[3] is not sufficient to justify the issue of a search warrant. As has been seen in Note 2 *ante* it is a *condition precedent* to the issue of a search warrant under this section that one or other of the circumstances mentioned in the section should exist.[4] In the absence of any such circumstances, the issue of a search warrant would be illegal.[5]

Section 96—Note 2.

(1) (1898) 22 Bom. 949 (956), In re *Harilal Buch* (Overruled on another point by 13 Cri. L. Jour. 693).
(1890) 13 Mad. 18 (20), *Empress* v. *Mahant of Tirupati.*
(2) (1934) 1934 Bom. 104 (106), In re *Mahmed Tabir.*

Note 3.

(1) (1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953 (P. C.), *Clarke* v. *Brojendra Kishore Roy* (Reversing 2 Ind. Cas. 436 which confirmed on appeal 12 Cal. W. N. 973).
(1916) 36 Ind. Cas. 171 (173): 1916 Lah. 281, *Abdul Aziz* v. *Emperor.*
(2) (1919) 1919 Mad. 620 (622): 42 Mad. 96, In re *Penchulu Reddi.*
(3) (1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953 (P. C.), *Clarke* v. *Brojendra Kishore Roy.*
(4) (1898) 22 Bom. 949 (956), In re *Harilal Buch.*
(1908) 8 Cri. L. Jour. 235 (240): 35 Cal. 1076, *Rash Behari Lal Mondal* v. *Emperor.*

Note 4.

(1-a) (1912) 13 Cri. L. Jour. 693 (701): 39 Cal. 953 (P. C.), *Clarke* v. *Brojendra Kishore Roy.*
See also cases cited in F.-N. (1), *infra.*
(1) (1917) 41 Ind. Cas. 661 (661): 1918 Mad. 587, *Iyavoo Chetty* v. *Jehangir.*
(1888) 15 Cal. 109 (134), In re *Ahmed Mahomed.*
(1920) 1920 Cal. 43 (44): 47 Cal. 597, *Pratt* v. *Emperor.*
(1867) 8 Suth. W. R. 74 (77), *Queen* v. *Syed Hossain* (It is the Magistrate alone and not the person directed to make the search that has to determine it).
(1903) 5 Bom. L. R. 980 (982), Re *Lakshmidas Naranji*
(2) (1917) 41 Ind. Cas. 661 (661): 1918 Mad. 587, *Iyavoo Chetty* v. *Jehangir M. Holmes.*
(3) (1920) 1920 Cal. 43 (44): 47 Cal. 597, *Pratt* v. *Emperor.*
(1929) 1929 Lah. 837 (838), *Ghai and Co., Ltd.* v. *Emperor.*
(4) (1903) 5 Bom. L. R. 1032 (1033), In re *Manekji Sorabji Captain.*
(1911) 12 Cri. L. Jour. 175 (177), *Mulchand* v. *Emperor.*
(5) (1916) 32 Ind. Cas. 652 (653): 1916 Lah. 274, *Mohammad Jackariah* v. *Ahmed.*

S. 96, Notes 5—9.

5. Record of reasons.—There is no express provision requiring the Magistrate to make a record or keep notes of the materials upon which he has acted in issuing a search warrant under this section. But it is necessary that some such record ought to be kept to enable the High Court to form an opinion as regards the materials upon which the Magistrate has acted.[1]

6. 'Person' if would include an accused person.—Reading this section with S. 94 *ante*, it will be clear that the word 'person' in this section will include accused persons also.[1] A search warrant can therefore be issued against an accused person also if the circumstances specified in the section exist.[2]

7. "Document or thing".—See note 4 to S. 94 *ante*. These words are general and when the premises to be searched are those of an accused person, the warrant need not be only for the finding of the document, etc., in respect of which the alleged offence has been committed and may be for any document or thing, the production and inspection of which are necessary and desirable or will serve the ends of justice.[1-a] A woman is not a "thing" within the meaning of this section.[1] It has also been held in a case under S. 165 of the Code that the word "thing" would not include the configuration of a wall or any place inside a house.[2]

8. Document etc., in the custody of Postal or Telegraph authorities.—It is only the District Magistrate in the moffussil and the Chief Presidency Magistrate in the Presidency Towns that can issue a search warrant under this section for a document or thing in the custody of Postal or Telegraph authorities. If any other Magistrate issues such a search warrant, his proceedings are void under S. 530, Cl. (*b*).

9. General search or inspection.—There was no provision for the issue of a general search warrant under the Code of 1861. A search warrant could be issued under that Code only for a specified and particular thing.[1] Under this section, however, there is a specific provision in the third clause of sub-S. 1 permitting the issue of such a warrant. A search may now be instituted on the chance of finding something which may prove useful in the case.[1-a] But a general search warrant can only be issued if the Court considers that the purposes of any enquiry, trial or other proceeding *under the Code*

(1887) 15 Cal. 109 (141), In re *Ahmed Mohamad*.

[See also (1920) 1920 Cal. 352 (353), *Jagannath* v. *Emperor* (*Per* Choudhuri, J.).]

Note 5.

(1) (1920) 1920 Cal. 352 (353), *Jagannath* v. *Emperor* (*Per* Choudhuri, J.).

[See also (1917) 1918 Mad. 587, *Iyavoo Chetty* v. *Jehangir*.

(1916) 1916 Lah. 274, *Piyare Lal* v. *Thakar Dat Sharma*.]

Note 6.

(1) See Note 9 to S. 94, *ante*.
(1914) 1914 Lah. 587 (590): 1914 P. R. 36, *Municipal Committee Jhang* v. *Muhammad Hayat*.

(2) (1914) 1914 Lah. 587 (589): 1914 Pun. Re. No. 36, *Municipal Committee Jhang* v. *Md. Hayat* (Dissenting from 12 Cri. L. Jour. 98).

(1888) 15 Cal. 109 (125, 141), In re *Ahmed Mahomed*.

Note 7.

(1-a) (1914) 1914 Lah. 587 (590): 1914 P. R. 36, *Municipal Committee Jang* v. *Muhammad Hayat*.

(1) (1907) 6 Cri. L. Jour. 38 (39), *Bisu* v. *Halder*.

(2) (1928) 1928 All. 185 (186), *Jagannath* v. *Emperor*.

Note 9.

(1) (1867) 8 Suth. W. R. 74 (77) (Cr.), *Queen* v. *Syed Hossain Ali Chowdhury*.

(1-a) (1934) 1934 Bom. 104 (106), In re *Mahmed Tahir*.

S. 96, Notes 9—10.

would be served by such search.[1-b] Such a proceeding need not, however, be actually pending at the time of issuing the warrant. A warrant may be issued for the purposes of an enquiry about to be made.[1-c]

In Form 8, of Schedule V no doubt the words "Specify clearly" occur, but the forms in the schedule are to be used only with such variation as the circumstances of the case may require.[2] It has, however, been held in the undermentioned case[3] that a search warrant is intended for use only in respect of *definite documents* believed to exist which must be clearly *specified* in the warrant. The decision does not refer to the third clause of sub-S. 1 of the section and is against the plain wording thereof. It is submitted that it cannot be accepted as correct.

10. 'May' issue a search warrant.—The word 'may' indicates that the issue of a search warrant under this section is in the *discretion* of the Court. In exercising this discretion, it is the duty of the Court, in the first instance to consider if a summons to produce would not have the desired effect. The Court should remember that it is a grave step to issue a search warrant directing that a man's house should be invaded and searched, and that such power should not be exercised without full appreciation of the gravity of the step and without coming to the conclusion that it is really necessary in the ends of justice. Where a search warrant is sought to be issued on the basis of any information furnished to the Magistrate the Court should if possible examine the informant on oath and if such examination is not possible the Court should act with due appreciation of the fact that it is taking upon itself the responsibility of considering the weight of the information as information preparatory to issuing an order of a very serious nature. Where the order is sought to be made on the basis of a complaint, the complainant should be examined on oath under S. 200 *infra* before issuing the order.[1] A mere statement of counsel on behalf of a prosecuting complainant[2] or a mere application by the police based on a telegram received by them[3] should not be treated as information on which a Magistrate is entitled to act. But it is not necessary, where action is taken on a complaint, that the Magistrate should wait until a preliminary enquiry is held and all the witnesses for the prosecution are examined and cross-examined.[4] Sometimes a delay in issuing the warant may tend to defeat the purpose for which the warrant is issued. In such cases it should be issued as early as possible. Where, in a case of theft, an application was made for the issue of a search warrant with the object of securing for the purpose of the trial,

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(1-b) (1934) 1934 Bom. 104 (107), In re *Mahmed Tahir* (Search warrant for purposes of inquiry by Customs Authorities under Sea Customs Act illegal).

(1-c) (1934) 1934 Bom. 104 (107), In re *Mahmed Tahir*.

(1920) 1920 Cal. 352 (353), *Jagannath* v. *Emperor* (*Per* Newbould, J., search warrant may be issued during police investigation—Chaudhuri, J., *contra*).

(2) [See S. 555, *infra*.]

(3) (1916) 36 Ind. Cas. 591 (592): 1917 Low. B. 131: 9 L. B. R. 45, *Moideen Brothers* v. *Eng Thaung*.

Note 10.

(1) (1911) 12 Cri. L. Jour. 175 (177), *Mulchand* v. *Emperor*.

[See also (1910) 11 Cri. L. Jour. 535 (536), In re *Sivagurunatha Pillai*.

(1926) 1926 Cal. 966 (969): 53 Cal. 718, *Walvekar* v. *Emperor* (Case under Calcutta Police Act IV of 1866. Search warrants are always open to very serious objections and very great particularity is justly required by law in cases where they are authorised before the privacy of a man's premises is allowed to be invaded by the minister of the law).]

(2) (1911) 12 Cri. L. Jour. 175 (178) (All.), *Mulchand* v. *Emperor*.

(3) (1898) 22 Bom. 949 (956), In re *Harilal Buch*.

(4) (1890) 13 Mad. 18 (20), *Queen-Empress* v. *Mahant of Tirupati*.

identification of the property and to ascertain whether it was really in the possession of the accused, it was held that a delay of three weeks in the issue of the warrant was not proper.[5]

11. Who may issue warrant.—All Magistrates including a third class Magistrate are empowered to issue search warrants under this section.[1]

12. Seizure without search warrant.—An Order calling upon the police to take possession of account books in the possession of a certain person without issuing a search warrant is illegal.[1]

When properties not mentioned in the warrant have also been seized and produced before the Court, they cannot be considered to be property before the Court.[2]

13. Search warrants for the purposes of attachment.—When property not alleged to be stolen, is in the hands of third parties a search warrant for their production can only be for the purposes of evidence and ought not to be granted for the sole purpose of attaching property the title to which is in dispute.[1]

14. Search warrant under Special or local Laws.—There are some Special and Local Acts empowering the issue of search warrants under specified circumstances, to which the provisions of this Code relating to searches apply. These may be classified under two heads viz.,

(1) Where the Acts themselves provide for the adoption, of the procedure laid down in this Code and

(2) Where the Acts make no such provision but where the procedure under this Code has been held to apply to searches under this Act.

Acts which provide for the adoption of the procedure of the Code:—

(*a*) The Indian Explosives Act IV of 1884. S. 7.
(*b*) The Forest Act VII of 1878. S. 71.
(*c*) The Opium Act I of 1878. S. 16.
(*d*) The Poisons Act XII of 1919. S. 7.
(*e*) The Press (Emergency Provisions) Act XXIII of 1931. S. 29.
(*f*) The Prevention of Cruelty to Animals Act XI of 1890. S. 8.
(*g*) The Bengal Excise Act V of 1909. S. 81 to the extent prescribed.[1]
(*h*) The Bihar and Orissa Excise Act II of 1915. S. 85.
(*i*) The Bihar and Orissa Opium Smoking Act II of 1928. S. 10.
(*j*) The Bombay Abkari Act V of 1878. S. 40.

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(5) (1919) 1919 Cal. 959 (960), *Bilal Roy* v. *Ramgopal.*

Note 11.

(1) See Schedule III, *infra*.

Note 12.

(1) (1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Haricharan* v. *Girish.*
(2) (1887) 15 Cal. 109 (144), *Mahomed Jackariah* v. *Ahmed.*

Note 13.

(1) (1893) 1893 Rat. 677 (679), In re *Banji Jussa.*

Note 14.

(1) [See however (1927) 1927 Cal. 527 (528): 54 Cal. 601, *Haribhajjan Sao* v. *Emperor* (Where S. 81 seems to have been overlooked).]

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(*k*) The Bombay Salt Act II of 1890. S. 40.
(*l*) The British Baluchistan Forest Regulation V of 1890. S. 35
(*m*) The Burmah Forest Act IV of 1892. S. 74.
(*n*) The Upper Burmah Ruby Regulation XII of 1887. S. 9.
(*o*) The Madras Abkari Act I of 1886. S. 30.
(*p*) The Madras Forest Act V of 1882. S. 59.
(*q*) The Madras Salt Act IV of 1889. S. 51 to the extent prescribed.
(*r*) The Punjab Excise Act I of 1914. S. 50.
(*s*) The Punjab Opium Smoking Act VI of 1923. S. 11.
(*t*) The United Provinces Excise Act IV of 1910. S. 54 to the extent prescribed.[2]
(*u*) The United Provinces Opium Smoking Act II of 1925. S. 10.
(*v*) The Central Provinces Excise Act II of 1915. S. 58.

Acts which do not provide for the adoption of the procedure of the Code:—

In respect of these the procedure to be adopted is that prescribed by the Code subject to the provisions of the said Acts.[3]

(*a*) The Indian Arms Act XI of 1878. Ss. 25 and 30.[4]
(*b*) The Indian Copyright Act III of 1914.[5]
(*c*) The Indian Public Gambling Act III of 1867. S. 5.[6]

It was held in the undermentioned case[7] that S. 5 of the Gambling Act provides for a special procedure for searches and consequently, under S. 5 of the Code, the provisions of the Code as regards searches will not apply. See also the undermentioned Acts and cases.[8]

15. Search for persons in wrongful confinement.—*See* S. 100 *infra.*

16. Search under the Indian Arms Act.—*See* S. 25 of the Indian Arms Act (Act XI of 1878). As a preliminary condition to the exercise of the power of a Magistrate to cause a search to be made under that section, it is necessary for the Magistrate to *record his grounds of belief* that arms are kept for an unlawful purpose. If this condition is not complied with the search under that would be illegal.[1] A Magistrate issuing a search warrant under S. 25 of the Arms Act must be taken to be acting as a Court.[2]

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(2) (1927) 1927 Oudh 132 (133): 1 Luck. 301, *Ali Abbas* v. *Emperor.*
(3) See S. 5 of the Code *ante* and the cases cited below under the respective Acts.
[See also (1907) 6 Cri. L. Jour. 60 (66): 31 Bom. 438.]
(4) (1919) 1919 Mad. 620 (621): 42 Mad. 96, In re *Penchulu Reddi.*
(1909) 2 Ind. Cas. 436 (437, 452): 36 Cal. 433, *Clarke* v. *Brojendra Kishore Roy* (Reversed on another point by the Privy Council in 13 Cri. L. Jour. 693).
(5) (1920) 1920 Cal. 83 (85): 47 Cal. 164, *Kishori Mohan Bagchi* v. *Haridas Basak.*
(6) (1908) 7 Cri. L. Jour. 19 (21): 30 All. 60, *Emperor* v. *Kashinath.*
(7) (1922) 1922 Lah. 458 (459): 3 Lah. 359, *Khilinda Ram* v. *Emperor.*
[See also (1895) 1895 Pun. Re. Cr. No. 22, pp. (59, 60), *Vir Singh* v. *Empress* (Officer named in the warrant—He should himself execute it—S. 79 of the Code does not apply).]
(8) (1935) 1935 Mad. 98 (100), *P. R. Subbier* v. *Emperor* (Madras Police Act, S. 42—Search warrant by Deputy Commissioner—Provisions of S. 96 of Code not applicable).

Note 16.

(1) (1909) 2 Ind. Cas. 436 (438, 440): 36 Cal. 433, *Clarke* v. *Brojendra Kishore Roy* (This view was upheld in appeal in 13 Cri. L. Jour. 693, but the decision was reversed on another point).
(2) (1919) 1919 Mad. 620 (622): 42 Mad. 96, In re *Penchulu Reddi.*

S. 96, Notes 17—21.

17. Search warrant when may be executed.—This section does not require that a search under this section should be made only by day light. But in view of the advantages of searching by day light whenever possible, the rules and regulations framed under S. 12 of the Indian Police Act (V of 1861) in the various provinces have prescribed that as far as possible searches after dark should be avoided.[1]

18. Security for production.—As has been seen in Note 17 to S. 94 that section does not enable a Court to demand security for the production of the article when required. This section also does not enable the Court to demand such security.[1] However, when once it has acted under this section and a search warrant has been issued, the Court can stay execution of the warrant conditionally on the execution of the bond by such person for production of the articles in Court whenever called upon.[2]

19. Inspection.—Having regard to the language of S. 97, the word "inspect" in Cl. 3 of the section applies only to a locality or place but not to a document or other thing.[1] But the right of seizure of documents or things implies and carries with it the right of inspection.[2] The documents or things must however be brought to the Court before they are allowed to be inspected,[3] and inspection should be allowed in Court or where and when the Court orders and in the presence of the person concerned,[4] and not at the office of the pleaders of the accused.[5] The inspection must be limited to the books etc., named in the search warrant and cannot be had of other books etc., seized under it.[6]

20. Power to search includes power to take into possession.—There is no express mention in this section or anywhere in the Code that the person to whom the search warrant is directed can seize and take possession of the thing found on search. But an examination of Ss. 94 to 96 and of S. 165 *infra* and the form of the search warrant, make it clear that the intention of the law is that the power to search includes the power to take into possession.[1]

21. Power to invoke aid in reading documents.—A Criminal Court has the power not only to seize and have produced before it any document etc., but also to invoke the aid of persons capable of helping it to read and understand the contents of the document, books etc., so produced.[1]

Note 17.

(1) See for example the Bengal Police Regulations 1927, R. 233 (5); The Central Provinces Police Manual, 1931 para. 740; The Bihar and Orissa Police Manual, 1930, R. 165 (b).

Note 18.

(1) (1903) 7 Cal. W. N. 522 (524), *Purna Chandra Bandopadhya* v. *Sri Bhusan Mallick.*

(2) (1920) 1920 Cal. 83 (85): 47 Cal. 164, *Kishori Mohan* v. *Hari Das.*

Note 19.

(1) (1888) 15 Cal. 109 (124), In re *Ahmed Mahomed.*

(2) (1908) 5 Bom. L. R. 980 (982), Re *Lakshmidas Naranji.*

(1888) 15 Cal. 109 (128, 143), In re *Ahmed Mahomed.*

(1929) 1929 Cal. 176 (176), *Ayoj Krishna* v. *S. G. Bose.*

(1914) 1914 Lah. 587 (590), *Municipal Committee, Jhang* v. *Mohd. Hayah.*

(3) (1888) 15 Cal. 109 (144), In re *Ahmed.*

(4) (1920) 1920 Cal. 349 (350): 47 Cal. 647, *Pratt* v. *Emperor.*

(5) (1903) 5 Bom. L. R. 978 (980), In re *Lakshmidas Narange.*

(6) (1888) 15 Cal. 109 (138, 144), In re *Ahmed Mohammad.*

Note 20.

(1) (1893) 1893 Rat. 677 (678), In re *Dhanji.*

(1888) 15 Cal. 109 (141), *Mahomed Jackariah* v. *Ahmed Mahomed.*

Note 21.

(1) (1914) 1914 Lah. 587 (590), *Municipal Committee, Jhang* v. *Mohd. Hayat.*

S. 96, Notes 22—27.

22. **Form of search warrant.**—See Sch. V, Form No. 8 *infra*.

23. **Who may make the search.**—S. 101 of the Code makes the provisions of S. 77 *ante* applicable to search warrants also. Under the latter section a warrant should ordinarily be directed to one or more police officers, and, when issued by a Presidency Magistrate should *always* be so directed; but any other Court issuing such a warrant, may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons. A warrant to a Collectorate Nazir where a police officer was available is illegal.[1] It is the person directed by the warrant, whether a police officer or otherwise, that should himself conduct the search, except as provided in S. 79 *supra* which authorises one police-officer to direct another police-officer whose name is endorsed on the warrant to execute the warrant.

As to the competency of Magistrates to conduct the search in person see Note 24 *infra*.

24. **Magistrate, if can search himself.**—A Magistrate who is competent to issue a search warrant is also competent to conduct the search himself or in his presence.[1] *See* Note 105 *infra*.

25. **Other than a District Magistrate.**—*See* Note 8 *supra*.

26. **Illegality of warrant or search.**—As to the effect of an illegality or irregularity in the search, on the trial itself, *See* S. 537 *infra*.

27. **Resistance to illegal search.**—There is a conflict of opinion as to whether and when a resistance to an illegal search is illegal. According to the Bombay High Court[1] and the Sind Judicial Commissioner's Court[2] and the Chief Court of Punjab[2-a] a resistance even to an illegal search is not justified if the officer was acting in good faith under colour of his office within the meaning of S. 99 of the Penal Code. The High Court of Allahabad seems also to be inclined to the same view.[3] On the other hand, the High Court of Calcutta has held that a resistance to an unauthorised search is justified.[4]

Note 23.

(1) (1867) 8 Suth. W. R. 74 (74, 77, 78), *Queen* v. *Syed Hossain*.

Note 24.

(1) (1884) 1884 All. W. N. 212 (213), *Empress* v. *Ganeshi*.
(1912) 13 Cri. L. Jour. 693 (700): 39 Cal. 953 (P. C.), *Clarke* v. *Brojendra Kishore Roy Choudury* (On appeal from 2 Ind. Cas. 436).

Note 27.

(1) (1870) 7 Bom. H. C. R. Cr. 50 (52), *Reg.* v. *Vyankatrav Shrinivas* (Search by police for *property* without search warrant).
(2) (1914) 26 Ind. Cas. 319 (322)): 1914 Sind 160: 8 Sind L. R. 1, *Mir Shah Nawaz Khan* v. *Emperor* (Search by police outside jurisdiction without search warrant).
(2-a) (1918) 14 Cri. L. Jour. 142 (143) (Lah.), *Emperor* v. *Gaman*.
(3) (1915) 16 Cri. L. Jour. 819 (821, 822): 1915 All. 430, *Emperor* v. *Bikhbhai* (*Bona fides* of officer not shown—Resistance was therefore justified).
(1929) 1929 All. 903 (903), *Fauira* v. *Emperor* (No hurt was caused to police officer during resistance. Therefore under the circumstances resister not held guilty of assault).
[See (1933) 1933 All. 620 (621): 55 All. 617, *Emperor* v. *Shib Lal* (Attachment by Amin acting honestly—He cannot be treated as robber).]
[But compare (1933) 1933 All. 759 (761), *Emperor* v. *Tohfa* (Illegal warrant —Resistance not offence).]
(4) (1911) 12 Cri. L. Jour. 8: 38 Cal. 304, *Bajrangi Gope* v. *Emperor* (Search without a search warrant but not coming under S. 98 or 165).
(1912) 13 Cri. L. Jour. 764 (765), *Prankhang* v. *Emperor* (Search without warrant and not under S. 165).
(1897) 24 Cal. 324 (329, 330), *Jagarnath Mandhata* v. *Queen-Empress* (A search for non-excisable articles under S. 4 of the Excise Act).
(1912) 13 Cri. L. Jour. 65 (75), *Pery Mohan Das* v. *Weston* (No search warrant).
(1907) 6 Cri. L. Jour. 38 (40), *Bisu Haldar* v. *Emperor* (Proceedings under S. 100—Search warrant issued deliberately under S. 96 and executed under S. 96—Illegal).

According to that Court the words "not strictly justifiable by Law" in S. 97 of the Penal Code point to cases where there is an excess of jurisdiction as distinct from a complete absence of jurisdiction, to cases where the official has done wrongly what he might have done rightly, not to cases where the act could not possibly have been done rightly.[5] Where a process issued under S. 100 was drawn up in the form prescribed for a warrant under S. 96[6] or under S. 98[7] *with the necessary alterations* it was held that there was only a defect in *form* and not in *substance* and that a resistance to such search is not justified. Similarly when an officer who had under the Abkari Act the power to make a search *after recording reasons* makes the search without making such record, a resistance thereto was held not to be justified.[8] S. 96, Notes 27—29.

See also S. 99 of the Penal Code.

28. Disposal of things produced.—*See* S. 517 *infra*. As to disposal of things found beyond jurisdiction.

See S. 99 *infra*.

29. Revision.—Unless an order for the issue of a search warrant is either illegal or vitiated by material irregularity the High Court will not interfere in revision and prevent the collection of material evidence in the interests of justice.[1]

97.* The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified. S. 97.

Power to restrict warrant.

***(CODE OF 1882—S. 97.)**

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Power to restrict warrant.

(CODE OF 1872—S. 368, Para. 4.)

The Magistrate issuing such warrant may, if he thinks fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer charged with the execution of such warrant shall then search or inspect only the house, place or part so specified.

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(5) (1907) 6 Cri. L. Jour. 38 (40), *Bisu Haldar* v. *Emperor*.

(6) (1918) 1918 Cal. 74 (75): 44 Cal. 905, *Superintendent of Legal Affairs* v. *Mozan*.

(7) (1912) 13 Cri. L. Jour. 186 (187): 39 Cal. 403, *Gurumeah* v. *Emperor*.

(8) (1896) 19 Mad. 349 (350), *Empress* v. *Pukoj Kotu*.

Note 29.

(1) (1890) 13 Mad. 18 (21), *Queen-Empress* v. *Mahant of Tirupathi*.

S. 97, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
SCOPE	2

1. **Legislative History**—

Difference between the Codes of 1861 *and* 1872.—The provisions of this section formed part of S. 114 of the Code of 1861 and was contained in para. 2 of S. 368 of the Code of 1872. The words "*If he thinks fit*", "*or inspection*" and "*and the officer charged. . . . so specified*" were newly introduced in the Code of 1872.

Difference between the Codes of 1872 *and* 1882.—The Code of 1882 enacted this provision under a separate S. 97 which made two changes only.

(1) The word "*Court*" was substituted for the word "Magistrate" used in both the previous Codes, in order to conform to a similar change in S. 96.

(2) The word '*House*' used in both the previous Codes was omitted, presumably because it is included in the word '*place*'.

Code of 1898.—The section remains the same in the Code of 1882.

2. Scope.—In the absence of the words "if it thinks fit" in S. 114 of the Code of 1861 it was held under that Code that the place to be searched must be specified in the warrant, and that a direction to search any house the officer thinks fit, rendered the warrant illegal.[1] This is no longer law in view of the words "if it thinks fit" in the present section.

S. 98.

Search of house suspected to contain stolen property, forged documents, etc.

98.* (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks neces-

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(CODE OF 1861—S. 114.)

114. * * * * * *

In such case the Magistrate may specify in his warrant the house or place, or part thereof, to which only the search shall extend.

***(CODE OF 1882—S. 98.)**

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information, and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

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Section 97—Note 2.

(1) (1867) 8 Suth. W. R. 74 (77), *Queen* v. *Syed Hossain*.

sary, has reason to believe that any place is used for the depo- S. 98.
sit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

or, if a District Magistrate, Sub-Divisional Magistrate or a Presidency Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place,

he may by his warrant authorize any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials *or of any such obscene objects* as aforesaid, and

(*d*) to convey such property, documents, seals, stamps coins, instruments or materials or *such obscene*

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to contain stolen property, forged documents, &c.

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

S. 98.

objects before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials *or such obscene objects*, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging, *or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported.*

(2) The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

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or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any police officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials,

shall, so far as they can be made applicable, apply respectively to— S. 98.

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889 [I of 1889] or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878 [VIII of 1878],

(*b*) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
PROCEDURE UNDER THE SECTION	2

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knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

(CODE OF 1872—S. 377.)

Search of house suspected to contain stolen property or forged documents.

377. If the Magistrate of the District, or a Magistrate of a Division of a District, or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any house or place is used as a place for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, or counterfeit Government stamps, or counterfeit coin, or instruments or materials for counterfeiting coin, or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin, or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any police officer above the rank of a constable to enter, with such assistance as may be required, and by force if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals, or coins, therein found, which he reasonably suspects to be stolen, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid.

S. 98, Note 1.

SYNOPSIS.

	Note No.
WHO CAN ISSUE A WARRANT UNDER THE SECTION ..	3
"UPON INFORMATION AND AFTER SUCH INQUIRY AS HE THINKS NECESSARY"	4
"BY WARRANT AUTHORISE"	5
FORM OF WARRANT	6
USE OF FORM UNDER THIS SECTION, FOR WARRANT UNDER ANOTHER SECTION	7
WHO MAY MAKE THE SEARCH	8
EXECUTION OF WARRANT OUTSIDE JURISDICTION ..	9
SEARCH WITHOUT WARRANT	10
"STOLEN PROPERTY" "FORGED DOCUMENTS," COUNTERFEIT COINS"	11
"PIECES OF METAL"	12
DISPOSAL OF THINGS FOUND IN SEARCH ..	13
NOTIFICATION UNDER S. 19 OF THE SEA CUSTOMS ACT OF 1878	14
SEARCH UNDER OTHER LAWS	15

Other Topics.

Scope of the section. See Note 4, Pt. 1. Warrant issued by a Magistrate not empowered. See Note 3. Whether the warrant can be endorsed. See Note 8, Pt. 1.

1. Legislative History—

Difference between the Codes of 1872 *and* 1882.—The provisions of both S. 377 of the Code of 1872 and S. 160 of Act IV of 1877 were enacted in S. 98 of the Code of 1882 with the following changes:

(1) The word '*house*' occurring in both the previous Codes was omitted as being included in the word 'place'.

(CODE OF 1861—S. 127.)

Search of house, etc., suspected to contain forged documents, &c.

127. If the Magistrate of the District or a Magistrate in charge of a division of a District, upon information and after such enquiry as he may think necessary, has reason to believe that any house or other place is used as a place for the deposit or sale of stolen property, or for the deposit or sale or manufacture of forged documents or counterfeit Government stamps or counterfeit coin, or instruments or materials for counterfeiting coin or for forging, or that any forged documents or counterfeit stamps or false seals or any counterfeit coin or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or other place, he may by his warrant authorize any police officer above the rank of a constable, peon, or burkundaz to enter, with such assistance as may be required, and by force if necessary, any such house or other place, and to search all such parts of the same as shall be specified in the warrant, and to seize and take possession of any stolen property, documents, stamps, seals, or coins therein found which he may reasonably suspect to be forged, stolen, false, or counterfeit, and also of any such instruments and materials as aforesaid.

(2) Clauses (*d*) and (*e*) were taken from S. 160 of Act IV of 1877 and added to the section. S. 98, Notes 1—8.

Difference between the Codes of 1882 *and* 1898.—Sub-S. 2 of the section was new.

Changes in 1925.—The additions to the section in the fourth para. of sub-S. 1 and in Clauses (*c*), (*d*) and (*e*) relating to "*obscene objects*" were made by the *Obscene Publications Act VIII of* 1925.

2. Procedure under the Section.—Under S. 101 the provisions of Ss. 43, 75, 77, 79, 82, 83 and 84 *ante* apply so far as may be to all searches under this section.

3. Who can issue a warrant under the section.—The section specifies the Magistrates that can issue a warrant under the section. A Magistrate not so specified cannot act under the section. Where, however, he does erroneously issue a warrant under the section in good faith, his proceedings will not be set aside merely on the ground of his not being empowered to do so. *See* S. 529 *infra*.

4. "Upon information and after such inquiry as he thinks necessary".—The pendency of any proceeding before the Magistrate is not a condition precedent to the issue of a search warrant.[1] The Magistrate can issue a warrant upon mere information and after such inquiry as he thinks necessary. When the Magistrate "is about to issue a search warrant on the strength of information as distinguished from a complaint, he should, if possible examine the informant on oath, and if evidence cannot be taken on oath, he should act with a due appreciation of the fact that he is taking upon himself the responsibility of considering the weight of the information, as information preparatory to issuing an order of a very serious nature".[2]

5. "By warrant authorise".—*See* Notes 6 to 11 below.

6. Form of warrant.—*See* Schedule V, Form No. 9.

7. Use of form under this section, for warrant under another section.—Where a form under this section is used for a warrant under S. 100 with necessary alterations, the defeat is only one of *form* and not in substance and a resistance to such a warrant is not justified.[1]

8. Who may make the search.—S. 101 *infra* makes the provisions of Ss. 77 and 79 *ante* apply *so far as may be* to this section. Under this section a warrant can be issued only to *a police officer above the rank of a constable* and it is only such officer that can conduct the search. But under S. 79 referred to above, a warrant issued under this section can be endorsed over to any other police officer of the *same rank* for execution.[1]

A Magistrate who is competent to issue a warrant under this section is also competent to conduct the search himself or in his presence under S. 105 *infra*.

Section 98—Note 4.

(1) (1908) 8 Cri. L. Jour. 235 (240): 35 Cal. 1076, *Rash Behari Lal* v. *Emperor* (Assumed).

(2) (1911) 12 Cri. L. Jour. 175 (177, 178), *Mulchand* v. *Emperor* (A case under S. 96).

Note 7.

(1) (1912) 13 Cri. L. Jour. 186 (186, 187): 39 Cal. 403, *Gurumeah* v. *Emperor*.

Note 8.

(1) (1909) 10 Cri. L. Jour. 3 (5): 3 Sind L. R. 56, *Emperor* v. *Mithu*.

S. 98, Notes 9—12.

9. **Execution of warrant outside jurisdiction.**—If search, under this section is required to be made at a place outside the local jurisdiction of the Magistrate issuing the warrant, proceedings should be taken in accordance with S. 84 *supra* which are made applicable to this section by S. 101.

10. **Search without warrant.**—A search under this section made without a search warrant is illegal.[1] But a police officer, investigating a charge of theft, is entitled under S. 165 *infra* to search without a warrant, and such a search will not be illegal.[2]

A warrant illegally issued under S. 96 cannot be treated as valid under this section. S. 537 does not cure such a defect.[3] *See* Note 27 to S. 96 *supra*.

11. **"Stolen property", "Forged Document", "Counterfeit" "Coin".**—The expressions mentioned above are defined as under, in the Penal Code and those definitions apply by virtue of S. 4, sub-S. 2 to this Code also.

"*Stolen Property*".—S. 410, Penal Code.—"Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated "Stolen property" whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property".

"*Forged Documents*".—S. 470, Penal Code. "A false document made wholly or in part by forgery is designated "a forged document".

"*Counterfeit*".—S. 28, Penal Code. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

"*Coin*".—S. 230, Penal Code. Coin is metal used for the time being as money and stamped and issued by the authority of some State or Sovereign power in order to be so used.

12. **"Pieces of Metal".**—S. 3 of the Metal Tokens Act I of 1889 prohibits the making, by private persons, of pieces of metal to be used as money.

Note 10.

(1) (1911) 12 Cri. L. Jour. 8 (9): 38 Cal. 304, *Bajrangi Gope* v. *Emperor*.

(2) (1919) 20 Cri. L. Jour. 695 (696): 1919 All. 41: 42 All. 67, *Nirmal Singh* v. *Emperor*.

(3) (1908) 8 Cri. L. Jour. 235 (240): 35 Cal. 1076, *Rash Behari Lal* v. *Emperor*.

13. Disposal of things found in search.—The police officer, conducting the search under this section should dispose of the things found in the search.

(1) In the manner indicated in Clause (*d*), *i.e.*, take the same before a Magistrate or dispose of them in some place of safety or

(2) Under S. 99 *infra* when the things are found beyond the jurisdiction of the Court issuing the warrant.

As to the disposal of things produced before the Magistrate, *see* S. 517 *infra*

14. Notification under S. 19 of the Sea Customs Act of 1878.—The bringing into British India by sea or by land, of pieces of metal resembling in shape and in size and stamped either on the obverse or on the reverse in imitation of rupees, half rupees, quarter rupees, and eighth rupees, is prohibited as also pieces of paper or mixed metal which not being coin as defined in the Indian Penal Code, are intended to be used as money.

But the bringing of such pieces into British India by a traveller in quantity not exceeding one hundred pieces, and in good faith, for his own use, is not to be deemed prohibited by the above notification.[1]

15. Search under other laws.—As to searches under other Acts, *see* the following cases.[1] *See also* Notes 14, 16 and 27 to S. 96 *ante*.

Note 14.

(1) See the *Fort St. George Gazette*, 5th April, 1887.

Note 15.

(1) *Under the Arms Act XI of* 1878.
(1893) 15 All. 129 (130), *Queen-Empress* v. *Sangam Lal* (Magistrate to record grounds of belief).
(1925) 1925 All. 434 (434): 47 All. 575, *Emperor* v. *Kutroo* (Illegality of search will not vitiate conviction if there is evidence of offence).
Under the Calcutta Police Act of 1866.
(1893) 20 Cal. 670 (672), *Forsyth* v. *Wilson* (A Deputy Commissioner of Police is empowered to issue search warrant).
(1930) 1930 Cal. 369 (369): 57 Cal. 457, *Ah Yung* v. *Emperor* (House not stated in the warrant searched—Illegal search).
Explosives Act of 1884.
(1912) 13 Cri. L. Jour. 433 (435): 39 Cal. 119, *Lalt Chandra* v. *Emperor*.
Excise Act.
(1872-92) S. J. L. B. 152 (152), *Naga Nayeen*, In re.
Under the U. P. Excise Act of 1910.
(1932) 1932 Oudh 249 (250), *Ujajar Singh* v. *Emperor* (Non-recording of reasons for search only an irregularity that does not vitiate proceedings).
Under the Opium Act of 1878.
(1909) 10 Cri. L. Jour. 85 (86): 5 L. B. R. 56, *King-Emperor* v. *Nawzee* (An entry into a 'vessel' for search under this Act must be authorised either under S. 15 or S. 19).
Under the Public Gambling Act, 1867.
(1870) 2 N.-W.P. 476 (477), *Queen* v. *Subsookh* (For a search under this Act, there must be "credible information and reason to believe" that a house is used as a common "gambling house").
(1889) 1889 All. W. N. 162 (162), *Empress* v. *Yusuf Husain* (Do.).
(1890) 1890 All. W. N. 226 (227), *Empress* v. *Ram Bharose* (Do.).
(1891) 1891 All. W. N. 111 (111, 112), *Empress* v. *Chiranji* (Do.).
(1905) 2 Cri. L. Jour. 243 (245) (All.), *Emperor* v. *Jhumni* (A misdescription of the place—A mere irregularity).
(1924) 1924 All. 128 (129), *Jamna Prasad* v. *King-Emperor* (Warrant not addressed to particular officer and no boundaries or number of house specified—Warrant illegal).
(1876) 1876 Pun. Re. Cr. No. 9, p. 14 (15), *Sandhi* v. *Crown* (Do.).
(1897) 1897 Pun. Re. Cr. No. 17, p. 46 (47), *Basanta Mal* v. *Empress* (Do.).
(1913) 14 Cri. L. Jour. 293 (295): 9 N. L. R. 68, *Sheikh Moti* v. *Emperor* (Do.).
S. C. Oudh 203, *Empress* v. *Niaz Ahmad* (Do.).
(1902) 5 Oudh Cas. 37 (40), *Narain Das* v. *Emperor* (Do.).
(1922) 1922 Oudh 224 (225): 25 Oudh Cas. 111, *King-Emperor* v. *Shankar Dayal* (Warrant not addressed to a particular person and search of room not mentioned in the warrant—Irregularities that vitiated the trial).
(1909) 10 Cri. L. Jour. 205 (205): 2 Sind L. R. 40, *Emperor* v. *Chellaram* (Warrant not issued to a Police officer as required but to a Mukhtiarkar—No presumption under S. 7).
(1905) 2 Cri. L. Jour. 806 (808): 28 All. 210, *Emperor* v. *Abdus Samad* ("Credible information" need not be in writing).
(1882) 1882 Pun. Re. Cr. No. 7, p. 6 (7), *Kada* v. *Empress* ("Credible information" need not be recorded nor the informant be examined on

S. 99.

99.* When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same

Disposal of things found in search beyond jurisdiction.

*(CODE OF 1882—S. 99.)

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Disposal of things found in search beyond jurisdiction.

oath").

(1895) 1895 Pun. Re. Cr. No. 22, p. 59 (60), *Vir Singh* v. *Empress* (The only person authorised to search is the officer named in the warrant. He cannot authorise anyone else to search).

(1912) 13 Cri. L. Jour. 832 (832): 35 All. 1, *Hargobind* v. *King-Emperor* (A warant to search any house the police officer might think proper, is illegal).

(1884) 4 All. W. N. 286 (288, 289), *Empress* v. *Hardeo Das* (Issue of warrant to an officer below the rank of an officer authorised under the Act —Irregularity does not vitiate proceedings).

(1884) 4 All. W. N. 291 (292), *Empress* v. *Man Singh* (Warrant for arrest of person only—House searched—Irregularity does not vitiate proceedings).

(1924) 1924 Lah. 247 (247, 248), *Raja Ram* v. *Emperor* (Warrant—Place used as gambling house not mentioned—Warrant illegal).

(1912) 13 Cri. L. Jour. 716: 34 All. 597, *Abbu Singh* v. *King-Emperor*.

Under the Bengal Public Gambling Act, 1867.

(1930) 1930 Cal. 365 (366), *Ganga Das Banerjee* v. *Emperor* (Credible information that house is used as a common gaming house is necessary).

Under the Bombay Prevention of Gambling Acts, 1866 *and* 1887.

(1868-69) 5 Bom. H. C. Cr. 1 (2), *Reg.* v. *Narayan Sundar* (Complaint on oath necessary for issue of a warrant).

(1907) 6 Cri. L. Jour. 60 (66): 31 Bom. 438, *Emperor* v. *Fernand* (Do.).

(1909) 10 Cri. L. Jour. 406 (407): 3 Sind L. R. 78, *Kadir* v. *Emperor* (Do.).

(1911) 12 Cri. L. Jour. 149 (149, 150): 5 Sind L. R. 40, *Abdullah* v. *Emperor* (Complaint on oath necessary though it is not necessary to be put in evidence).

(1913) 14 Cri. L. Jour. 204 (206): 37 Bom. 402, *Emperor* v. *Jafur Mahomed* (Where there is no warrant, the presumption under S. 7 does not arise).

(1917) 18 Cri. L. Jour. 70 (71): 1917 Sind 43: 10 Sind L. R. 134, *Baghumal Wadhumal* v. *Emperor* (Direction in warrant to seize all monies—Warrant does not become illegal).

(1926) 1926 Bom. 195 (196): 50 Bom. 344, *Emperor* v. *Abasbhai* (Illegality of search does not vitiate conviction, if evidence of offence was found in search).

(1929) 1929 Bom. 157 (160): 53 Bom. 367, *Emperor* v. *Thavarmal Rupchand* (The only person who can execute a warrant, is the officer who is named in the warrant. He cannot endorse it to another for execution).

(1933) 1933 Bom. 79 (79, 80), *Vallibhai Ibrahim* v. *Emperor* (Omission to state suspicion that house is used as a gaming house and wrong description of place to be searched are only irregularities).

(1908) 8 Cri. L. Jour. 182 (183, 184): 1 Sind L. R. 64, *Imperator* v. *Hiro* (Inquiry before issue of warrant is not obligatory and a reasonable suspicion is enough and no knowledge is required).

(1926) 1926 Sind 65 (65): 20 Sind L. R. 66, *Tilokchand* v. *Emperor* (Honorary First Class Magistrate can issue a warrant).

(1926) 1926 Sind 254 (255): 20 Sind L. R. 10, *Bhanji* v. *Emperor* (Omission to mention a sub-division of a house in the warrant will not make it illegal).

Under the Burmah Gambling Act, 1899.

(1872-1892) S. J. L. B. 548 (548), *Nga Sit Shwe*, In re (Search must be in conformity with S. 5 before the presumption under S. 6 can be drawn).

(1872-92) 1 L. B. R. 120 (121), *Crown* v. *Majun* (Before a search warrant can be issued record must be made of (1) the substance of information, (2) grounds of belief).

(1872-92) 1 L. B. R. 289 (289), *Crown* v. *Tun Wa* (Do.).

prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court. S. 99.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
LIST PREPARED UNDER THE PROVISIONS HEREINAFTER MENTIONED	3

(CODE OF 1872—Ss. 373, Paras. 2 and 3, and 374.)

373. * * * *

Thing found to be taken to Magistrate within whose jurisdiction it is found.

If the thing for which search is made is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

If the thing be not found after such search, the police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Magistrate in whose local jurisdiction the search was made.

Procedure in such cases within Presidency town.

374. If the thing searched for be found within a Presidency town, it shall be taken to the Commissioner of Police or to a Police Magistrate; and such Commissioner or Magistrate shall act in the manner prescribed in section three hundred and seventy-three.

(CODE OF 1861—Ss. 118 and 119.)

118. * * * *

Thing found to be taken immediately to the Magistrate within whose jurisdiction it is found.

If the thing for which search is made is found in such place, it shall be immediately taken before the Magistrate in whose jurisdiction it is found, and who, unless there be good cause to the contrary, shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

Procedure in such cases within local limits of Supreme Court.

119. If the thing searched for be found within the local limits of a Supreme Court of Judicature, it shall be taken to the Chief Commissioner of Police or to a Police Magistrate, who shall act in the manner prescribed in the last preceding section.

S. 99, Notes 1—3.

Other Topics.

Documents ceased without search warrant. See Note 2, Pt. 1.

Power to endorse and order delivery. See Note 2, Pt. 2 and Sch. III, Cl. 9.

1. Legislative Changes.—

Difference between the Code of 1861 *and the Code of* 1872.

The later part of S. 118 of the Code of 1861 provided that the things found in execution of a search warrant beyond the jurisdiction of the magistrates issuing the warrant should be taken to the Magistrate *in whose jurisdiction the things were found*. S. 373, para. 2 of the Code of 1872 provided that such things should be taken to the Magistrate in whose jurisdiction the things were found, only *if the place is nearer to that Magistrate* than to the Magistrate who issued the warrant.

Difference between Codes of 1872 *and* 1882.

(1) The word '*Court*' was substituted for the word '*Magistrate*' with reference to the issue of the warrant, in conformity with a similar change in S. 96 *supra*.

(2) The provision as to the taking of *list* of the things found was newly added in 1882. S. 99 of the Code of 1882 has been repeated in the present Code.

2. Scope of the section.—This section deals only with cases in which things are found *in execution of a search warrant*. So where a Presidency Magistrate, on being requisitioned by a telegram by a District Magistrate to take possession of certain books of a person within the jurisdiction of the former and send them to the latter, *summoned* the person to produce the same and when they were produced sent them to the District Magistrate, purporting to act under S. 96 and this section it was held that, as the things were not found in execution of a search warrant neither S. 96 nor this section applied to the case and that the sending of the books in accordance with the requisition was not justified.[1]

Any Magistrate within whose jurisdiction things are found in execution of a search warrant can, under this section, order them to be taken to the Court issuing the warrant.[2]

3. List prepared under the provisions hereinafter mentioned.—*See* S. 103, sub-S. 2 *infra*.

Power to declare certain publications forfeited, and to issue search warrants for the same.

S. 99-A.

99-A. (1) Where—

(*a*) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(*b*) any document,

wherever printed, appears to the Local Government to contain any seditious matter *or any matter which promotes or is*

Section 99—Note 2.

(1) (1897) Ratanlal 880 (880), In re *Parmanand*.

(2) See Schedule III, I—(9).

S. 99-A, Note, 1.

intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124-A *or section* 153-*A or section* 295-*A* of the Indian Penal Code, the Local Government may, by notification in the local Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document, to be forfeited to His Majesty, and thereupon any police-officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorize any Police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

*Ss. 99-A to 99-G were inserted by the Third Schedule of Act XIV of 1922.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
NEWSPAPER, BOOK OR DOCUMENT	3
"APPEARS TO THE LOCAL GOVERNMENT"	4
"STATING THE GROUNDS OF ITS OPINION"	5
"SEDITIOUS MATTER"	6

1. Legislative Changes.—

(1) This section was newly inserted by the Press Law Repeal and Amendment Act (XIV of 1922).

(2) The words "or any matter. . . . clauses of His Majesty's subjects" were added after the words "Seditious matter" by Act XXXVI of 1926. The reason for the addition was stated as follows:—

"There is no provision which enables similar action" (*i.e.*, provided as by this section) . "To be taken against publications calculated to promote feelings of hatred or enmity between different classes of His Majesty's subjects. The publication and circulation of such documents have the effect of spreading and intensifying the feelings of communal bitterness and hatred,

S. 99-A, Notes 1—4.

and as the law now stands even if a prosecution is launched under S. 153-A of the Indian Penal Code there is no effective power to check circulation''.[1]

(3) The words ''or which is deliberately and maliciously. . . . . of that class'' have been added by Act XXV of 1927.

2. Scope of the section.—Ss. 99-A to 99-G have been based on Ss. 12, 17, 18, 19, 20, 21 and 22 of the Indian Press Act (I of 1910) now repealed. This section corresponds to S. 12 of the Act but is more limited in its scope.

3. Newspaper, book or document.—The word ''newspaper'' has been defined in S. 1 of the Press and Registration Act, 1867, as meaning, ''any printed periodical work containing public news or comments on public news''. It thus involves the idea of *periodicity* and also the fact that what is contained in the paper is *public news* or *comment* thereon.[1]

The word 'book' has been defined by the same section as including every volume, part or division of a volume and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed.

Under S. 3, Clause 16 of the General Clauses Act (X of 1897) ''document'' includes ''any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose of recording that matter''. Under sub-S. 2 of this section it also includes any painting, drawing or photograph or other visible representation.[1-a] It is not necessary for the application of the section that the document sought to be forfeited should *by itself* disclose the seditious intent. It may be read in the light of other documents whether prior or subsequent in date and the seditious nature of the document may be apparent from those other documents.[2] The fact that a document is an advertisement of a forthcoming book is, by itself, not sufficient to protect it from forfeiture if it contains seditious matter, but in the absence of such matter, the mere fact that it is intimately connected with the book which contains seditious matter is not sufficient to enable the forfeiture thereof under this section.[3]

4. ''Appears to the Local Government''.—Two conditions are necessary to a forfeiture in accordance with the terms of this section. *First,* it must *appear to the Local Government* that the newspaper, book or document contains any seditious matter and, *secondly,* the Local Government must, by notification *stating the grounds of its opinion,* declare such newspaper, book or document to be forfeited. The first condition implies that the publication had been seen and read by the Local Government prior to its declaration of forfeiture, for it must first form an opinion.[1]

Section 99-A—Note 1.

(1) Statement of Objects and Reasons—Gazette of India, 1926, part 5, p. 139.

Note 3.

(1) (1910) 7 Ind. Cas. 641 (644): 38 Cal. 202, *Sarat Chandra* v. *King-Emperor.*

(1-a) (1933) 1933 Mad. 123 (124), *Pandurang Mudali,* In re (Painting on flood of road is making document).

(1933) 1933 Cal. 458 (458): 60 Cal. 1089, *Jithendra Lal Banerjee* v. *Emperor* (Photographs are documents).

(2) (1930) 1930 All. 401 (402, 403): 52 All. 775 (F.B.), *Saigal* v. *Emperor.*

(3) (1930) 1930 All. 401 (402, 403): 52 All. 775 (F. B.), *Saigal* v. *Emperor.*

Note 4.

(1) (1913) 20 Ind. Cas. 977 (983): 41 Cal. 466, *Mohomad* v. *Emperor* (Case under S. 12 of the Press Act, 1910).

5. **"Stating the grounds of its opinion".**—The requirement as to the statement of the grounds of the opinion of the Local Government is mandatory, and a notification which does not state the grounds of the opinion is not a compliance with the terms of the section.[1] A mere citation of the words of the section is not a statement of the grounds of opinion.[2] The Court in an application to set aside a forfeiture, is however precluded by S. 99-D from entering into the question whether the requirements as to the statement of grounds has been complied with or not. *See* Notes to S. 99-D.

6. **"Seditious matter".**—The words "seditious matter" in the section mean any matter the publication of which is punishable under Ss. 124-A, 153-A or 295-A of the Penal Code. *See* the undermentioned cases bearing upon those sections.[1]

Note 5.

(1) (1913) 20 Ind. Cas. 977 (983): 41 Cal. 466, *Mahomad* v. *Emperor.*
(2) (1913) 20 Ind. Cas. 977 (983): 41 Cal. 466, *Mahomed* v. *Emperor.*

Note 6.

(1) *Motive of writer immaterial in considering effect of writing.*
(1913) 18 Ind. Cas. 347 (348): 1913 Pun. Re. No. 14, *Karam Chand* v. *Emperor.*
(1914) 24 Ind. Cas. 578 (580): 1914 Lah. 1: 1914 Pun. Re. No. 27, *Ghulam Qadir* v. *Emperor.*
(1915) 28 Ind. Cas. 322 (325): 1915 Lah. 1: 1915 Pun. Re. No. 19, *Farooq* v. *Emperor.*
(1918) 37 Ind. Cas. 525 (583, 584): 1918 Mad. 1210: 39 Mad. 1085, *Annie Besant* v. *Government of Madras.*
(1919) 49 Ind. Cas. 593 (595): 1919 Pat. 84, *Purushottum* v. *Chief Secretary.*
(1919) 54 Ind. Cas. 578 (594): 1920 Cal. 478, Re *Amrita Bazaar.*
(1923) 1923 Lah. 61 (63): 3 Lah. 405, *Raj Pal* v. *Crown.*

Comments must not excite hatred.

(1925) 1925 Pat. 99 (102, 103), *Nageswar Prasad* v. *Emperor.*
(1915) 29 Ind. Cas. 827 (829): 1915 Lah. 383: 1915 Pun. Re. No. 15, *Amar Singh* v. *Emperor.*
(1915) 28 Ind. Cas. 322 (327): 1915 Lah. 1: 1915 Pun. Re. No. 19, *Farooq* v. *Emperor.*
(1919) 54 Ind. Cas. 578 (607, 612): 1920 Cal. 478, Re *Amrita Bazaar.*
(1914) 24 Ind. Cas. 578 (580): 1914 Lah. 1: 1914 Pun. Re. No. 27, *Gulam Qadir* v. *Emperor.*

Mere criticism not sedition.

(1914) 24 Ind. Cas. 578 (580): 1914 Lah. 1: 1914 Pun. Re. No. 27, *Gulam Qadir* v. *Emperor.*
(1919) 49 Ind. Cas. 593 (597 to 599): 1919 Pat. 84, *Purushottam* v. *Chief Secretary.*
(1919) 54 Ind. Cas. 578 (604, 605): 1920 Cal. 478, Re *Amrita Bazar.*
(1913) 18 Ind. Cas. 347 (349): 1913 Pun. Re. 14, *Karam Chand* v. *Emperor* (Expl. II of S. 124-A does not apply when there were charges and attacks against the Government).
(1918) 37 Ind. Cas. 525 (592): 1918 Mad. 1210: 39 Mad. 385, *Besant* v. *Emperor* (Expl. II of S. 124-A does not apply when there were imputations of base and malicious motives, and of indifference).

"Government established by law"—What is.

(1913) 18 Ind. Cas. 347 (348): 1913 Pun. Re. 14, *Karam Chand* v. *Emperor.*
(1913) 20 Ind. Cas. 977: 41 Cal. 466, Re *Mohammad Ali.*
(1914) 24 Ind. Cas. 578 (580): 1914 Lah. 1: 1914 Pun. Re. 27, *Gulam Qadir* v. *Emperor.*
(1915) 28 Ind. Cas. 322 (327): 1915 Lah. 1: 1915 Pun. Re. 19, *Farooq* v. *Emperor* (Includes British Cabinet or Government).
(1915) 29 Ind. Cas. 827 (829): 1915 Lah. 383, *Amarsingh* v. *Emperor.*
(1916) 37 Ind. Cas. 525 (583, 591): 1918 Mad. 1210: 39 Mad. 1085, *Besant* v. *Emperor.*
(1919) 55 Ind. Cas. 110 (111): 1919 All. 91: 42 All. 233, Re *Sundar Lal.*
(1932) 1932 Cal. 547 (548): 59 Cal. 1197, *Kshitish Chandra Ray Chowdhury* v. *Emperor.*

Construction of seditious articles—Liberal construction to be given and articles considered as a whole with reference to surrounding circumstances.

(1891) 19 Cal. 35 (45, 46), *Empress* v. *Jogendra.*
(1897) 22 Bom. 112 (139 to 144), *Empress* v. *Bal Gangadhar.*
(1899) 2 Bom. L. R. 304 (308, 309, 311), *Empress* v. *Vinayak.*
(1899) 2 Bom. L. R. 286 (297, 298, 302 to 304), *Empress* v. *Luxman.*
(1933) 1933 Bom. 65 (66): 57 Bom. 253, *Emperor* v. *Maniben Lladhar.*
(1925) 1925 Pat. 99 (102), *Nageswar Prasad* v. *King-Emperor.*
(1910) 8 Ind. Cas. 531 (532): 38 Cal. 253, *Manomohan* v. *Emperor.*
(1923) 1923 Rang. 212 (213): 1 Rang. 211, *Damadaya* v. *Emperor.*
(1909) 1 Ind. Cas. 36 (39, 40): 32 Mad. 35, *Chidambaram Pillai* v. *King-Emperor.*
(1910) 10 Ind. Cas. 948 (956): 38 Cal. 214, *Joy Chandra* v. *Emperor.*
(1908) 35 Cal. 141 (154), *Aburba* v. *Emperor.*
(1906) 8 Bom. L. R. 421 (439): 30 Bom. 421, *Emperor* v. *Bhaskar Balvant Bhopatkar.*
(1925) 47 All. 298 (303): 1925 All. 195 (F.B.), *Emperor* v. *Baijnath Kedia.*
(1908) 36 Cal. 405 (412), *Girija Sundar* v. *Emperor.*
(1908) 10 Bom. L. R. 848 (881 to 888), *Emperor* v. *Bal Gangadhar.*
(1879) Rat. 140 (141), Re *Pitambar.*
(1909) 2 Ind. Cas. 38 (38): 32 Mad. 384, *Krishnaswami* v. *Emperor.*
(1918) 18 Ind. Cas. 347 (348): 1913 Pun. Re. 14, *Kari Singh* v. *Finch.*
(1920) 54 Ind. Cas. 578 (599): 1920 Cal. 478: 47 Cal. 190, Re *Amrita Bazar.*

S. 99-A, Note 6.

As to the criminal liability of particular persons for publication of such seditious matter, *see* Ss. 124-A, 153-A and 295-A of the Penal Code and the cases

(1893) 18 Bom. 758 (764, 765), *Queen-Empress* v. *Kanhanji*.
(1919) 1919 P. C. 31 (35, 36): 43 Mad. 146: 46 Ind. App. 176 (P.C.), *Annie Besant* v. *Advocate-General of Madras*.
(1929) 1929 Pat. 10 (10), *Jagat Narain Lall* v. *Emperor*.
(1928) 29 Cri. L. Jour. 381 (381) (Lah.), *Ramchandra* v. *Emperor*.
(1916) 1916 Bom. 9 (43, 44, 48), *Bal Gangadhar* v. *Emperor*.
(1927) 1927 Cal. 751 (751, 752), *Gopal Lal Sanyal* v. *Emperor*.
(1927) 1927 Cal. 698 (699, 700), *Satyaranjan Bakshi* v. *Emperor*.

Admissibility of other articles representing views of paper.

(1909) 1 Ind. Cas. 42 (44) (Mad.), In re *Chidambaram*.
(1909) 2 Ind. Cas. 33 (48, 49): 32 Mad. 384, *Krishnaswami* v. *Emperor*.
(1891) 19 Cal. 35 (37, 45, 46), *Empress* v. *Jogendra*.
(1908) 33 Bom. 221 (238), Re *Bal Gangadhar*.
(1906) 30 Bom. 421 (425), *Emperor* v. *Bhaskar*.
(1897) 22 Bom. 152 (163), *Queen-Empress* v. *Ramachandra*.
(1897) 20 All. 55 (69) (F.B.), *Queen-Empress* v. *Amba*.
(1908) 10 Bom. L. R. 848 (885), *Emperor* v. *Bal Gangadhar*.
(1908) 35 Cal. 945 (947, 948), *Emperor* v. *Phanendra*.
(1908) 1 Ind. Cas. 36 (39, 40): 32 Mad. 3, *Chidambaram* v. *Emperor*.
(1909) 13 Cal. W. N. cxl (P.C.), *Tilak* v. *Emperor*.
(1910) 8 Ind. Cas. 531 (532): 38 Cal. 253, *Manomohan* v. *Emperor*.
(1898) 22 Bom. 112 (121), *Queen-Empress* v. *Balgangadhar Tilak* (Articles or letters signed by outsiders published in same paper).
(1899) 2 Bom. L. R. 304 (312), *Queen-Empress* v. *Vinayak* (To prove authorisation by proprietor).
(1909) 2 Ind. Cas. 193 (198): 32 Mad. 338, *Gadicherla* v. *Emperor* (Do.).
(1909) 5 Ind. Cas. 854 (855): 34 Bom. 394, *Emperor* v. *Ganesh Damodar* (Other poems by the writer).

Promoting enmity between classes—S. 153-A of the Penal Code.

(1908) 10 Bom. L. R. 848 (878), *Bal Gangadhar Tilak* v. *Emperor*.
(1907) 1907 Pun. Re. No. 10, p. 35, *Jasvant Rai* v. *King-Emperor* (There must be intention to promote such enmity).
(1929) 30 Cal. L. J. 289 (410, 411): 1920 Cal. 478: 47 Cal. 190, In re *Amrit Bazar Patrika*.
(1910) 38 Cal. 214 (224), *Joy Chandra Sarkar* v. *Emperor*.
(1927) 1927 Lah. 594 (599), *Devi Saran Sharma* v. *King-Emperor* (Hatred need not be reciprocal).
(1907) 1907 Pun. Re. No. 10, p. 43, *Jaswant Rai* v. *King-Emperor* ('Classes' include races such as Indians and Europeans).
(1919) 21 Bom. L. R. 867 (882, 884): 43 Mad. 146: 46 Ind. App. 176 (P.C.), *Besant* v. *The Advocate-General* (A school of opinion does not involve imputation upon the class who hold the opinion).
(1932) 1932 Lah. 99 (99): 13 Lah. 152, *Chamupati* v. *Emperor* (Words tending to promote enmity between classes—Presumption of intention of writer—Existing feelings between communities—Intention).

Miscellaneous.

(1897) 22 Bom. 112 (135 to 139), *Queen-Empress* v. *Bal Gangadhar* (Exciting any form of ill-will against Government).
(1897) 20 All. 55 (68) (F.B.), *Queen-Empress* v. *Amba Prasad* (Exciting feelings of hatred, dislike, ill-will, enmity or hostility).
(1897) 22 Bom. 152 (159 to 161), *Queen-Empress* v. *Ramachandra* (Exciting political alienation, discontent, disloyalty or political hatred).
(1899) 2 Bom. L. R. 286 (295, 296), *Empress* v. *Luxman* (Practises causing hatred, contempt, disloyalty or feelings of enmity).
(1891) 19 Cal. 35 (44), *Empress* v. *Jogendra* (Words calculated to create disposition not to obey Government or to subvert or resist it).
(1899) 2 Bom. L. R. 304 (307, 308), *Empress* v. *Vinayak* (Meaning of attempt).
(1908) 35 Cal. 141 (153), *Apurba* v. *Emperor* (Hatred, contempt or disaffection).
(1908) 35 Cal. 945 (951), *Emperor* v. *Phanendra* (Incitement to insurrection is seditious but not reasonable criticism).
(1908) 32 Mad. 3 (27), *Chidambaram* v. *Emperor* (When advocacy of Swedeshi, boycott and strike is seditious).
(1908) 1 Ind. Cas. 42 (44), Re *Chidambaram* (When advocacy of boycott and strike is seditious).
(1909) 5 Ind. Cas. 612 (615): 34 Bom. 378, *Emperor* v. *Ganesh Modak* (Criticism of Government when seditious).
(1909) 5 Ind. Cas. 854 (855, 856): 34 Bom. 394, *Emperor* v. *Ganesh Damodar* (Blood-thirsty incitement to take sword against Government is sedition).
(1910) 7 Ind. Cas. 641 (642): 38 Cal. 202, *Sarat Chandra* v. *Emperor* (A veiled glorification of rebellion is incitement).
(1910) 8 Ind. Cas. 531 (532): 38 Cal. 253, *Manmohan* v. *Emperor* (Strong criticism when not seditious).
(1910) 10 Ind. Cas. 948 (953, 954): 38 Cal. 214, *Joy Chandra* v. *Emperor*.
(1918) 37 Ind. Cas. 525 (583, 585, 591, 592, 601, 602): 1918 Mad. 1210: 39 Mad. 1085, *Besant* v. *Emperor* (Advocacy of Home Rule).
(1925) 1925 Pat. 99 (104), *Nageswar Prasad* v. *Emperor*.
(1930) 1930 Cal. 244 (246): 57 Cal. 1217 (F.B.), In the matter of *Sajoni Kanta Das*.
(1932) 1932 Cal. 738 (742) (S.B.), In re *Amrita Bazar Patrika*.
(1932) 1932 Cal. 758 (759), *Satyaranjan Bakshi* v. *Emperor*.
(1932) 1932 Lah. 559 (563), *Secretary, High Court Bar Association, Lahore* v. *Emperor* (Speech as whole not calculated to bring Government into hatred or contempt does not come under S. 124-A).
(1930) 1930 Lah. 371 (374), *Ram Chandra*

noted below.[2]

S. 99-A, Note 6.

v. *Emperor* (If certain alleged facts are used as a peg on which to hand seditious comments, the truth of the facts is no excuse).
(1930) 1930 Lah. 309 (310), *Satya Pal* v. v. *Emperor* (To advocate expulsion of Englishmen from India is tantamount to asking for the subversion of Government).
(1930) 1930 Lah. 870 (872), *Indra* v. *Emperor* (Intention necessary under S. 124-A should be gathered from expression used by the accused).
(1930) 1930 Lah. 306 (307), *Ananda Kishore* v. *Emperor* (Speech in which the speaker approves of violence as means of achieving self-Government amounts to offence under S. 124-A).
(1930) 1930 Lah. 186 (187), *Arjun Singh* v. *Emperor* (Writer can discuss policy of Government attributing base motives to Government amounts to offence).
(1930) 1930 Lah. 156 (156), *Lachhman Singh* v. *Emperor* (Allegation against His Majesty's Government amount to an offence under S. 124-A).
(1930) 1930 Lah. 153 (154), *Arjan Singh* v. *Emperor* (Publication of a life sketch of a person who was a member of society to overthrow the Government is an offence under S. 124-A).
(1929) 1929 Lah. 817 (818), *Kidar Nath Sahgal* v. *Emperor* (Speeches imputing communal motives to the Government such as desire of addicting the people the evil habit and ruining them coupled with wholesale denunciation of Government is seditious).
(1930) 1930 Cal. 363 (364), *Jnananjan Niyogi* v. *Emperor* (Vilification of Government by contrast is sedition).
(1931) 1931 Cal. 337 (339, 341), *Satyendra Nath Musumdar* v. *Emperor* (Historical articles suppressing and avoiding truth for anything that is in favour of Government amounts to sedition).
(1930) 1930 Cal. 220 (222): 56 Cal. 1085, *Satyaranjan Bakshi* v. *Emperor* (Government may be brought into hatred and contempt by abuse of officials).
(1929) 1929 Cal. 277 (280), *Satyaranjan Bakshi* v. *Emperor* (Article attacking the Police comes within S. 124-A).
(1925) 1925 Lah. 16 (17), *Jeonsingh* v. *Emperor* (Intention will be presumed from language and conduct of the accused who must rebut presumption).
(1933) 1933 Cal. 278 (279), *Anucul Chandra Parihal*, In re (Newspaper article—Oppression and humiliation of ruled referred to—Offence if constituted).
(1933) 1933 Cal. 140 (140, 141), *Zamar* v. *Emperor* (Newspaper article attributing 'reckless oppression and free exploitation' to imperialism).
(1922) 1922 Bom. 284 (285), *Emperor* v. *Hosrat Mohani* (So long as a man only tries to inflame feeling he is not guilty but if he incites the people to action he is guilty).
(1932) 1932 Cal. 745 (749): 60 Cal. 408, In the matter of *Ananda Bazar Patrika* (Allegations of dishonest motives).
(1925) 1925 Sind 59 (59): 17 Sind L. R. 341, *Emperor* v. *Nabibuk* (Article can be both seditious and provocative of class enmity).
(1933) 1933 Nag. 148 (148): 29 Nag. L. R. 244, *Bapuji Kunbi* v. *Local Government* (Poem making a hero of a convict sentenced to death—Tendency to incite to or encourage commission of similar offences).

Cases under S. 295-A of the Penal Code.

(1927) 1927 Lah. 594 (598), *Devi Sharan Sharma* v. *Emperor*.
(2) (1900) 2 Bom. L. R. 286 (303), *Empress* v. *Luxman Narayan Joshi* (Author).
(1886) 9 Mad. 387 (389, 390), *Ramaswami* v. *Lokanada* (Printer or publisher).
(1900) 2 Bom. L. R. 304 (312, 314), *Queen-Empress* v. *Vinayak* (Do.).
(1906) 30 Bom. 421 (425), *Emperor* v. *Bhaskar* (Do.).
(1897) 22 Bom. 152 (158, 163), *Empress* v. *Ramachandra* (Do.).
(1897) 22 Bom. 112 (129 to 132), *Empress* v. *Bal Gangadar Tilak* (Do.).
(1908) 35 Cal. 141 (153, 154), *Apurba Kishore Bose* v. *Emperor* (Do.).
(1908) 35 Cal. 945 (952, 953), *Emperor* v. *Phanendra* (Do.).
(1925) 1925 Pat. 99 (106), *Negeswar Prasad* v. *King-Emperor*. (Do.).
(1909) 2 Ind. Cas. 193 (197): 32 Mad. 338, *Gadicherla* v. *King-Emperor* (Do.).
(1910) 8 Ind. Cas. 531 (535): 38 Cal. 253, *Manomohan* v. *Emperor* (Do.).
(1910) 10 Ind. Cas. 954 (955): 38 Cal. 227, *Surendra Prasad* v. *Emperor* (Do.).
(1918) 44 Ind. Cas. 579 (579): 1918 Pat. 236, *Ganesh Lal* v. *Emperor* (Proprietor of press).
(1914) 1914 Bom. 2 (3), *Emperor* v. *Pandurang Bal Krishna* (Do.).
(1919) 1919 P. C. 31 (44): 46 Ind. App. 176: 43 Mad. 146, *Besant* v. *Advocate-General* (Do.),
(1910) 7 Ind. Cas. 937 (938): 35 Bom. 55, *Emperor* v. *Shankar Shrikrishna* (Do.).
(1909) 2 Ind. Cas. 193 (197): 32 Mad. 338, *Gadicherla* v. *King-Emperor* (Do.).
(1892) 19 Cal. 35 (41), *Queen-Empress* v. *Jogendra* (Do.).
(1909) 5 Ind. Cas. 612 (613, 614): 12 Bom. L. R. 21: 34 Bom. 378, *Emperor* v. *Ganesh Balwant* (Disseminator or distributor of article).
(1928) 1928 Rang. 276 (277), *Chellan Pillai* v. *Emperor* (Accused causing a leaflet to be printed is liable whether he is responsible for its publication or not).
(1933) 1933 Rang. 4 (4), *Kadar Sultan* v. *Emperor* (Carrying on business through manager—Liability of principal).
(1905) 1905 Pun. Re. No. 1, *Ramnath* v. *Emperor* (Liability of registered printer of Newspaper for article appearing in his absence).
(1923) 1923 Bom. 255 (258): 47 Bom. 438, *Pitra* v. *Emperor* (Pamphlet containing seditious matter is printed from a press in the absence and without the knowledge of the pro-

S. 99-B, Notes 1—3.

Application to High Court to set aside order of forfeiture.

99-B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious *or* other matter of such a nature as is referred to in sub-section (1) of section 99-A.

1. **Scope of the section.**—This section corresponds to S. 17 of the Indian Press Act, 1910, now repealed.

2. **"Within two months from the date of such order".**—The words "within two months from the date of such order" cannot be read as meaning "within two months from the date on which notice of the order *was served.*" They only mean "two months from the date of the order of forfeiture." The application under this section is not a remedy by way of *appeal* and therefore S. 5 of the Limitation Act cannot be applied to it so as to enable the Court to extend the period of two months for sufficient cause.[1]

3. **Onus of proof.**—There is a conflict of decisions between the High Courts of Allahabad and Lahore as to the onus of proof in applications under this section. According to the Allahabad High Court, the onus lies on the applicant in such cases and it is for him to prove that the order of forfeiture is wrong.[1] But the Lahore High Court has held that the onus is on the Government to justify the order.[2]

S. 99-C.

Hearing by Special Bench.

99-C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

S. 99-D.

Order of Special Bench setting aside forfeiture.

99-D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other

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prietor he is not guilty).

(1925) 1925 Lah. 569 (569), *Ranjit Singh Tajwar* v. *Emperor* (Mere fact that the title page of the pamphlet bears accused's name does not justify the conclusion that he is the Author).

(1930) 1930 Lah. 875 (876, 877), *Kushal Chand Khurshand* v. *Emperor* (Editor is responsible for a seditious article in a newspaper although it was not written by him).

(1931) 1931 Lah. 182 (183): 12 Lah. 483, *Chunni Lal* v. *Emperor* (Absent proprietor of press not liable).

(1931) 1931 Cal. 349 (350), *Braja Behari Barman* v. *Emperor* (Owner of press, liability of).

Section 99-B—Note 2.

(1) (1914) 1914 Lah. 8 (8, 9): 16 P. R. 1914, *Abdul Haq* v. *Crown*.

Note 3.

(1) (1927) 1927 All. 649 (650): 49 All. 856, *Kali Charan* v. *Emperor*.

(2) (1928) 1928 Lah. 245 (246): 9 Lah. 668, *Lajpath Roy* v. *Emperor*.

matter of such a nature as is referred to in sub-section (1) of section 99-A, set aside the order of forfeiture. S. 99-D, Notes 1—2.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

SYNOPSIS.

	Note No.
POWERS OF SPECIAL BENCH	1
ONUS OF PROOF IN APPLICATION TO SET ASIDE ORDER OF FORFEITURE	2
PLEA AS TO TRUTH OF STATEMENTS MADE	3
EFFECT OF DIFFERENCE OF OPINION	4
ORDER UNDER THIS SECTION—IF EVIDENCE IN PROSECUTION UNDER Ss. 124-A, 153-A OR S. 295-A OF THE PENAL CODE	5

1. Powers of Special Bench.—When an application is made to the High Court under S. 99-B in respect of a document the Special Bench is precluded by this section from considering any other point than the question whether, in fact, the matters contained in the document were seditious or not. Thus it cannot enter into the question whether the requirements of S. 99-A as to the statement of grounds in the notification, have been complied with.[1] Where a series of books are published the whole series must be looked to in order to determine whether the passages contained therein are seditious or not.[2] *See* also cases cited in Note 6 to S. 99-A.

2. Onus of proof in application to set aside order of forfeiture.—In an application under S. 99-B, the *onus* is cast upon the Local Government to begin and state the case in support of the Local Government's orders.[1] A contrary view, has been expressed in the undermentioned case[1-a] where it has been held that it is for the *applicant* to convince the Court that the order is wrong. The question of *onus* is, however, of very little or no practical importance after both parties have been fully heard.[2]

If the language is of a nature calculated to produce or to promote feelings of enmity or hatred, the writer must be presumed to intend that which his act was likely to produce.[3] The Court is not concerned with the motive with which an article is written. Whatever be the ostensible motives, if the effect of the article is seditious the Government cannot be said to be wrong in ordering a forfeiture under S. 99-A.[4]

Section 99-D—Note 1.

(1) (1925) 1925 All. 195 (196): 47 All. 298 (F.B.), *Baijnath* v. *King-Emperor.*
[See also (1919) 1919 Pat. 84 (86), *Besant* v. *Emperor* (Case under S. 17 of the Press Act, 1910).]

(2) (1925) 1925 All. 195 (196): 47 All. 298, (F.B.), *Baijnath* v. *King-Emperor.*

Note 2.

(1) (1930) 1930 All. 401 (402): 52 All. 775 (F. B.), *Saigal* v. *Emperor.*
(1925) 1925 All. 195 (196): 47 All. 298 (F. B.), *Baijnath* v. *King-Emperor.*
(1928) 1928 Lah. 245 (246): 9 Lah. 663 (S. B.), *Lajpat Rai* v. *Emperor* (Crown must prove possibility of conviction under the relevant section).

(1-a) (1927) 1927 All. 649 (650): 49 All. 856 (S. B.), *Kalicharan Sharma* v. *King-Emperor.*

(2) (1930) 1930 All. 401 (402): 52 All. 775 (F.B.), *Saigal* v. *Emperor.*

(3) (1927) 1927 All. 649 (652): 49 All. 856, *Kalicharan Sharma* v. *King-Emperor.*
(1932) 1932 Lah. 99 (99): 13 Lah. 152 (S. B.), *Chamupati* v. *Emperor.*

(4) [See (1914) 1914 Lah. 1 (4): 1914 Pun. Re. No. 27 (S. B.), *Ghulam Qadir* v. *Emperor.*
(1920) 1920 Cal. 478 (482, 491): 47 Cal. 190 (S. B.), In re *Amrita Bazar*

S. 99-D, Notes 3—5.

3. **Plea as to truth of statements made.**—In an application under S. 99-B a plea that the statements contained in the publication are supported by authority or are true can neither be pleaded nor proved and are immaterial.[1]

4. **Effect of difference of opinion.**—Where the High Court is left in doubt after hearing the application it should *set aside* the order, and not as in the case of an appeal in a civil suit, *confirm* the order.[1] The following cases[2] under S. 19 of the Press Act, 1910 may also be referred to.

5. **Order under the section—If evidence in prosecution under Ss. 124-A, 153-A, or 295-A of the Penal Code.**—In a prosecution for an offence under Ss. 124-A or 153-A or 295-A of the Penal Code, a judgment under this section refusing to set aside an order of forfeiture is admissible as evidence under S. 11 or under S. 13 of the Evidence Act, 1872.[1]

S. 99-E, Notes 1—2.

99-E. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper *in respect of which the order of forfeiture was made.*

Evidence to prove nature or tendency of newspapers.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
SCOPE AND APPLICABILITY OF THE SECTION	2
"IN AID OF THE PROOF OF THE NATURE, OR TENDENCY OF"	3

Other Topics.

Copy given in evidence. See Note 2, Pts. 2 and 3.
Does not apply to books. See Note 2, Pt. 5.
In aid of proof. See Note 2, Pt. 6 and Note 3.

1. **Legislative History.**—This section is based upon S. 20 of the Indian Press Act, 1910 (Act I of 1910) and the rulings under that section may usefully be referred to for interpreting this section.

The words "in respect of which the order of forfeiture was made" were substituted by Act XXXVI of 1926 for the words "which are alleged to be seditious matter."

2. **Scope and applicability of the section.**—This section provides for the admission in evidence of any copy of the newspaper in aid of the proof of

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Patrika.
(1915) 28 Ind. Cas. 322 (325): 1915 Lah. 1: 1915 Pun. Re. No. 19, *Farooq* v. *Emperor*.]

Note 3.
(1) (1927) 1927 All. 649 (653): 49 All. 856 (S. B.), *Kalicharan Sharma* v. *King-Emperor.*
(1932) 1932 Lah. 99 (99): 13 Lah. 152 (S. B.), *Chamupati* v. *Emperor.*

Note 4.
(1) (1927) 1927 All. 649 (653): 49 All. 856 (S. B.), *Kalicharan Sharma* v. *Emperor.*
(2) (1914) 24 Ind. Cas. 581 (584): 1914 Lah. 4: 1914 Pun. Re. No. 28, *Ghulam Qadir* v. *Emperor.*

Note 5.
(1) (1927) 1927 All. 654 (656), *Kalicharan Sharma* v. *Emperor.*

S. 99-E, Notes 2—3.

the nature or tendency of the words, etc., in respect of which the order of forfeiture has been made.[1] S. 14 of the Evidence Act would not make such copies relevant, unless the existence of a state of mind, or body or bodily feeling is in issue or relevant. In this respect therefore this section is wider than S. 14 of the Evidence Act.[2] But it does not exclude any other evidence that may be otherwise admissible.[3]

The section applies only where, if the article stood alone, there may be doubt or ambiguity as to the character, nature or tendency of the words used and not when the meaning of the article is apparent on its face.[4] Nor does it apply to publication other than newspapers.[5]

The words "in aid of the *proof* of the nature, etc.," cannot be construed to mean that no such evidence in *disproof* of the nature or tendency of the words complained of can be let in. The section may be utilised both by the person affected by the order of forfeiture, precisely in the same manner as by the Crown.[6]

3. "In aid of the proof of the nature, or tendency of".—A copy of the newspaper other than the one forfeited is admissible in evidence under this section only "in aid of the proof of the *nature* or *tendency* of the words, etc.," and for no other purpose[1] such as the policy of the paper[2] the truth of the statements made[3] or the loyalty of the writer.[4] Further it must be such that a perusal of the same throws appreciable light on the nature or tendency of the aritcle forfeited.[5] The word "tendency" is not to be confused with the word "intention". Intention and tendency are entirely different things. Intention has reference to the state of the mind of the actor. Tendency on the other hand has reference to the possible result of the act. The use of the word tendency does not show that intention is an essential element in the determination of the true character of the words.[6] *See also* Note 2 *ante*.

S. 99-F.

99-F. Procedure in High Court. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed

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Section 99-E—Note 2.

(1) (1920) 1920 Cal. 478 (484): 47 Cal. 190 (S. B.), In re *The Amrita Bazar Patrika, Ltd.* (*Per* Woodroffe, J.).
(2) (1920) 1920 Cal. 478 (492): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika* (*Per* Mookerjee, J.).
(3) (1920) 1920 Cal. 478 (493): 47 Cal. 190 (S. B.), In re *The Amrita Bazar Patrika* (*Per* Mookerjee, J.).
(4) (1920) 1920 Cal. 478 (485): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika* (*Per* Woodroffe, J.).
(1927) 1927 All. 649 (652): 49 All. 856 (S. B.), *Kalicharan Sarma* v. *King-Emperor.*
(1921) 1921 Sind 199 (200), *Emperor* v. *Govindanand.*
(5) (1920) 1920 Cal. 478 (493): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika, Ltd.* (*Per* Mookerjee, J.).
(6) (1920) 1920 Cal. 478 (485, 493): 47 Cal. 190 (S.B.), In re *Amrita Bazar Patrika,*
(1917) 18 Cri. L. Jour. 157 (235): 1918 Mad. 1210: 39 Mad. 1085, *Annie Besant* v. *Government of Madras.*

Note 3.

(1) (1920) 1920 Cal. 478 (485, 497): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika.*
(1915) 16 Cri. L. Jour. 555 (556): 1915 Lah. 383: 1915 Pun. Re. No. 15, *Amar Singh* v. *Emperor.*
(1915) 16 Cri. L. Jour. 274 (278): 1915 Lah. 1: 1915 Pun. Re. No. 19, *Farooq* v. *Emperor.*
(2) (1920) 1920 Cal. 478 (485): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika, Ltd.*
(3) (1927) 1927 All. 649 (652): 49 All. 856 (S. B.), *Kalicharan Sarma* v. *Emperor.*
(4) (1914) 1914 Lah. 1 (4): 1914 Pun. Re. No. 27 (S. B.), *Ghulam Quadir* v. *Emperor.*
(5) (1917) 18 Cri. L. Jour. 157 (224, 235): 1918 Mad. 1210: 39 Mad. 1085, *Annie Besant* v. *Government of Madras.*
(6) (1920) 1920 Cal. 478 (490): 47 Cal. 190 (S. B.), In re *Amrita Bazar Patrika* (*Per* Mookerjee, J.).

S. 99-F, Notes 1—2.

thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

SYNOPSIS.

PROCEDURE APPLICABLE TO PROCEEDINGS UNDER THIS SECTION .. .. Note No. 1
"THE AMOUNT OF COSTS" 2

1. Procedure applicable to proceedings under this section.—Where no rules are framed under this section, the procedure in the case of applications under S. 99-B is the practice followed in proceedings *other than suits and appeals.* The exclusion of the practice in "suits" and the provision for an order for the payment of costs suggest that regard is intended to be had to the practice in *miscellaneous civil proceedings.*[1]

2. "The amount of costs".—The costs of one successful party, so far as they may be found to have been reasonably incurred should be paid by the other side to whose action the incurring of costs was due.[1]

S. 99-G, Note 1.

99-G. No order passed or action taken under section 99-A shall be called in question in any Court otherwise than in accordance with the provisions of section 99-B.

Jurisdiction Barred.

1. Finality of order or action taken under S. 99-A.—This section corresponds to Sec. 22 of the Indian Press Act 1910. The following cases[1] may be referred to as bearing upon that section.

C.—Discovery of Persons wrongfully confined.

S. 100.

100.* If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the

Search for persons wrongfully confined.

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*(CODE OF 1882—S. 100.)

C.—Discovery of persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for

Search for persons wrongfully confined.

Section 99-F—Note 1.

(1) (1930) 1930 All. 401 (406): 52 All. 775 (F. B.), *Saigal* v. *Emperor.*

Note 2.

(1) (1930) 1930 All. 401 (406): 52 All. 775 (F. B.), *Saigal* v. *Emperor* (Costs incurred by Government in translating articles held seditious).

Section 99-G—Note 1.

(1) (1919) 1919 P. C. 31 (36): 43 Mad. 146: 46 Ind. App. 176 (P.C.), *Annie Besant* v. *Advocate-General* (No *certiorari* can be issued in respect of Order of Magistrate under S. 3. On Appeal from 39 Mad. 1164 and 39 Mad. 1085).

(1918) 1918 Mad. 1266 (1268): 39 Mad. 1164, *Besant* v. *Emperor.*

(1918) 1918 Mad. 1210 (1231, 1248): 39 Mad. 1085, *Besant* v. *Government of Madras.*

(1918) 1918 Lah. 219 (220): 1918 Pun. Re. No. 20, *Gulzar Muhammad* v. *Emperor* (Jurisdiction of Courts barred as regards all proceedings except declarations of forfeiture under Ss. 4, 6, 9, 11 or 12).

confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith; and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

S. 100, Notes 1—2.

SYNOPSIS.

	Note No.
SCOPE AND APPLICABILITY OF THE SECTION	1
WHO MAY ISSUE WARRANT UNDER THIS SECTION ..	2
"REASON TO BELIEVE"	3
CONFINEMENT SHOULD AMOUNT TO AN OFFENCE ..	4
FORM OF WARRANT	5
PLACE OF SEARCH	6
WHO MAY MAKE THE SEARCH	7
RESISTANCE TO ILLEGAL SEARCH	8
SUCH ORDER AS SEEMS PROPER	9

Other Topics.

Arrest or ward. See Note 2.
Duty of Magistrate. See Note 3, Pts. 1 & 2.
Habeas corpus—section not wide as. See Note 1.
May issue—notice. See Note 3, Pt. 2-a.
Persons found taken before Magistrate. See Note 9, Pts. 1 & 2.

1. Scope and applicability of the section.—The provision for the search for persons wrongfully confined was first introduced by S. 100 of the Code of 1882 and has been re-enacted in this section. The section is limited to persons *wrongfully confined* and is not as wide as the powers of the High Courts under S. 491 *infra* to issue directions in the nature of *Habeas Corpus*.[1] As to the power to compel restoration of women and female children abducted or unlawfully detained, *See* S. 552 *infra*.

2. Who may issue warrant under this section.—The only Magistrates that can act under the section are

(1) Presidency Magistrates,
(2) Magistrates of the First Class, and
(3) Sub-Divisional Magistrates.

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the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immcdiately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

(CODES OF 1872 and 1861—Nil.)

Section 100—Note 1.
(1) (1896) Rat. Un. Re. Cr. Cas. 839 (839), *Empress* v. *Muktabai*.

S. 100, Notes 2—9.

A District Court ordering the arrest of a ward under S. 25 of the Guardians and Wards Act, 1890, is by virtue of Sub-S. 2 of that section a Magistrate of the First Class within the meaning of this section.

3. **"Reason to believe".**—A Magistrate cannot issue a warrant under this section unless he has *reason to believe* that a person is wrongfully confined.[1] But he is not *bound* to hold a regular enquiry before issuing the warrant. He may act merely on an application of the complainant[2] though it would be wise to hold some enquiry or to give notice to the opposite party[2-a] and not merely rely on the allegation of an interested person of whom he knows nothing.[3]

4. **Confinement should amount to an offence.**—It is not in every case of confinement, that a Magistrate can issue a warrant. He can do so only in those cases where the confinement amounts to an *offence*. *See* Ss. 339, 340 and 368 of the Penal Code. So where a boy was taken away by the natural father from the house of the alleged adoptive father, on the ground that there was no adoption and the latter applied under this section for recovery of the boy, it was held that it was doubtful whether any offence had been committed and consequently this section was held not to apply.[1]

5. **Form of warrant.**—There is no form prescribed for a warrant under the section, and there is nothing illegal in the Magistrate using a form prescribed under S. 96[1] or S. 98[2] with the necessary alterations suited to this section.

See also Note 27 to S. 96 *ante*.

6. **Place of search.**—It is not illegal for a Magistrate to issue a warrant under this section without confining it to any particular place. But where a particular place is specified in the warrant, the officer to whom the warrant is directed, has no power to search outside that place and take the person into custody; nor has he power to endorse it to another officer, authorising him to execute the same, outside the place specified in the warrant.[1]

7. **Who may make the search.**—*See* Notes 23 and 24 to S. 96 *ante*.

8. **Resistance to illegal search.**—*See* Note 27 to S. 96 *ante*.

9. **Such order as seems proper.**—When a person wrongfully confined is brought under a warrant, before the Magistrate, he is bound to hear the parties concerned, and should after such enquiry, as may be necessary, pass such orders as may seem right.[1] Where the person for whom a search warrant is issued

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Note 3.

(1) (1916) 17 Cri. L. Jour. 491 (495): 1916 Lah. 281: 1916 P. R. 34, *Abdul Aziz* v. *Emperor*.
[See also (1896) Rat. Un. Re. Cr. Cas. 839 (839), *Empress* v. *Muktabai* (A Magistrate is not bound to issue warrant if he has no reason to believe).]
(2) (1928) 1928 Pat. 550 (550), *Chepa Mahton* v. *Emperor*.
(2-a) (1897-98) 2 Cal. W. N. (N) cccxxxiii (cccxxxiv), In the matter of *Shribalini Dassee*.
(3) (1916) 17 Cri. L. Jour. 491 (495): 1916 Lah. 281: 1916 P. R. 34, *Abdul Aziz* v. *Emperor*.

Note 4.

(1) (1920) 1920 Cal. 562 (563), *Chagan Raj* v. *Hera Lal Doosaj*.

Note 5.

(1) (1918) 1918 Cal. 74 (75): 44 Cal. 905, *Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Moozam Molla* (Dissenting from 6 Cri. L. Jour. 38).
(2) (1912) 13 Cri. L. Jour. 186 (187): 39 Cal. 403, *Gurameah* v. *Emperor*.

Note 6.

(1) (1928) 1928 Pat. 550 (551), *Chepa Mahton* v. *Emperor*.

Note 9.

(1) (1910) 11 Cri. L. Jour. 450 (451) (Lah.), *Sher Shah* v. *Musammat Sakina*.
(1898) 2 Cal. W. N. 333 (N) (334), In re *Shribalani Dossi* (Notice to be

voluntarily appears before the Magistrate and is not brought under a warrant, the Magistrate should decline to take further action under this section.[2] S. 100, Note 9.

D.—General provisions relating to Searches.

101*. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, *section* 99-*A* or section 100. S. 101.

Direction etc., of search-warrants.

*The words "Section 99-A" in this section have been added by Act XIV of 1922.

***(CODE OF 1882—S. 101.)**

D.—General Provisions relating to Searches.

Direction, etc., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83, and 84, shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

(CODE OF 1872—Ss. 370, 371, 372, 373, para 1, 375 and 376.)

Direction, of search-warrant.

370. A search-warrant shall ordinarily be directed to a Police-Officer, but the Magistrate issuing the warrant may, after recording his reasons, if immediate search is necessary and no Police-Officer be immediately available, direct it to any other person.

Warrant to Police officer may be executed by his subordinate.

371. A search-warrant directed or endorsed to a Police Officer may, if he is not able to proceed in person, be executed by any other Police-Officer.

Endorsement.

In such case the name of such Police-Officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

Execution of search-warrant out of district in which issued.

372. When it is necessary for a search-warrant to be executed out of the district in which it was issued, any Magistrate within whose local jurisdiction the warrant is to be executed shall endorse his name thereon.

Such endorsement shall be sufficient authority for the Police-Officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate within whose local jurisdiction the search is to be made; and he shall thereupon endorse his name on such warrant, and enforce its execution in the same manner as if it had been issued by himself.

Search-warrants may, in emergency, be executed without endorsement.

373. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose district the warrant is to be executed will prevent the discovery of the thing for which search is to be made, the Police-Officer charged with the execution of the warrant may execute the same, in any place beyond the district in which it was issued, without the endorsement of the Magistrate in whose local jurisdiction that place is situate.

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Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.

375. Whenever it appears necessary, a Magistrate may, by his warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

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given to the parties concerned).

(2) (1909) 10 Cri. L. Jour. 219 (220): 2 Sind L. R. 22, *Imperator* v. *Pine*.

S. 101.

SYNOPSIS.

Note No.

SCOPE AND APPLICABILITY 1

Other Topics.

Search warrant issued under Gambling Act, 1867, endorsement on. See Note 1, F.N. 2.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or of the house or place be situate within a Presidency town, he shall inform the Commissioner of Police, of the issue of such warrant.

Magistrate may send search-warrant by post to Magistrate of another District or Division of District.

376. A Magistrate issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate of the District, or out of his own Division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and may send the same by post.

Endorsement and execution by such Magistrate.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon, and enforce its execution in the same manner as if it had been originally issued by himself.

Direction of warrant to be executed in Presidency town.

If the warrant is to be executed within a Presidency town, it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case, any property found on search made may be dealt with as provided in sections three hundred and seventy-three and three hundred and seventy-four.

(CODE OF 1861—Ss. 115, 116, 117, 118, 120 and 121.)

How to be directed.

115. A search-warrant shall ordinarily be directed to Police-Officer, but the Magistrate issuing the search-warrant may, if immediate search is necessary, and no Police-Officer be immediately available, direct the warrant to any other person.

A warrant to a Police-Officer may be executed by another.

116. A search-warrant directed to an Officer in charge of a Police Station may, if such Officer is not able to proceed in person, be executed by any Officer subordinate to such Officer. In such case the name of such subordinate Officer shall be endorsed upon the warrant by the Officer to whom the warrant is directed.

How to be executed out of jurisdiction of the Magistrate.

117. When it shall be necessary for a search-warrant to be executed out of the jurisdiction of the Magistrate issuing the warrant, the Magistrate within whose jurisdiction the warrant is to be executed shall endorse his name on the warrant, which shall be sufficient authority for the Police-Officer charged with the execution of such warrant to execute the same within the said jurisdiction or the search-warrant may be directed to the Magistrate within whose jurisdiction the search is to be made, and such Magistrate shall thereupon endorse his name on such warrant and enforce its execution in the same manner as if the warrant had been issued by himself.

Search-warrants may in cases of emergency be executed without endorsement.

118. In any case in which there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police-Officer charged with the execution of the search-warrant may execute the same in any place beyond the

S. 101, Note 1.

1. Scope and applicability.—This section makes applicable, so far as may be, to search warrants under Ss. 96, 98, 99-A and 100, the provisions relating to the form, direction and execution of warrants of arrest contained in Ss. 43, 75, 77, 79, 82, 83 and 84 *ante*.

The chapters dealing with arrest and search respectively in the Codes of 1861 and 1872 repeated the procedure to be adopted in the same terms in the case of warrant for arrest and for search[1]. In order to obviate such repetition of language, S. 101 of the Code of 1882 corresponding to this section was introduced.

As to the applicability of this section and consequently of the provisions of the sections mentioned therein, to searches under local or special laws, *see* generally S. 5 *ante* and Note 14 to S. 96. *See* also the following cases.[2]

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jurisdiction of the Magistrate by whom it was issued without the endorsement of the Magistrate in whose jurisdiction that place is situate.

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120. In any case in which it may appear necessary, a Magistrate may, by the warrant, order search to be made in a place out of the jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made. When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose jurisdiction the house or place to be searched is situate, or if the house or place be situate within the local limits of any Supreme Court of Judicature, he shall inform the Chief Commissioner of Police of the issue of such warrant.

Magistrate may, when necessary, issue search-warrant to be executed in the jurisdiction of another Magistrate.

121. It shall be competent to a Magistrate issuing a warrant for the search of any house or place out of the jurisdiction of the Magistrate of the District, to direct the warrant to the Magistrate of the District in which such house or place is situate, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on the warrant and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the warrant is to be executed within the local limits of any Supreme Court of Judicature, it shall be addressed to the Chief Commissioner of Police or to a Police Magistrate. In such case any property found on search made, may be dealt with as provided in Ss. 118 and 119 of this Act.

Magistrate may send search-warrant by post to the Magistrate of another District.

Procedure to be observed by such Magistrate.

Section 101—Note 1.

(1) Compare Ss. 77 and 79, 80 and 86 with Ss. 115, 116, 121 and 118 and 120 of the Code of 1861.
and
Ss. 161 and 164, 165, 168 and 170 with Ss. 370, 371, 376 and 373 and 375 of the Code of 1872.

(2) *Cases under Opium Act which provides for the adoption of the procedure of the Code.*
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *Emperor*.
(1930) 1930 Rang. 49 (50): 7 Rang. 771, *Maung San Myin* v. *Emperor*.
Case under the Excise Act which enacts its own procedure—Code does not apply.
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *Emperor*.
Cases under the various Gambling Acts:
(1895) 1895 Pun. Re. No. 22, page 59 (60), *Vir Singh and others* v. *Queen-Empress* (Public Gambling Act III of 1867—This section will not apply).
(1920) 1920 L. B. 49 (49), *Po Thwai and others* v. *Empress* (Burmah Gambling Act—This section will not apply).
(1915) 16 Cri. L. Jour. 238 (239): 1914 Sind 158: 8 Sind L. R. 213, *Emperor* v. *Aslam Gul Mahomed* (Bombay Gambling Act—This section will not apply).
(1908) 7 Cri. L. Jour. 19 (20, 21): 30 All. 60, *Emperor* v. *Kashinath and another* (Section applies).
(1920) 1920 All. 150 (151): 42 All. 385, *Mahadeo* v. *Emperor* (Do.).
(1910) 11 Cri. L. Jour. 570 (570, 571): 1910 Pun. Re. No. 23, *Girdhari Lal and others* v. *Emperor* (Do.).
(1929) 1929 All. 68, *Emperor* v. *Abdul Ghafur* (Arms Act).

S. 102. **102***. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

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*(CODE OF 1882—S. 102.)

102. Whenever any place liable to search, or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(CODE OF 1872,—Ss. 382, 383 and 384.)

382. Whenever any house or place liable to search of inspection under this chapter is closed, any person residing in, or being in charge of, such house or place shall, on demand of the officer or other person executing the warrant, allow such officer or other person free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed house to allow search.

383. A Police-Officer or other person, auhorized by a warrant to search any house or place, may break open any outer or inner door or window of such house or place, in order to execute the warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Place to be searched may be broken open.

384. If the place ordered to be searched is an apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

Breaking of Zanana.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same

SYNOPSIS.

S. 102, Notes 1—2.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"MAY PROCEED IN MANNER PROVIDED BY S. 48"	3
ANY PERSON MAY BE SEARCHED—SUB-S. 3.	4

1. Legislative Changes—

Change made in the Code of 1898.—Sub-S. 3 is new.

2. Scope of the section.—The provisions of this section has been made applicable, so far as may be, to searches under S. 165 *infra*.[1]

As to the applicability of this section to special or local Acts, *see* Note 14 to S. 96 *ante* and the following cases.[2]

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time every precaution consistent with these provisions for preventing the clandestine removal of property.

(CODE OF 1861—Ss. 122, 123 and 124.)

122. If the house or place to be searched is closed, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Officer or other person executing the warrant, to allow such officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Persons in charge of dwelling house, &c., to allow the search.

123. A Police-Officer, or other person authorized by a warrant to search any house or place, may break open any outer or inner door or window of the house or place, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Place to be searched may be broken open.

124. If the place ordered to be searched is a zenanah or apartment in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such zenanah or apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw, and, after giving such notice and allowing a reasonable time for the woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or other person may enter such zenanah or apartment for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Breaking of zenanah or female apartment..

Section 102—Note 2.

(1) (1927) 1927 All. 516 (517), *Shiam Lal* v. *King-Emperor*.

(2) *Excise Act.*
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *Emperor* (Not applicable).

Bengal Excise Act.
(1927) 1927 Cal. 527 (527, 528): 54 Cal. 601, *Harbhajjan Sao* v. *King-Emperor* (Not applicable).

Public Gambling Act.
(1929) 1929 All. 937 (939), *Rure Mal and another* v. *Emperor* (Not applicable).
(1934) 1934 Oudh 90 (91), *Mahadeo Prasad Vishnu* v. *Emperor* (Search-warrant under Public Gambling Act).

Burmah Gambling Act.
(1906) 4 Cri. L. Jour. 390 (392) (Rang.), *Ah Tuok* v. *Emperor* (Applicable).
(1908) 7 Cri. L. Jour. 411 (411): 4 L. B. R. 134, *Ana Dewa Sing* v. *Emperor* (Applicable).
(1908) 7 Cri. L. Jour. 479 (480): 4 L. B. R. 213, *Emperor* v. *Kwe Haw and others* (Applicable).
(1920) 1920 L. B. 49 (49), *Po Thwai and others* v. *Emperor* (Applicable).
(1927) 1927 Rang. 241 (241): 5 Rang. 291, *King-Emperor* v. *Wun Na and others* (Applicable).

Opium Act.
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *Emperor* (Applicable).

S. 102, Notes 3—4.

3. **"May proceed in manner provided by S. 48".**—If ingress into a place liable to search or inspection cannot be obtained as mentioned in sub-S. 1, the person executing the warrant may proceed in manner provided by S. 48 *ante, i.e.*, by *breaking open any outer or inner door or window* of such house or place. It has been held in the undermentioned case[1] that neither this section nor S. 48 justifies the search officer to *scale the outer wall* and effect a burglarious entry into the house. It is submitted that the view cannot be accepted as a sound one. If instead of breaking open a door an outer wall can be scaled and the object effected, there is really less harm done and it cannot be the object of the legislature to see that doors are broken notwithstanding that such a course is unnecessary.[2]

4. **Any person may be searched—sub-S. 3.**—Sub-S. 3 which is new makes a search-warrant more effective by permitting the search of a person in or about the place upon whom reasonable suspicion rests, of his having concealed about his person any articles sought for. Where such a search is made, a list of articles so found and taken possession of should be prepared and a copy of the list delivered to the person so searched at his request.

See S. 103, sub-S. 4.

S. 103.

103*. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search *and may issue an order in writing to them or any of them so to do.*

Search to be made in presence of witnesses.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

***(CODE OF 1882—S. 103.)**

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

Search to be made in presence of witnesses.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Note 3.

(1) (1915) 16 Cri. L. Jour. 495 (496): 1915 All. 208: 37 All. 353, *Mukhtar Ahmad and another* v. *Emperor.*

(2) [See (1933) 1933 All. 438 (439), *Mahmud Ali Khan* v. *Emperor* (Which was a case where an entry was effected by *scaling a wall* and obstruction thereto was held to be an offence).]

S. 103.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

Occupant of place searched may attend.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) *Any person, who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section* 187 *of the Indian Penal Code.*

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

Occupant of place searched may attend.

(CODE OF 1872—S. 385.)

385. Before conducting a search under this chapter, the officer conducting it shall call upon two or more respectable inhabitants of the place in which the house or place to be searched is situate, to attend and witness the search.

Search to be made in presence of witnesses.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Occupant of place searched may attend.

(CODE OF 1861—S. 125.)

125. The search of any house or place under this Chapter shall be made in the presence of two or more respectable inhabitants of the place in which the house or place searched is situate, but such persons shall not be required to attend the Court of the Magistrate as witnesses unless specially summoned by such Magistrate.

Search of house, etc., to be made in the presence of witnesses.

The occupant of the house or place or some person in his behalf shall, in every instance, be permitted to attend during the search.

Occupant of place searched may attend.

S. 103, Notes 1—2.

SYNOPSIS.

		Note No.
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II.	SCOPE AND OBJECT OF THE SECTION	2
III.	PLACE OF SEARCH	3
IV.	SEARCH WITNESSES	4
	(1) WHO CAN CALL SEARCH WITNESSES	5
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V.	LIST OF THINGS SEIZED	12
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Other Topics.

Extrinsic evidence other than the search list may be given. See Note 12, Pts. 2 & 3.

Failure to call inhabitants of the locality. See Note 7, Pts. 6 to 8.

Proper witnesses. See Note 6.

Refusal to sign search-list. See Note 11.

Search list, additions to, do not invalidate. See Note 17, Pt. 3-a.

1. Legislative history.—

Changes made in the Code of 1882—

(1) In para. 2 the words "and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses" were newly added.

(2) In para. 3 the words "and a copy of the list prepared under this section signed by the said witnesses shall be delivered to such occupant at his request" were newly added.

Changes made in the Code of 1898—

Sub-Section 4 is new.

Changes made in 1923—

(1) The words "and may issue an order in writing to them or any of them so to do" were added at the end of Sub-S. 1.

(2) *Sub-section* 5 was newly added.

2. Scope and object of the section.—The object of the section is—

(1) to prevent possible chicanery and unfair dealings on the part of the officers entrusted with search warrants.[1]

Section 103—Note 2.

(1) (1906) 4 Cri. L. Jour. 390 (393) (Rang.), *Ah Tuck* v. *Emperor.* (1914) 1914 Low. Bur. 128 (134): 8 L.

(2) to safeguard the rights of the subject and to ensure that the search is conducted honestly.[2]

S. 103, Notes 2—4.

(3) to ensure confidence in the neighbours and in the public generally that anything incriminating which may be found in the premises searched shall be *really* found and shall not be "planted"[3] and

(4) to obtain as reliable evidence as possible of the search and exclude the possibility of any concoction or malpractice of any kind.[4]

Under the rules framed by the various Local Governments under S. 72 of the Police Act, 1861, it is provided that *before making the search*, the search party must themselves submit to being searched by the witnesses in order to leave no room for suspicion that incriminating articles are being smuggled into the place.[5] The provisions of this section will apply so far as may be to search under S. 165 *infra*.[6] Sub-S. (1) of the section refers only to the search of *places*. The officer who intends to search a *person* cannot issue an order in writing to any inhabitants of the locality to be witnesses for such a search and their presence is not necessary.[7]

3. Place of search.—A cart is not a '*place*' such as is contemplated in this section and therefore its provisions will not apply to the search of a 'cart'.[1]

4. Search witnesses.—Under this section it is obligatory on the officer about to execute a search warrant to call on and get two or more respectable inhabitants of the locality to witness the search.[1] They must be called *before the search is started*. The object of this section would be entirely defeated if it were open to the police to raid the place first and then call the witnesses.[2]

The witnesses for the search can be examined as witnesses in the case as to the fact of the search, but a Court is not bound to accept their evidence as

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B. R. 38, *Ti Ya* v. *Emperor*.
(1925) 91 Ind. Cas. 249 (249, 250) (Lah.), *Abdullah* v. *Emperor*.
(2) (1919) 1919 All. 41 (42): 42 All. 67, *Nirmal Singh* v. *Emperor*.
(3) (1906) 4 Cri. L. Jour. 390 (393) (Rang.), *Ah Tuck* v. *Emperor*.
(1917) 18 Cri. L. Jour. 1009 (1009): 1917 Low. Bur. 91, *Ah Pok* v. *Emperor*.
[See also (1919) 1919 Pat. 452 (453, 454), *Lakshmi Narain* v. *Emperor*.
(1908) 7 Cri. L. Jour. 479 (487): 4 L. B. R. 213, *Emperor* v. *Kwe Haw*.]
(4) (1930) 1930 Cal. 141 (143), *Emperor* v. *Balai Ghose*.
(1903-1904) 2 Low. Bur. Rul. 43 (45), *Emperor* v. *Maung Cho*.
(1910) 11 Cri. L. Jour. 746 (747) (Rang.), *Emperor* v. *Sit Nyin*.
(5) See Allahabad Police Regulations 1928, para. 100.
Burma Police Manual, 1926, para. 703.
Bihar and Orissa Police Manual 1931, Rule No. 165 (*e*).
Central Provinces Police Manual 1931, para. 739.
(1933) 1933 Oudh 305 (307), *Sohan Lal* v. *Emperor*.
[See also (1933) 1933 All. 438 (439), *Emperor* v. *Mahomed*.
(1927) 1927 Rang. 241 (242): 5 Rang. 291, *Emperor* v. *Wan Ma*.]
(6) (1927) 1927 All. 516 (517), *Shiam Lal* v. *Emperor*.
(7) (1933) 1933 Nag. 99 (100): 29 Nag. L. R. 67, *Local Government* v. *Nain Sukh*.

Note 3.

(1) Cr. Rg. 18—6—1885, *Makan Khoshal*.

Note 4.

(1) (1908) 7 Cri. L. Jour. 479 (482): 4 L. B. R. 213 (F.B.); *Emperor* v. *Kwe Haw*.
(1921) 1921 Pat. 508 (509), *Debidas* v. *Emperor*.
(2) (1903-1904) 2 Low. Bur. Rul. 43 (45), *Maung Cho*.
(1908) 7 Cri. L. Jour. 479 (481): 4 L. B. R. 213, *Emperor* v. *Kwe Haw*.

S. 103, Notes 4—7.

true, where they are shown to be false[3] or where there are discrepancies therein.[4]

The evidence of a person cannot be distrusted solely on the ground that on a previous occasion he had acted as a witness in another search[5] though it is objectionable to be constantly calling on the same person to witness searches.[6]

The mere fact that the witnesses for the search helped the police in making the search will not make the search invalid.[7] *See also* Notes 5 to 11 and 13 below.

5. **Who can call search witnesses.**—It is only the *officer about to make the search* and not any other person that can call for witnesses for search.[1]

6. **Respectable inhabitants.**—The section requires that the search should be conducted in the presence of two or more *respectable* inhabitants of the locality.[1-a]

The words "respectable inhabitants of the locality" must be construed in the light of the object of the section in accordance with the maxim *ut res magis valeat, quam pareat*—that an act may prevail rather than perish. As has been seen in Note 2 already the legislature has made this provision to ensure fair dealing and a feeling of confidence and security amongst the public in regard to a sometimes necessary invasion of a private right regarded as almost sacred under the British system. In order to give effect to this object, it is necessary that the persons selected should be absolutely unprejudiced and uninterested in the results of what they have to take part in.[1] The selection of officers connected with the police or persons who are not impartial, is not contemplated by the section.[2] Thus a head man of a ward in Rangoon who is appointed by the Commissioner of Police is not a fit person to be selected as a witness,[3] but such a head man in other towns, who is not appointed by such officer is not incompetent to witness a search under the section.[4]

7. **Of the locality.**—Only respectable persons *of the locality* are to be selected as witnesses for the search.[1] The words "of the locality" do not mean that they should be living within a stone's throw of the house to be sear-

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(3) (1918) 1918 All. 113 (114), *Baburam* v. *Emperor.*
(4) (1923) 1923 Lah. 683 (683), *Sandagar Singh* v. *Emperor.*
(5) (1933) 1933 Nag. 99 (100): 29 N. L. R. 67, *Local Government* v. *Nain Sukh.*
(6) (1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *Emperor.*
(7) (1927) 1927 Rang. 241 (242): 5 Rang. 291, *King-Emperor* v. *Wan Ma.*

Note 5.

(1) (1898) 21 Mad. 83 (89), *Empress* v. *Raman.*

Note 6.

(1-a) (1935) 1935 All. 520 (520), *Ramchandra* v. *Emperor* (A man who has been twice convicted, once for forgery and once for robbery is altogether unsuitable as a search witness).
(1) (1908) 7 Cri. L. Jour. 479 (482, 483): 4 L. B. R. 213 (F. B.), *Emperor* v. *Kwe Haw.*
(1911) 12 Cri. L. Jour. 251 (253) (Rang.), *Emperor* v. *Khan Haw* (Respectability means much the same thing as impartiality).
(1923) 1923 Lah. 79 (80), *Sher Ali* v. *Emperor* (The presence of independent witnesses is an essential requirement of the section).
(2) (1908) 7 Cri. L. Jour. 479 (483): 4 L. B. R. 213, *Emperor* v. *Kwe Haw.*
(1906) 4 Cri. L. Jour. 390 (393) (Rang.), *Ah Shee* v. *King-Emperor.*
(1928) 1928 Cal. 27 (35), *Hari Narayan Chandra* v. *Emperor.*
(1929) 1929 All. 901 (902), *Faqira* v. *Emperor* (Village Mukhia and Chowkidar not proper search witnesses).
(1931) 1931 Lah. 408 (416), *Indar Dutt* v. *Emperor* (Dismissed constable not to be selected).
[See (1934) 1934 Oudh 90 (91): 9 Luck. 355, *Mahadeo Pershad* v. *Emperor* (Mere fact that a person has appeared as a search witness in another case does not make him a person under the control of the police).]
(3) (1908) 7 Cri. L. Jour. 479 (484, 488): 4 L. B. R. 213, *King-Emperor* v. *Kwe Haw.*
(1911) 12 Cri. L. Jour. 251 (254, 255, 256) (Rang.), *Emperor* v. *Kan Haw.*
(4) (1914) 1914 Low. Bur. 128 (130, 133, 134): 8 L. B. R. 38, *Tiya* v. *Emperor.*
(1908) 8 Cri. L. Jour. 413 (416): 1908 U. B. R. 2nd quarter gambling, *Paw Ya* v. *King-Emperor.*

Note 7.

(1) (1898-99) 2 Oudh Cas. 99 (102), *Ganeshi* v. *Crown.*

ched.[2] Nor are the words restricted to mean the same quarter.[3] They are comprehensive and will include places even within 3 or 4 miles of the place of search.[4] In a densely populated city like Rangoon "locality" has, however, been held to mean the *immediate vicinity* and not a place a couple of miles away.[5]

But the fact that the witnesses are from a different locality will not necessarily make the search invalid.[6] The emphasis of the section is on the word "respectable" and not on the word "locality",[7] and the mere fact that a witness for search is of a different locality would not justify a resistance to such search.[8]

8. Search shall be made in their presence.—Both the letter and the spirit of the section require that the witnesses should actually accompany the persons making the search and should be actual witnesses to the fact of finding of the property. It is not a sufficient compliance with this section that they should be merely summoned and kept present outside a building while the search is being carried on within it and then called in to see what has been found.[1] But if the place searched is visible to witnesses from outside the room or house they need not be inside it.[2]

The mere fact that the witnesses are not present *throughout the search* and did not witness *every* detail of it, would not justify the setting aside of the conviction, but where such a circumstance has left the evidence in an unsatisfactory condition so that there is a reasonable doubt as to whether the article found was really in the possession of the accused, a conviction cannot be sustained.[3]

It is not necessary that the search witnesses must have been present at the scene before the *arrival* of the officer making the search. It is sufficient compliance with the section that the search witnesses arrived on the scene before the *search begins*.[4]

(1934) 1934 Nag. 156 (157), *Hajari Tika Lodhi* v. *Emperor*.

(1934) 1934 All. 374 (375), *Sadlu* v. *Emperor* (Where respectable persons can be found in the neighbourhood, and the Police Officer making a search takes with him persons whose respectability is questionable or who come from a distant locality inference is that he was prompted by a desire to have such witnesses as would be easily persuaded to support any story which he might put forward).

(2) (1917) 18 Cri. L. Jour. 1009 (1009): 1917 Low. Bur. 91, *Ah Pok* v. *Emperor*.

(1934) 1934 Oudh 90 (91): 9 Luck. 355, *Mahadeo Pershad* v. *Emperor*.

(1934) 1934 All. 873 (874), *Emperor* v. *Bachcha* (Search on public road away from town—Absence of search witnesses from immediate vicinity is immaterial).

(3) (1911) 12 Cri. L. Jour. 479 (479) (Rang.), *Ah Sein* v. *Emperor*.

(1934) 1934 Sind 159 (161): 28 Sind L. R. 41, *Gandalal Kalidas* v. *Emperor*.

(4) (1931) 1931 Oudh 115 (116): 6 Luck. 472, *Emperor* v. *Mast Ram*.

(1908) 8 Cri. L. Jour. 413 (416, 417): 1908 U. B. R. 2nd quarter gambling, *Paw Ya* v. *Emperor* (Another quarter of the same place 1 mile away).

(1910) 11 Cri. L. Jour. 746 (747) (Rang.), *Emperor* v. *Sit Nyein* (Another quarter within hail of the place of search).

(1901) 23 All. 420 (421), *King-Emperor* v. *Muhammad Husain* (500 paces off).

(5) (1925) 1925 Rang. 205 (205), *Ma Ht Way* v. *Emperor*.

(6) (1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor*.

(1928) 1928 Cal. 27 (35), *Hari Narayan Chandra* v. *Emperor*.

(7) (1910) 11 Cri. L. Jour. 746 (747) (Rang.), *Emperor* v. *Nyein*.

(1917) 18 Cri. L. Jour. 1009 (1009): 1917 Low. Bur. 91, *Ah Pok* v. *Emperor*.

(1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor*.

(1934) 1934 Sind 159 (161): 28 S. L. R. 41, *Gandalal Kalidas* v. *Emperor*.

(8) (1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor*.

Note 8.

(1) (1930) 1930 Bom. 169 (170): 54 Bom. 471, *Dinkar Nhanu* v. *Emperor*.

(2) (1914) 15 Cri. L. Jour. 19 (21): 35 All. 575, *Sayeed Ahmad* v. *Emperor*.

(3) (1930) 1930 Bom. 169 (172): 54 Bom. 471, *Dinkar Nhanu* v. *Emperor*.

(4) (1934) 1934 Bom. 16 (20), *Appa Ramamali* v. *Emperor*.

S. 103, Notes 9—12.

9. **Shall not be required unless summoned.**—A person called upon to attend and witness a search cannot be compelled by the officer conducting the search to attend court to give evidence without a summons in that behalf.[1]

10. **Duty of prosecution to call search witnesses.**—An officer connected with the investigation cannot be deemed to be an entirely satisfactory witness for the purpose of proving the search.[1] So ordinarily the prosecution should produce the search witnesses and they would be guilty of suppressing material evidence if they do not do so.[2] But it is not the duty of the prosecution to put every search witness in the witness box. The discretion is left to the Court to require or not the attendance of such witnesses.[3] Where the officer desires that the evidence of the witnesses are required to fortify his own evidence, then he must call those witnesses.[4]

11. **Refusal or neglect to attend and witness search.**—Before the introduction of sub-S. (5) in 1923 it was held by the High Court of Madras in *In the matter of Ramaya Naika*[1] that a refusal of a search witness to *sign* the list is not a refusal to render "assistance" within the meaning of S. 187 of the Penal Code. In a later case,[2] however, the same High Court held that the failure to attend and witness a search in obedience to a requisition under this section is a failure to render "assistance" within S. 187 of the Penal Code. A similar view was taken also by the Judicial Commissioner's Court of Lower Burma.[3] Under the present sub-S. (5), the refusal to "attend and witness a search under this section" should be deemed to be an offence under S. 187, Penal Code. The words "attend and witness a search under this section" would, it is submitted, include attending, witnessing, and also *signing* the search list. The decision in *Ramaya Naika's* case is, therefore, it is submitted, now no longer good law.

12. **List of things seized.**—The provision as to the preparation of the search list was newly introduced in the Code of 1882 as a means of putting a check upon the irregularities which occur in the course of searches. An officer conducting a search should, therefore, strictly comply with this provision and prepare a search list in the manner specified.[1] He should exercise the very greatest caution in fulfilling the formalities of the law for making a search and providing every possible safeguard so as not to allow any handle for adverse criticism.[1-a]

Note 9.

(1) (1920) 1920 Mad. 286 (286), *Ippili Magatha* v. *Emperor.*
(1906) 28 All. 62 (69), *Emperor* v. *Deni.*

Note 10.

(1) (1930) 1930 Cal. 141 (143), *Emperor* v. *Balai Ghosh.*
(2) (1932) 1932 All. 185 (186), *Mahomed Bashir* v. *Emperor.*
(3) (1928) 1928 Cal. 27 (35) (F. B.), *Hari Narayan Chandra* v. *Emperor* (Dissenting from and disapproving 9 Cal. W. N. 438).
(1904) 9 Cal. W. N. 438 (439), *Murni Sonar.*
(1932) 1932 Cal. 474 (477); 59 Cal. 1361, *Saroji Kumar Chakravarty* v. *Emperor* (Not usual to call every search witness).
[See also (1933) 1933 Pat. 100 (102): 11 Pat. 807, *Mosaddi Rai* v. *Emperor.*]
(4) (1932) 1932 Bom. 181 (183), *Emperor* v. *Rustam.*

Note 11.

(1) (1903) 26 Mad. 419 (420, 421) (F. B.), In the matter of *Ramaya Naika.*
(2) (1920) 1920 Mad. 286 (286), In re *Ippili Magatha.*
(3) (1893-1900) 1893-1900 Low. B. R. 406 (407), *Queen-Empress* v. *Nga Hat.*

Note 12.

(1) (1915) 16 Cri. L. Jour. 264 (266) (Rang.), *Nga San Nyein* v. *Emperor.*
(1-a) (1929) 1929 All. 901 (902, 903), *Faqira* v. *Emperor.*

S. 103, Notes 12—16.

The properties found and places searched, should ordinarily be proved by the production of search list which should be exhibited as relevant evidence of those matters.[2] But the contents need not be proved by the list alone. Other evidence of its contents is admissible. Section 91 of the Evidence Act does not apply to such cases.[3] If prohibited articles are found in the possession of the accused a conviction based thereon will be valid.[4] As to the manner of preparing search lists and numbering the several items of property found, see the undermentioned cases.[5]

13. Signed by the witnesses.—The search list should be signed by the witnesses for the search and unless it is so signed no presumption based upon such list can be drawn against the accused.[1]

14. Occupant of the place searched.—The words *"occupant of the place"* are not intended to cover any person who may happen to be in the place at the time but they refer back to the person mentioned in S. 102, *supra* that is "a person residing in or being, in charge of the place".[1]

15. Right of occupant to be present.—Where the occupant is present and demands to be allowed to be present at the search he must be permitted to do so. The rule is one not merely of technicality but of substance inasmuch as it is enacted to guarantee the realities of the search and the discoveries made thereat.[1] Where the search officer insists on keeping the occupant out and the occupant causes hurt to the officer in attempting to go into his house on physical resistance being offered by the officer, he cannot be held guilty of an offence under S. 332 of the Penal Code.[2] It is, however, not necessary that the occupant *must* be present at the search. The section only says that he should be *permitted* to do so.[3]

16. Applicability of the section to searches under other Acts.—As to the applicability of this section to searches under other special or local Acts

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(2) (1911) 12 Cri. L. Jour. 489 (493): 5 Sind L. R. 31, *Imperator* v. *Misri*.
(1933) 1933 Sind 220 (222), *Baloch* v. *Emperor*.
(3) (1910) 11 Cri. L. Jour. 136 (136): 33 Mad. 416, *Etamathan* v. *Emperor*.
(1910) 11 Cri. L. Jour. 576 (577) (F.B.), (Mad.), *Solai Naick*, In re (Overruling 2 Weir 47; 2 Weir 515).
(1910) 11 Cri. L. Jour. 716 (716): 33 Mad. 413, *The Public Prosecutor* v. *Sarabu Chennaya*.
(1932) 1932 All. 185 (186), *Md. Bashir* v. *Emperor*.
(1927) 1927 Lah. 149 (151), *Bachan* v. *Emperor*.
(4) (1933) 1933 Rang. 146 (147): 11 Rang. 107, *Chwa Hum Htine* v. *Emperor*.
(5) (1935) 1935 Cal. 184 (187), *Rafiqueuddin Ahmad* v. *Emperor* (When there are several search lists in each of which several items of property are mentioned, the prosecution ought to prove their case with regard to the different items severally, and the different items of property are different groups thereof mentioned in a search list ought to be separately and consecutively numbered either by letters or figures or by some other distinguishing marks and the same numbering should be followed while recording the evidence of witnesses relating to the searches to which those search lists refer).
(1934) 1934 Rang. 80 (81), *A. R. Rajalingam* v. *Emperor* (Articles of same kind seized—Identification by witnesses—Giving of exhibit numbers necessary).

Note 13.

(1) (1908) 7 Cri. L. Jour. 411 (412): 4 L. B. R. 134, *Ana Dewa Singh* v. *Emperor*.

Note 14.

(1) (1914) 1914 Cal. 456 (470, 471): 41 Cal. 350, *Romesh Chandra* v. *Emperor*.

Note 15.

(1) (1914) 1914 Cal. 456 (468): 41 Cal. 350, *Romesh Chandra* v. *Emperor*.
(2) (1932) 1932 All. 449 (450), *Bhi Kugir* v. *Emperor*.
(3) (1928) 1928 Cal. 27 (35) (F.B.), *Hari Narayan Chandra* v. *Emperor* (Dissenting from and disapproving of the view of Beachcraft, J., in 1914 Cal. 456).

S. 103, Notes 16—17.

see the undermentioned decisions[1] and Note 14 to S. 96, *ante*.

17. **Irregularities in search**.—No irregularity in a search can vitiate the trial nor effect the conviction of the accused unless the accused has been prejudiced by the defect.[1] Thus the failure to call respectable persons of the locality to witness the search[2] or the failure to prepare a search list on the spot[3] or the addition of new items to the search list after it had been signed by the witnesses[3-a] are irregularities that will not vitiate the trial in the absence of proof

Note 16.

(1) *Applies to the Opium Act.*
(1922) 1922 Lah. 458 (459): 3 Lah. 359, *Khilinda* v. *Emperor*.
(1904) 1 Cri. L. Jour. 993 (993, 994) (Rang.), *N. C. Sen* v. *Emperor*.
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *King-Emperor*.
(1927) 1927 Rang. 170 (170), *Kali Kumar De* v. *Emperor*.
(1930) 1930 Rang. 49 (50): 7 Rang. 771, *Maung San Myin* v. *Emperor*.
Applies to Bengal Excise Act V of 1909.
(1914) 1914 Cal. 675 (677): 41 Cal. 836, *Prokash Chandra* v. *Emperor*.
Bombay Akbari Act.
Cr. Rg. 18—6—1885, In re *Matter* of *Makan Khoshal*.
Applies to U. P. Excise Act.
(1932) 1932 All. 185 (185), *Mohd. Bashir* v. *Emperor*.
Applies to Burma Gambling Act.
(1906) 4 Cri. L. Jour. 390 (392) (Rang.), *Ah Tuck* v. *Emperor*.
(1908) 7 Cri. L. Jour. 87 (87): 4 L. B. R. 121, *Mi Hauk* v. *Emperor*.
(1908) 7 Cri. L. Jour. 411 (411): 4 L. B. R. 134, *Ana Dewa Singh* v. *Emperor*.
(1920) 1920 L. B. 49 (49), *Po Thwai* v. *Emperor*.
Does not apply to the Excise Act.
(1908) 7 Cri. L. Jour. 87 (88): 4 L. B. R. 121, *Mi Hauk* v. *King-Emperor*.
Does not apply to the Bengal Excise Act.
(1927) 1927 Cal. 527 (527): 54 Cal. 601, *Harbhajan Sao* v. *Emperor*.
Does not apply to the Public Gambling Act.
(1922) 1922 Lah. 458 (458, 459): 3 Lah. 359, *Khilinda Ram* v. *Emperor*.
Does not apply to the Bombay Prevention of Gambling Act.
(1932) 1932 Bom. 610 (611), *Emperor* v. *Raghunath Lahanusa*.
(1917) 18 Cri. L. Jour. 49 (50): 1917 Sind 16: 10 Sind L. R. 137, *Kadir Mohd.* v. *Emperor*.
(1914) 1914 Sind 158 (159): 8 Sind L. R. 213, *Emperor* v. *Aslum Gul Mohd.*
Does not apply to the U. P. Gambling Act.
(1929) 1929 All. 937 (939), *Rure Mal* v. *Emperor*.
(1934) 1934 Oudh 232 (232), *Maqbool Ahmed Khan* v. *Emperor* (Search under U. P. Excise Act).
(1935) 1935 Mad. 98 (100, 101), *Subbier* v. *Emperor* (Search under Madras City Police Act).
(1934) 1934 Nag. 156 (157), *Hajar Tika Lodhi* v. *Emperor* (Search under C. P. Excise Act—Provisions of this section apply).

Note 17.

(1) (1929) 1929 All. 937 (939), *Rure Mal* v. *Emperor*.
(1930) 1930 Rang. 49 (50): 7 Rang. 771, *Maung San Myin* v. *Emperor*.
(1931) 1931 Oudh 115 (116): 6 Luck. 472, *Emperor* v. *Mast Ram*.
(1933) 1933 Lah. 809 (810), *Doulat Ram* v. *Emperor*.
(1904) 1 Cri. L. Jour. 993 (994) (Rang.), *N. P. Sen* v. *Emperor* (In this case the conviction was quashed on the ground that the irregularities were serious).
(1934) 1934 Oudh 321 (323), *Emperor* v. *Chandevapasi* (Provisions regarding searches of houses and the precaution necessary to be taken before any search is held have been framed with a view to protect the interests of the accused).
[See (1935) 1935 Rang. 233 (233, 234), *Boon Chin* v. *Emperor* (Police party consisting of several senior officers—Search witnesses chosen—Presumption is that they have been properly chosen).]
(2) (1925) 91 Ind. Cas. 249 (250) (Lah.), *Abdullah* v. *Emperor*.
(1912) 13 Cri. L. Jour. 763 (764) (Mad.), *Satagopa Charlu* v. *Satrughna Behara*.
(1919) 1919 Pat. 452 (453), *Lachmi Narain* v. *Emperor*.
(1921) 1921 Pat. 508 (508, 509), *Debi Das* v. *Emperor*.
(1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor*.
(1892-1896) U. B. R., Vol. I, 135.
(1926) 1926 All. 147 (150, 151), *Emperor* v. *Param Sukh*.
(1910) 11 Cri. L. Jour. 453 (464): 37 Cal. 467, *Barindra Kumar* v. *Emperor* (Only one witness was called and not two).
(1932) 1932 Bom. 610 (611), *Emperor* v. *Raghunath Lahanusa* (Panchas not local people).
(1926) 1926 All. 188 (189), *Abdul Hafiz* v. *Emperor* (Respectable persons not available at the time—Search conducted with persons available).
(1933) 1933 Lah. 809 (810), *Daulat Ram* v. *Emperor* (Witnesses not respectable).
(1910) 11 Cri. L. Jour. 453 (464): 37 Cal. 467, *Barindra Kumar* v. *Emperor* (Do.).
(1934) 1934 All. 873 (874), *Emperor* v. *Bachcha* (Only one search witness present at search—No bar to conviction).
(1934) 1934 Oudh 232 (232), *Maqbool Ahmad Khan* v. *Emperor* (Fact that witnesses did not belong to the village in which the search was made is only irregularity).
[But see (1904) 1 Cri. L. Jour. 993 (994) (Rang.), *N. C. Sen* v. *Emperor* (Where the fact that witness was not respectable was held to vitiate the conviction).]
[See also (1919) 1919 All. 41 (42): 42 All. 67, *Nirmal Singh* v. *Emperor* (Where the failure to call for witnesses was held to justify obstruction to the search).]
(3) (1910) 11 Cri. L. Jour. 453 (464): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor*.
(3-a) (1914) 1914 L. B. 258 (258): 7 L. B. R. 275, *Htaung* v. *Emperor*.

of a failure of justice resulting therefrom. Irregularity in a search would, however, always afford ground for scrutiny[4] and may furnish a reason for distrusting the evidence produced by the prosecution.[5] S. 103, Note 17.

E.—Miscellaneous.

Power to impound document, etc., produced.

104.* Any Court may, if it thinks fit, impound any document or thing produced before it under this Code. S. 104, Notes 1—2.

SYNOPSIS.

	Note No.
"ANY COURT"	1
"MAY, IF IT THINKS FIT"	2
"IMPOUND"	3
"PRODUCED BEFORE IT UNDER THIS CODE"	4

Other Topics.

Illegal impounding. See Note 1, Pt. 2 and Note 4, Pt. 2.

1. "Any Court".—*'Any Court'* in the section means any Court which has seisin of the case in which the document or thing is produced. Thus, the High Court can order to be impounded an alleged forged document produced in the case before it, on revision.[1] But a District Magistrate cannot impound any document which is produced in a case pending before a subordinate Magistrate.[2]

2. "May, if it thinks fit".—The section gives a discretion to the Court to impound the document or thing produced before it under the provisions of the Code.

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*(CODE OF 1882—S. 104.)

E.—Miscellaneous.

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

(CODE OF 1872—S. 367.)

Power to impound document produced.

367. Any Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

(CODE OF 1861—Nil.)

Section 104—Note 1.

(1) (1910) 11 Cri. L. Jour. 448 (449): 38 Cal. 106, *Sasi Bhusan Seal* v. *Manik Lal Nundy*.

(2) (1904) 1 Cri. L. Jour. 1060 (1061) (All.), *Byas Hardeo Das* v. *Emperor*.

(4) (1932) 1932 All. 185 (186), *Mohd. Bashir* v. *Emperor*.

(5) (1933) 1933 Nag. 99 (100): 29 Nag. L. R. 67, *Local Government* v. *Nainsukh*.

S. 104, Notes 3—4.

3. **"Impound".**—The word 'impound' means "to place in the custody of the law".[1]

4. **"Produced before it under this Code".**—The section refers to documents or things produced before it "*under this Code*", *e.g.*, under Ss. 94, 95, 96, 98 and 99-A. When therefore a document is not produced under the provisions of the Code, it cannot be impounded under this section.[1] Where a summons to produce was issued by a Magistrate who had no authority to issue it, and certain account books were produced in obedience to such summons, they cannot be said to have been produced "under this Code", and this section cannot therefore apply.[2] As to the disposal of documents or things produced otherwise before the Court, see S. 517 and the undermentioned case.[3]

S. 105, Note 1.

Magistrate may direct search in his presence.

105.* Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

1. **Scope and applicability.**—A Magistrate who is competent to issue a search warrant under this Code can also direct a search to be made in his presence.[1] Such power is one falling within the principle of the legal maxim that "whatever a man *sui juris* may do of himself, he may do by another", and

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*(CODE OF 1882—S. 105.)

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

(CODE OF 1872—S. 378, para 2.)

378. * * * * *

The Magistrate may also direct a search to be made in his presence, of any house or place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

(CODE OF 1861—S. 128.)

128. * * * * *

The Magistrate may also direct a search to be made in his presence of any house or place, for the search of which he is competent to issue a search-warrant.

Magistrate may attend personally.

Note 3.

(1) [See Wharton's Law Lexicon.]

Note 4.

(1) (1904) 1 Cri. L. Jour. 1060 (1061) (All.), *Byas Hardeo Das* v. *Emperor*.
(2) Ratanlal 880 (880), In re *Parmanand*.
(3) (1926) 1926 Nag. 304 (305): 22 Nag. L. R. 34, *Waman Rao* v. *Emperor* (Document produced in cross-examination—Confiscation as being a State document).

Section 105—Note 1.

(1) (1912) 13 Cri. L. Jour. 693 (701): 39 Cal. 953, *Loftus Otway Clarke* v. *Brojendra Kishore Roy Chowdhury*.
(1884) 1884 All. W. N. 212 (213), *Empress* v. *Din Ali*.

its correlative that "what is done by another is to be deemed done by the party himself; *qui per alium facit per seipsum facere videtur.*" As has been seen in Note 1 to S. 65, *ante* when the Legislature empowers an officer to delegate an authority to do a certain act to another person, it necessarily implies that the original authority to do such act is fully and completely in the officer himself, but that it is necessary for the exigencies of business that it should be done in the majority of cases by persons acting under authority derived from him. This principle is adopted by the legislature in this section as well as in S. 65, *ante*.[2] S. 105, Note 1.

Where a Magistrate does not issue a search warrant but acts under this section, he must strictly confirm to the provisions thereof. Thus where he does not enter the house or room to be searched, but stands outside it, and sends the complainant or the Police Inspector to search, he cannot be said "to direct the search to be made *in his presence*" and the search would be contrary to law.[3]

(1925) 1925 All. 434 (436): 47 All. 575, *Emperor* v. *Kutroo*.

(2) (1907) 6 Cri. L. Jour. 60 (65, 66): 31 Bom. 438, *Emperor* v. *Kaitan Duming Fernad* (A case under the Gambling Act to which this section also applies).

(3) (1907) 6 Cri. L. Jour. 60 (67): 31 Bom. 438, *Emperor* v. *Kaitan Duming Fernad* (Complainant).

(1933) 1933 Lah. 234 (234), *Hari Ram and others* v. *Emperor* (Police Inspector).

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the peace on conviction.

S. 106.

Security for keeping the peace on conviction.

106. (1) Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men or of taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate,

Security for keeping the peace on conviction.

106.* (1) Whenever any person accused of *any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under S. 143, S. 149, S. 153-A or S. 154 thereof, or of* assault or other offence involving a breach of the peace, or of abetting the same [* * *] or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate,

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***(CODE OF 1882—S. 106.)**

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

trate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class, S. 106

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

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and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(CODE OF 1872—Ss. 489, para. 1 & 3, 490, 493.)

Personal recognizance to keep the peace in cases of conviction.

489. Whenever a person accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a Division of a District, or Magistrate of the first class,

* * * *

Such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

S. 106.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(3) An order under this section may also be made by an Appellate Court *including a Court hearing appeals under S.* 407, or by the High Court when exercising its powers of revision.

Security to keep the peace.

490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a District, or by a First Class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

Penalty of bond.

493. The bond shall be in the form (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

(CODE OF 1861—Ss. 280, 281, and 284.)

Personal recognizance to keep the peace in cases of conviction.

280. Whenever a person charged with rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Court of Session or the Magistrate of the District or other Officer exercising the powers of Magistrate, and the Court or Magistrate or other Officer as aforesaid by which the accused person is convicted, or the Court or Magistrate or other officer as aforesaid by which final sentence or order in the case shall be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted, it shall be lawful to such Court or Magistrate or other Officer as aforesaid so convicting the accused person, or so passing the final sentence or order as aforesaid, in addition, to direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by the Magistrate of the District or other Officer exercising the powers of a Magistrate, or three years if the sentence or final order be passed by a Court of Session. When any accused person shall be convicted of any offence specified in this Section by an Officer not exercising the powers of a Magistrate, such Officer, if he consider it just and necessary to require a penal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District, or other Officer exercising the powers of a Magistrate to whom such Officer may be subordinate, who shall deal with the case as if the conviction had been before himself.

Security to keep the peace.

281. In cases in which it may appear necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, it shall also be lawful to the Court or Magistrate or other Officer

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Is breach of the peace involved in criminal trespass ? See Note 10, Pts. 5 to 6.

Offence not themselves involving a breach of the peace. See Note 10.

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as aforesaid, empowered to require a penal recognizance under the last preceding Section, to require security in addition thereto and to fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in custody for any time not exceeding one year if the order be passed by the Magistrate of the District or other Officer exercising the powers of Magistrate, or three years if the order be passed by the Sudder Court or by a Court of Session.

Penalty.

284. The penalty of such bond, which shall be in the form (*D*) given in the Appendix or to the like effect, shall be fixed with a due regard to the circumstances of the case and the means of the party, and the amount in which the sureties shall be bound shall not exceed the said penalty.

S. 106. Note 1

Other Topics.

Opportunity to show cause. See Note 16, Pts. 6 & 7.
Order for security abates with annulment of conviction. See Note 20.
Security order and exercise of legal rights. See Note 15, Pt. 5.
"Sum proportionate to his means". See S. 112, Note 4.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872

Sections 280 and 281 of the Code of 1861 enabled *any officer* exercising the powers of a Magistrate to require a personal engagement from a convicted person. Under Ss. 489 and 490 of the Code of 1872, only a Magistrate of a Division of a District or a Magistrate of the first class was enabled to take such recognizance.

The other differences are not material.

Changes made in 1882—

(1) Criminal intimidation by threatening injury to person or property was made one of the offences to which the section would apply.[1]

(2) The High Court, the Presidency Magistrate and the District Magistrate were also empowered to pass orders under this section.

(3) The maximum period for which security could be demanded was made three years in all cases. In the prior Codes, it was one year if the order was made by a Magistrate[2] and three years, if it was made by a Court of Session.

(4) The power to order security was conferred on the Court or Magistrate convicting the accused. In the prior Codes, the power was conferred on the Magistrate or Court, by whom the accused was convicted or the final sentence or order was made in the case. *See* Note 19.

(5) A provision corresponding to sub-S. (2) of the present section was newly added.[3]

Changes made in 1898—

(1) The words qualifying criminal intimidation were omitted.

(2) The words "other offences involving breach of peace" were substituted for "other breach of peace".

(3) Sub-S. 3 was newly added.

Changes made in 1923—

(1) In sub-S. (1) the words "rioting" and "of assembling armed men or taking other unlawful measures with the evident intention of committing the same have been omitted and the words

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Section 106—Note 1.

(1) (1879) 2 All. 351 (352), *Empress of India* v. *Raghubar and others* (Case under Code of 1872—Criminal intimidation was not one of the offences on conviction for which the accused could be bound over).

(2) (1866) 6 Suth. W. R. 71 Cr. (71), *Queen* v. *W Don Dolloi*.

(3) [See (1865) 3 Suth. W. R. Cr. 33 (33), *Queen* v. *Reazooddeen and others* (Case under the Code of 1861 which did not contain any such provision. Conviction set aside in appeal. Order of original Court requiring security was set aside by the High Court on revision).]

"any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under Ss. 143, 149, 153-A or 154 thereof" have been introduced instead. *See* Note 4.

(2) In sub-S. 3, the words "including a Court hearing appeals under S. 407" have been added.

2. Scope of the section.—This chapter contemplates two kinds of security being taken;

(*a*) for keeping the peace and

(*b*) for good behaviour.

This section and the next deal with the former and Ss. 108 to 110, with the latter. Security for keeping the peace can be required under this section when a person is *convicted* of certain offences and under the next section, when, though he is not convicted of any offence, there is reason to apprehend that he is likely to commit or provoke a breach of the peace.

In order that this section may apply, it is essential,

(1) that there must be a conviction,

(2) that such conviction must be for one of the offences mentioned in the section,

(3) that such conviction must be by one of the Courts mentioned in the section, and

(4) that such Court must be of the opinion that it is necessary to bind over the accused to keep the peace.

The power under the section may also be exercised by an appellate Court or by the High Court in revision.

The section contemplates only one order requiring security being passed at the time of passing sentence on the accused. There is no provision for a *preliminary* order to show cause and final order after enquiry as is provided for in the case of proceedings under S. 107.

3. "Person accused of an offence".—The power to order security under this section exists only as against an *accused* person. A *Complainant* cannot be ordered to give security under this section.[1]

4. "Any offence punishable under Chap. VIII . . . S. 154 thereof." —These words are new and were introduced in 1923. (*See* Note 1, *supra.*) Their effect is to enable security being demanded from persons accused of *any* offence under Chap. VIII of the Penal Code, except those specified in the section. Hence the undermentioned cases decided before the Amendment of 1923 are no longer good law.[1]

Note 3.

(1) (1902) 1902 Pun. Re. No. 3, *Crown* v. *Kallu.*

Note 4.

(1) (1890) 1890 Pun. Re. No. 3 Cr., *Emperor* v. *Yar Mahammad* (Offence under S. 144—Security cannot be ordered). (1907) 6 Cri. L. Jour. 14 (15): 29 All. 569, *Emperor* v. *Husain Baksh* (Offence under S. 153. No security can be ordered). (1920) 1920 Bom. 402 (406), *Rahimat Alli* v. *Emperor* (Do.).

S. 106, Notes 5—9.

5. **"Offences punishable under S. 143".**—Prior to the amendment of the section in 1923, it was held in some cases that on a conviction under S. 143 of the Penal Code, security could be ordered if the facts of the particular case showed that the unlawful assembly had intended to use force,[1] while in a number of other cases, it was held that an offence under S. 143 by itself did not justify action under S. 106.[2] Under the present section, as amended, it is clear that on a conviction under S. 143 of the Penal Code, the accused cannot be ordered to give security for keeping the peace.[2]

6. **Offence punishable under S. 149 of the Penal Code.**—An offence under S. 149 of the Penal Code read with another section of the Penal Code (for no offence is punishable under S. 149 alone) is not one on conviction of which the accused can be bound over to keep the peace.[1]

7. **Offence of "rioting".**—The word "rioting" which occurred in the section prior to the amendment of 1923 has been omitted. But as the offence of rioting (S. 147) is one under Chapter VIII of the Penal Code and does not fall under any of the excluded sections, an accused person convicted of rioting can be bound over to keep the peace under this section.[1]

8. **"Offence of assembling armed men."**—Prior to the amendment of 1923, "assembling armed men or taking other unlawful measures with the evident intention of committing the same" (offence involving breach of peace) was one of the matters on conviction for which the accused could be bound over to keep the peace.[1] These words have now been omitted. But it is conceived that the offences referred to by these words would in particular cases be covered by Chapter VIII of the Penal Code, the whole of which with certain exceptions has been expressly brought within the purview of the section. *See* for instance, S. 150 of the Penal Code (engaging members for unlawful assembly).

9. **Assault.**—As will be seen from Note 10, *infra*, the language of the section makes it clear that the offence of assault is treated as one which necessarily involves a breach of the peace. In the case of such an offence therefore it is not necessary to record an express finding as to a breach of the

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Note 5.

(1) (1907) 5 Cri. L. Jour. 19 (21) (Cal.), *Bepin Behari* v. *Prana Kul Majumdar*.
[See also (1875) 24 Suth. W. R. 29 (29), *Akool* v. *Partama*.]
(2) (1908) 7 Cri. L. Jour. 392 (392): 35 Cal. 315, *Raj Narain* v. *Bhagabal*.
(1903) 26 Mad. 469 (469), *Kamookaran Kunhammad* v. *Emperor*.
(1908) 7 Cri L. Jour. 200 (201) (Cal.), *Chandra Bhusan* v. *Emperor*.
(1899) 26 Cal. 576 (578), *Jibhal Gir* v. *Jog Mohem Gir*.
(1900) 27 Cal. 983 (984), *Sheo Bhajan* v. *S. A. Mosawi*.
(1904) 1 Cri. L. Jour. 447 (449) (Cal.), *Kishore Shankar* v. *Emperor*.
(1916) 17 Cri. L. Jour. 241 (241): 1916 Cal. 883: 43 Cal. 671, *Abdul Ali* v. *Emperor*.
(1912) 13 Cri. L. Jour. 138 (139) (Cal.), *D. L. R.* v. *Ohulhan*.
(3) (1927) 1927 All. 136 (137), *Nanbat* v. *Emperor*.

Note 6.

(1) (1925) 1925 Pat. 117 (117): 3 Pat. 870, *Chhedi Singh* v. *Emperor*.
(1932) 1932 Lah. 489 (489, 490), *Ghasita Singh* v. *Emperor*.
(1934) 1934 Oudh 279 (280), *Saun Pande* v. *Emperor*.

Note 7.

(1) (1929) 1929 Mad. W. N. 583 (587), *Pedda Hampayya* v. *Emperor*.
(1923) 1923 Mad. 606 (607), In re *Marimuthu Naidu*.

Note 8.

(1) (1901) 5 Cal. W. N. 250 (252), *Sri Hari Shome* v. *Lal Khan*.
[See also (1916) 17 Cri. L. Jour. 313 (313) (Pat.), *Sarju Lal* v. *Emperor* ("Lathies" are "arms" within S. 106).]

peace.[1] The contrary view expressed in the undermentioned case[2] is, it is submitted, not correct. *See* for a full discussion Note 10 below. S. 106, Notes 9—10.

10. "Assault or other offence involving a breach of the peace".— The word "peace" means a quiet behaviour towards the King and his subjects; and the words "breach of the peace" mean a violation of that quiet peace and security which is guaranteed by the laws for the *personal* comfort of the subjects of the kingdom.[1] The words "*assault* or *other* offence involving a breach of the peace" make it clear that assault is an offence which involves a breach of the peace within the meaning of the section.[1-a] An assault as defined in S. 351 of the Penal Code (which is the definition to be adopted for the purposes of this Code also)[2] is an offence against a *person* and not against the *public*. It consequently follows that the breach of the peace contemplated by the section is not a breach of the *public* peace.[3]

Giving the language of the section its plain meaning the words "offence *involving* a breach of the peace" must mean an offence, one of the *constituting elements* of which is the commission of or the intention to commit, a breach of the peace on the part of the offender.[4] Thus the offence of causing hurt or grievous hurt which necessarily has, as one of its elements, the commission of a breach of the peace as explained above is an offence "involving a breach of the peace".[5] An offence of criminal trespass (*i.e.*, entering upon property with intent to commit an offence or to intimidate insult or annoy any person in possession of such property) may or may not be an offence involving a breach of the peace. If the entry is made with intent to commit, for example, the offence of hurt or assault, one of the elements of the criminal trespass of which

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Note 9.

(1) (1923) 1923 Mad. 618 (619), *Ramaswami Thevan* v. *The Crown*.
[See also (1924) 1924 All. 306 (307): 46 All. 105, *Jafar Hussain* v. *King-Emperor*.]
(2) (1926) 1926 All. 144 (145), *Muhammad Rahim* v. *Emperor* (This case has also been dissented from in 1929 All. 349).

Note 10.

(1) See Wharton's Law Lexicon.
(1-a) (1933) 1933 All. 609 (611): 55 All. 857, *Naziruddin* v. *Emperor*.
(1919) 1919 Mad. 770 (771, 772), *Sourirajulu Naidu*, In re.
(1921) 1921 All. 35 (36, 37), *Chajju* v. *Emperor*.
[See also (1924) 1924 All. 306 (307): 46 All. 105, *Jafar Husain* v. *Emperor*.]
(2) See S. 1, sub-S. 2, *ante*.
(3) (1933) 1933 All. 609 (611): 55 All. 857, *Nazer Uddin* v. *Emperor*.
(1919) 1919 Mad. 770 (771, 772), *Sourirajulu Naidu*, In re (Dissenting from 29 Mad. 190 and 30 I. C. 435).
[See also (1921) 1921 All. 35 (37), *Chajju* v. *Emperor*.]
(4) (1909) 9 Cri. L. Jour. 88 (88), In re *Patambie Moideen*.
(1919) 1919 Bom. 150 (150, 151): 43 Bom. 554, *Syed Yacoob* v. *Emperor*.
(1920) 1920 Bom. 402 (406), *Rahimatulli Mahomed Ali* v. *Emperor*.
(1902) 4 Bom. L. R. 78 (79), *Emperor* v. *Chunabhai*.
(1924) 1924 Lah. 311 (312), *Mohomad Afzal* v. *Emperor*.
(1924) 1924 Mad. 808 (809): 47 Mad. 846, *Kuppa Reddiar*, In re.
(1906) 3 Cri. L. Jour. 461 (462): 29 Mad. 190, *Muthiah Chetti* v. *Emperor*.
(1871) Rat. 48 (49), *Reg.* v. *Sivaram*.
(1931) 1931 Cal. 646 (647), *Sashadhar Acharya* v. *Sir Charles Tegart* (Conviction under S. 504, I. P. Code).
(5) (1933) 1933 All. 609 (611): 55 All. 850, *Naziruddin* v. *Emperor*.
(1934) 1934 Oudh 425 (426): 9 Luck. 272, *Suraj Pal* v. *Kamta*.
(1921) 1921 All. 35 (37), *Chhaju* v. *Emperor* (S. 323, Penal Code).
(1929) 1929 All. 349 (350): 51 All. 520, *Mewa Lal* v. *Emperor* (1927 All. 157 and 1926 All. 144 Expl.).
(1932) 1932 Lah. 435 (436): 13 Lah. 336, *Hayat Khan* v. *Emperor* (S. 324, Penal Code).
(1923) 1923 Mad. 618 (619), *Ramaswami Thevan* v. *The Crown* (Hurt).
(1919) 1919 Mad. 770 (771, 772), In re *Sourirajulu Naidu* (Dissenting from 29 Mad. 190 and 30 I.C. 435).
(1927) 1927 Oudh 101 (102), *King-Emperor* v. *Ramanuj* (8 Oudh L. J. 318 dissented).
(1904) 1 Cri. L. Jour. 1054 (1055): 7 Oudh Cas. 338, *Meghu* v. *Emperor* (Do.).
(1905) 2 Cri. L. Jour. 720 (721): 3 L. B. R. 30, *Emperor* v. *Ha Taw* (Offence under S. 324).
[See however 1921 Oudh 140 (140), *Dubri* v. *Emperor* (It was held that the circumstances in which the hurt was caused in the particular case did not involve a breach of the peace).]

S. 106, Note 10.

the accused is convicted will be an intention to commit a breach of the peace and such criminal trespass will therefore be an "offence involving a breach of the peace."[6] On the other hand, if the entry is made with intent, for example, to commit theft,[7] or to have sexual intercourse with the complainant's wife,[8] the criminal trespass will not be an offence involving a breach of the peace. *See also* the undermentioned cases.[8-a]

An offence which does not require the commission of, or the intention to commit, a breach of the peace, as a necessary element thereof, is not one involving a breach of the peace.[9] The fact that in the course of commission of such offence the accused as a matter of fact does acts involving a breach of the peace[10] or which are likely to lead to a breach of the peace or which are likely to *provoke* persons *other than the offender* to commit a breach of the peace[11] will not make the offence itself one "involving a breach of the peace".

The above principles have, however, not always been kept in view by judicial decisions with the result that there is a great diversity of opinion. One set of decisions hold that the words "breach of the peace" mean only a breach of the *public* peace and that offences such as that of causing hurt or grievous hurt wherein injuries are inflicted only against a particular individual are not offences involving a breach of the peace.[12] Another class of decisions has held

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(6) (1903) 7 Cal. W. N. 25 (26), *Tarini Charan Mundle* v. *Gourikant*.
(1903) 30 Cal. 93 (94), *Baidyanath Majumdar* v. *Nibaran Gope*.
(1867) 7 Suth. W. R. (Cr.) 14 (15), In re *Gendoo Khan*.
(1873) 20 Suth. W. R. 37 (Cr.), *Queen* v. *Jhapoo*.
(1925) 1925 Lah. 621 (621), *Dullah* v. *Emperor*.
(1917) 18 Cri. L. Jour. 81 (81): 1917 Low. Bur. 76, *Sit Hon* v. *Emperor*.
(1920) 1920 All. 164 (164): 42 All. 345, *Dharamraj* v. *Emperor*.

(7) (1908) 8 Cri. L. Jour. 476 (478): 4 L. B. R. 277, *Morali* v. *Emperor*.

(8) (1897) 25 Cal. 628 (630), *Subul Chunder* v. *Ram Kanai*.

(8-a) (1885) 1885 All. W. N. 303 (303), *Empress* v. *Kundan Singh* (Breaking open unoccupied shop).
(1866-1867) 3 Bom. H. C. R. 1 (5), *Reg.* v. *Bhaskar*.
(1901) 1901 Pun. L. R. No. 127, p. 501, *Badar-uddin* v. *Emperor*.

(9) (1897) 1 Cal. W. N. 186 (187), *Ram Charan Maitie* v. *Umesh Chandra Mondal* (Theft).
(1893-1900) L. B. R. 630 (630), *Empress* v. *Nga Tha Ein* (Do.).
(1892) Ratanlal 622 (622), *Empress* v. *Muni Ram* (Do.).
(1867) 7 Suth. W. R. 57 (58) (Cr.), *Queen* v. *Kunce Sonar* (Theft).
(1902) 26 Mad. 469 (469), *Muthiah* v. *Emperor* (Theft, mischief and unlawful assembly).
(1923) 1923 Mad. 618 (619), *Ramaswami* v. *Emperor* (Do.).
(1927) 1927 All. 136 (137), *Naubat* v. *Emperor* (Offence under S. 143 or S. 427).
(1926) 1926 Lah. 675 (676), *Santosh Singh* v. *Emperor* (Offence under S. 452, I. P. Code).
(1924) 1924 Lah. 311 (312), *Mahammad Afzal* v. *Emperor* (Wrongful confinement).
(1892-1900) L. B. R. 50 (51), *Empress* v. *Nga So Pe* (Abuse, S. 294, Penal Code).
(1904) 2 L. B. R. 125, *Emperor* v. *Ma Hla Bon* (Do.).

(10) (1909) 9 Cri. L. Jour. 88 (88) (Mad.), In re *Patambie Moideen* (S. 106, Cr. P. Code refers to offence into which breach of the peace necessarily enters as a constituting element and not merely an offence committed under circumstances showing that the accused did acts involving a breach of the peace).
(1891) 2 Weir 48 (48), *Paezensky* v. *Mrs. Smith* (Under S. 106, Cr. P. Code, it is the offence for which the person is convicted and not the facts as put in evidence at the trial, which determines whether or not security can be demanded).

(11) (1930) 1930 Cal. 802 (803), *Asoke Pranna Bal* v. *Emperor* (Offence under S. 504 of the Penal Code).
(1932) 1932 Oudh 33 (34): 7 Luck. 573, *Sadho Ram* v. *Emperor* (S. 504, Penal Code).
(1900-02) L. B. R. 262 (262), *Crown* v. *Nga Wet Taung*.
(1921) 1921 Lah. 96 (97): 2 Lah. 279, *Abdullah* v. *Crown* (Offence under S. 297, I. P. Code).
(1899) 2 Weir 47 (47), *Kunhipurapurambil* v. *Gulam Hussain* (Offence under Ss. 296 and 298, I. P. Code).
(1903) 30 Cal. 366 (368), *Arun Samorita* v. *Emperor*.

(12) (1923) 1923 Oudh 37 (37), *Mahant Durga Bharathi* v. *Emperor* (Conviction under S. 325, I. P. Code. See contra 1927 Oudh 101).
(1872) 4 N.-W. P. 154 (154), *Queen* v. *Kunhiya* (See decisions contra in Foot-note 5 above).
(1921) 1921 Oudh 140 (140, 141), *Dubri* v. *Emperor* (Dissented from in 1927 Oudh 101).
(1927) 1927 All. 157 (158): 49 All. 131, *Atma Ram* v. *Emperor* (Dissented from in 1929 All. 349).

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that if such offences are committed in a *public place*, or near or in sight of a public place, they may be regarded as involving a breach of the public peace.[13] A third class of cases has held that it is not necessary that a breach of the peace either actually committed or intended, should form an *element* of the offence, but that if in the course of committing it, the accused is *found on the evidence* to have committed acts amounting to a breach of the peace, then the offence could be regarded as one involving a breach of the peace.[14] It has accordingly been held in this class of cases that the Court should expressly give a *finding* as to the existence of a breach of the peace before it can proceed to act under this section.[15] A fourth class of cases hold that even though a breach of the peace may not be an element of the offence of which the accused is convicted, it may be said to involve a breach of the peace if there is a *probable* breach of the peace.[16] In the undermentioned case[17] it was held that if the offence—for example, an offence under S. 504 of the Penal Code—provoked the commission of a breach of the peace on the part of others, it is an ingredient of the offence under S. 504 which is therefore an offence involving a breach of the peace.

It is respectfully submitted that none of the above classes of views can be supported on principle. If in committing an offence of which a breach of the peace is not an element, the accused does commit acts amounting to a breach of the peace, he should be charged and convicted for the offence of which such breach of the peace is an element.[18] To act under this section without doing so seems to be clearly an exercise of jurisdiction not warranted by the terms of the section.

11. Criminal intimidation.—This is one of the offences on conviction for which the accused can be bound down to keep the peace. It is important to note that there should be a *conviction* for criminal intimidation; the mere fact that the facts of the case disclose the commission of such an offence by the accused is not enough.[1]

(1926) 1926 All. 144 (145), *Muhammad Rahim* v. *Emperor* (Do.).
(1932) 1932 Lah. 489 (489), *Ghasita Singh* v. *Emperor* (But see 1932 Lah. 435).
(1925) 1925 Nag. 36 (37), *Raja Ram* v. *Govinda*.
(1915) 30 Ind. Cas. 435 (435) (Mad.), In re *Muthurakka* (S. 392, I. P. Code. Dissented from in 1919 Mad. 770).

(13) (1904) 1 Cri. L. Jour. 555 (556): 1904 U. B. R. 1st qr. 4, *Emperor* v. *Mi Kun Ya*.
(1924) 1924 Oudh 233 (234), *Emperor* v. *Sheo Ram*.
[See also (1875) 7 N.-W.P. 328, *Queen-Empress* v. *Bachu*.
(1924) 1924 Nag. 118 (119), *Nanha* v. *Kanhayalal*.]

(14) (1904) 1 Cri. L. Jour. 555 (557): 1904 U. B. R. 1st qr. 4, *King-Emperor* v. *Mi Kun Ya* (Abuse—S. 294, Penal Code).
(1930) 1930 Cal. 646 (647), *Rafat Ulla Pramanik* v. *Rajek Sardar* (Theft).
(1931) 1931 Pat. 337 (338, 339), *Lal Mohammad* v. *Emperor* (Do.).
(1924) 1924 Mad. 808 (809): 47 Mad. 846, *Kuppa Reddiar*, In re (Wrongful confinement).
(1908) 7 Cri. L. Jour. 200 (201) (Cal.), *Chandra Bhusan Sen* v. *Emperor* (Theft).
(1904) 1 Cri. L. Jour. 447 (449) (Cal.), *Kishore Sarkar* v. *Emperor*.
(1901) 29 Cal. 393 (394), *Kinoo Sheikh* v. *Darasilla*.
(1906) 3 Cri. L. Jour. 461 (462): 29 Mad. 190, *Muthiah Chetti* v. *Emperor*.
(1932) 1932 Sind 87 (88): 26 S. L. R. 18, *Haroon* v. *Emperor* (Mischief).
(1907) 5 Cri. L. Jour. 25 (28, 29): 9 Oudh Cas. 381, *Maqbul Ahmad* v. *Emperor* (Conceded).
(1923) 1923 Mad. 133 (133), *Thirumal Reddy* v. *Emperor*.
(1913) 14 Cri. L. Jour. 562 (563) (All.), *Rama Dir* v. *Emperor* (Mischief).
(1931) 1931 Cal. 645 (646), *Abdul Gafur* v. *Mohd. Mirza* (30 Cal. 366 and 1930 Cal. 802, distinguished).
(1906) 3 Cri. L. Jour. 461 (462): 29 Mad. 190, *Muthiah Chetty* v. *Emperor*.

(15) [See the cases cited in foot-note (14) above.]
(16) (1911) 11 Ind. Cas. 589 (589): 33 All. 771, *Emperor* v. *Manak Rai*.
(17) (1919) 1919 Bom. 150 (151): 43 Bom. 554, *Syed Yacoob Syed Lalaminan* v. *Emperor* (Dissented from in 1932 Oudh 33).
(18) [See (1932) 1932 Oudh 33 (34): 7 Luck. 573, *Lodha Ram* v. *Emperor*.]

Note 11.

(1) (1910) 11 Cri. L. Jour. 680 (681) (Lah.), *Abdullah Khan* v. *Crown*.
(1921) 1921 Lah. 96 (97): 2 Lah. 279,

S. 106, Notes 12—15.

12. **"Is convicted of such an offence".**—The jurisdiction to pass an order for security under this section arises only on *conviction* of an accused person for any of the offences mentioned therein.[1] So, where the accused person is acquitted he cannot be ordered to give security under this section.[2] *See also* Note 11, *supra*.

Where the accused is only convicted of an *attempt* to commit one of the offences mentioned in the section, there is no jurisdiction to pass an order for security against him on such conviction.[3]

13. **Conviction in summary trial.**—An order for security under this section can be passed even if the accused is convicted in a summary trial.[1]

14. **Courts empowered to act under this section.**—The power to require security under this section is conferred only on the High Court, the Court of Session, or the Court of a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class. A Magistrate of the *third class* has therefore no power to act under this section. A Magistrate of the *second class* also has no power to do so unless he is a Sub-Divisional Magistrate.

S. 18 confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates. Such a Bench can take action under this section.[1]

In a case tried by a Bench of Magistrates, if any of its members has first class powers, the Bench can pass an order under the section. (*See* S. 15, sub-S. 2, *supra*.)

See also S. 349, *infra*.

15. **"Such Court is of opinion . . . peace".**—The mere fact that a person is convicted and sentenced for one of the offences mentioned in this section is not enough for binding him over under it. It is further necessary that the Court should be of opinion that "it is *necessary* to require such person to execute a bond for keeping the peace".[1] The necessity or desirability of requiring security in particular cases are guided by the following considerations:—

1. Do the circumstances indicate that a breach of the peace is *likely to recur*? If they do, then an order for security is justified.[2] If they do not, the accused should not be bound over.[3] Thus, when

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Abdullah v. *Crown*.
(1904) 1 Cri. L. Jour. 447 (449) (Cal.), *Kishore Sarkar* v. *King-Emperor*.

Note 12.

(1) (1874) 21 Suth. W. R. (Cr.) 37 (38), *Sahebdi* v. *Kuran*.
(1875) 24 Suth. W. R. (Cr.) 10 (10), *Queen* v. *Har Kumari*.
(1906) 3 Cal. L. R. 72 (73), In the matter of *Umda Khanum*.
(2) (1874) 22 Suth. W. R. (Cr.) 9 (10), *Dilloo Singh* v. *Ootnin*.
(1862-65) 1 Bom. H. C. 91 (92), *Reg.* v. *Byhavalad*.
[See also (1870) 2 N. W. P. H. C. R. 431 (432), *Queen* v. *Nirunjun Singh*.]
(3) (1880) 3 Shome 33, *Abinash Chunder* v. *Hurrish*.

Note 13.

(1) (1886) 1886 All. W. N. 181 (181), *Emperor* v. *Lachman*.
(1904) 1 Cri. L. Jour. 1054 (1055): 7 Oudh Cas. 338, *Meghu* v. *Emperor*.

Note 14.

(1) (1905) 2 Cri. L. Jour. 770 (773) (Bom.), *Hassan* v. *Yas Kubar*.

Note 15.

(1) (1927) 1927 Pat. 37 (38), *Jai Singh* v. *Emperor* (In order to support an order under S. 106, the Court must as a condition precedent show some grounds for requiring the security).
(1933) 1933 All. 609 (611): 55 All. 850, *Naziruddin* v. *Emperor*.
(2) (1929) 1929 All. 349 (350): 51 All. 520, *Mewa Lal* v. *Emperor*.
(1870) 13 Suth. W. R. 73 (75) (Cr.), *Imamoodeen Bheena*.
(3) (1918) 48 Ind. Cas. 340 (341): 1918 Pat. 252, *Mousi* v. *King-Emperor* (Order under section is bad when the act charged was done in a moment of impulse and there was not the slightest likelihood of a repetition of it).
(1916) 30 Ind. Cas. 748 (748): 1916 Mad. 1035, In re *Ranga Goundan* (Security

the accused has been sentenced to a long term of imprisonment or transportation, an order for security is unnecessary and uncalled for.[4] S. 106, Notes 15—16.

2. Would the order for security have the effect of preventing the accused from exercising his legal rights? If so, such an order should not be made.[5]

Illustrations.

(*a*) The accused's party were in possession of certain land. The complainant's party tried to dispossess them by force. The accused in defending their possession exceeded their right of private defence and were consequently convicted of rioting under S. 147 of the Penal Code. It was *held* that there was no reason for binding over the accused as that would prevent them from further resisting the unlawful action of the complainant's party and as the complainant was the party who was more likely to break the peace.[6]

(*b*) The *Ijaradar* of a market in order to prevent sale of foreign articles used force and caused hurt to certain itinerant vendors. It was *held* that though he had exceeded his rights under the law, he should not be bound over as he would thereby be practically prevented from exercising his legal rights in the market.[7]

The law does not provide that the Court should record its reasons for forming an opinion that it is necessary to require security. But it is desirable that they are so recorded so that an appellate Court may be in possession of the reasons if they are not otherwise apparent on the face of the records.[8]

16. "At the time of passing sentence".—An order for security under this section must be passed at the time of the conviction and the passing of the sentence.[1] In other words, the order must be part of the decision in the main case.[2] If no such order is passed at the time of passing the sentence but it is considered desirable to bind over the accused, the only procedure by which this can be done is that laid down in S. 107.[3] But the Court must not only record a conviction but pass a substantive sentence before the provisions of S. 106 can come into play.[4]

It has been held by the Bombay High Court[5] that the restriction as to the order for security being passed at the time of passing sentence does not

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unnecessary when under compromise between both parties, accused is allowed to be in peaceable possession).

(4) (1909) 10 Cri. L. Jour. 69 (72): 5 L. B. R. 34, *Kya Wa* v. *Emperor*.

(5) (1907) 6 Cri. L. Jour. 40 (41) (Cal.), *Nahar Khan* v. *Emperor*.
(1907) 6 Cri. L. Jour. 321 (325) (Cal.), *Nanda Kumar* v. *Emperor*.
[But compare (1907) 5 Cri. L. Jour. 19 (21) (Cal.), *Bepin* v. *Pranukul* (In this case security was ordered but it was held that the opposite party also should be bound over under S. 107).]

(6) (1907) 6 Cri. L. Jour. 40 (41) (Cal.), *Nahar Khan* v. *Emperor*.

(7) (1907) 6 Cri. L. Jour. 321 (325) (Cal.), *Nanda Kumar* v. *Emperor*.

(8) (1933) 1933 All. 609 (611, 612): 55 All. 850, *Naziruddin* v. *Emperor*.

Note 16.

(1) (1871) 15 Suth. W. R. (Cr.) 56 (56), *Gobind Sooboodhee*, In re.
(1871) 3 N.-W.P. 96 (97), *Queen* v. *Powell*.
(1924) 1924 All. 230 (231), *Ram Adhin* v. *Emperor*.
(1872) 4 N.-W.P. 154 (155), *Queen* v. *Kunhiya*.

(2) (1925) 1925 All. 443 (444), *Dindayal* v. *Emperor*.

(3) See cases cited in foot-note (1).

(4) (1903) 2 Low. Bur. R. 53 (54), *Emperor* v. *Nga Shwe Tun*.

(5) (1928) 1928 Bom. 134 (135), *Hussain Ghulam Nabi* v. *Emperor*.

S 106, Notes 16—20.

apply to an appellate or revisional Court ordering security under the provisions of sub-S. 3. The reason given is that sub-S. 1 which contains the restriction abovenamed does not control sub-S. 3 which confers the power on appellate and revisional Courts.

As seen in Note 2 above, no notice to show cause why security should not be required is necessary before an order is passed under this section.[6]

The Patna High Court has, however, observed in the undermentioned case[7] that to adopt proceedings under this section without notice to the parties is "an incorrect procedure on general principles of justice".

17. "**Notice**".—*See* Note 16, *supra*.

18. **Form and contents of order under section**.—An order under this section can only be for security *for keeping the peace*. Courts have no power to require security for *good behaviour* under this section.[1-a]

An order under the section should not provide for an engagement to be executed at a *future date*. Thus an order which directs that the prisoner shall, *at the conclusion of the term of his imprisonment*, execute a bond for keeping the peace would not be a proper order under the section. The reason is that, under the law, he is at liberty to execute the bond *at once* or *at any time before* the expiration of the term of his imprisonment.[1] [*See* Ss. 120 and 123, *infra*].

An order under the section must specify the *amount* for which security is required; otherwise, the order is bad.[2] *See* Notes to S. 112, *infra*. The Court has no power to order that securities under this section should be furnished in landed property.[3]

19. "**With or without sureties**".—The section empowers the Court to order that the bond for keeping the peace should be with sureties. This does not, however, enable the Court to direct that a *particular person* must be one of the sureties.[1] Further an order requiring a surety for a higher amount than that for which the accused is directed to execute a bond is wrong; the reason is that the surety stands security only for the sum for which the bond is executed by the principal (*viz.*, the accused).[2]

20. "**Setting aside of conviction—Effect of—Sub-S. 2.**—Sub-S. 2 provides that on the conviction being set aside, the *bond* so executed shall become

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(6) (1924) 1924 All. 230 (231), *Ram Adhin* v. *Emperor*.
(7) (1927) 1927 Pat. 37 (38), *Jai Singh* v. *Emperor*.
[See also (1865-67) 3 Bom. H. C. R. 1, *Reg.* v. *Bhaskar*.]

Note 18.

(1-a) (1871) Ratanlal 48 (49), *Reg.* v. *Shravan*.
(1881) 1881 All. W. N. 154 (155), *Empress* v. *Jeonath*.
(1883) 9 Cal. 215 (217), *Tamiz Mandal* v. *Umid Kanigar*.
(1918) 1918 All. 95 (95), *Mahaboi* v. *Emperor*.

(1) (1875) 7 N.-W.P. 328, *Queen* v. *Bachu*.
(1872) 4 N.-W.P. 154 (155), *Queen* v. *Kunhiya* and *Mungro*.
[But compare (1867) 7 Suth. W. R. 14, *Queen* v. *Gendoo Khan*.]
(2) (1881) 1881 A. W. N. 86 (86), *Empress* v. *Sheobalak*.
(3) (1904) 1 All. L. Jour. (N.) 162 (162), *Mokha* v. *Emperor*.

Note 19.

(1) (1918) 1918 All. 95 (95), *Mahabir* v. *Emperor*.
(2) (1912) 13 Cri. L. Jour. 482 (482), *Emperor* v. *C. E. Ellis*.

void. But it is clear that the *order for security* based on such conviction also automatically falls to the ground and can be set aside.[1]

21. Alteration of conviction to one under a different section.—Sub-S. (2) provides that if the conviction is set aside on appeal or otherwise, the security bond executed under the section shall become void. But if the conviction is not set aside but merely altered to one under a different section which also is within the ambit of S. 106, the order for security can be allowed to stand.[1]

22. Power of appellate or revisional Court to order security—Sub-S. (3).—Under the Codes of 1861 and 1872, the power to order security on conviction was conferred on the Court by which the accused was convicted or the final sentence or order in the case was passed. Hence it was held under those Codes that an appellate Court had the power to require security under this section though there was no provision therein corresponding to the present sub-S. (3).[1] When the section was re-enacted in the Code of 1882, the words referring to the Court by which the final sentence or order in the case was passed were omitted. Hence it was held under that Code that an appellate Court had no power to require security under this section.[2] This Code, by enacting the present sub-S. (3) has now expressly empowered an appellate Court and the High Court in revision to pass an order for security, under this section.[3] The words "including a Court hearing appeal under S. 407" did not originally occur in the sub-section, but were added by the amendments made in 1923. Hence, prior to the said amendments, there was a conflict of decisions[4] as to

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Note 20.

(1) (1917) 18 Cr. L. Jour. 987 (988): 1917 Pat. 500, *Sahju Koeri* v. *Mallar Koeri*.
(1925) 1925 Pat. 17 (20), *Gita Prasad* v. *King-Emperor*.
(1921) 1921 All. 282 (284), *Ganga Saran* v. *Emperor*.
(1924) 1924 All. 696 (698), *Dalganjan* v. *Emperor*.
(1895) 1895 All. W. N. 141 (141), *Queen-Empress* v. *Chajju*.
(1922) 1922 All. 184 (185), *Anant* v. *Emperor*.
(1900) 27 Cal. 566 (570), *Abhi Misser* v. *Lachmi*.

Note 21.

(1) (1921) 1921 All. 261 (262), *Sabir Husain* v. *Emperor* [Conviction under S. 323 altered to conviction under S. 160 (affray)—It was ordered that the order for security under S. 106, Cr. P. Code should stand].

Note 22.

(1) (1882) 4 All. 212 (214), *Empress* v. *Kamta Prasad*.
(2) (1889) 16 Cal. 779 (781), *Ashu* v. *Queen-Empress*.
(1884) 1884 All. W. N. 71 (71), *Empress* v. *Ghongha Sahai*.
(1890) 1890 All. W. N. 201 (201), *Queen-Empress* v. *Lachman*.
(1888) 1888 Pun. Re. 23 (Cr.), *Nidhan Singh* v. *Empress*.
(1884) 1884 Pun. Re. 21 Cr., *Jan Muhammad* v. *Empress*.
(1890) 1890 All. W. N. 170, *Empress* v. *Peman*.
(1891) 1 Mad. L. J. 252 (252).
(1897) Ratanlal 906, *Queen-Empress* v. *Mahomed Isa*.
(1888) 1888 Pun. Re. 23 p. 43, *Nidhan Singh* v. *Empress*.
(1895) 17 All. 67 (68), *Queen-Empress* v. *Ishri*.
(3) (1904) 1 Cri. L. Jour. 190 (190): 26 All. 371, *Emperor* v. *Ghulam Mustafa*.
(1919) 1919 All. 375 (376), *Zafar Husain* v. *Emperor*.
(1919) 53 Ind. Cas. 488 (489): 1918 Nag. 64, *Maharaj Singh* v. *Emperor*.
(1905) 1905 Pun. Re. 21, *Miran* v. *Emperor*.
(4) (1909) 10 Cri. L. Jour. 289 (290) (Mad.), *Gnanamurthi* v. *Emperor* (Appellate Court had *no* power).
(1909) 10 Cri. L. Jour. 309 (313, 314): 1909 P. R. 7, *Emperor* v. *Hardit Singh* (Do.).
(1910) 11 Cri. L. Jour. 251 (251) (Mad.), In re *Latchumana Thalavan* (Do.).
(1910) 11 Cri. L. Jour. 640 (640) (Mad.), *Emperor* v. *Rhoddamatha* (Do.).
(1908) 1908 Pun. Re. 21, *Gopal Singh* v. *Emperor* (Do.).
(1907) 1907 Pun. Re. 6, *Radha Singh* v. *King-Emperor* (Do.).
(1918) 1918 Cal. 517 (517), *Karim Buksh* v. *Emperor* (Do.).
(1918) 1918 Lah. 370 (371): 1918 P. R. 5, *Lalkhan* v. *Emperor* (Do.).
(1909) 1909 P. R. 7 (Cr.), *Hardit Singh* v. *Emperor* (Do.).
(1923) 1923 Lah. 91 (92), *Karam Singh* v. *Emperor* (Do.).
(1906) 3 Cri. L. Jour. 461 (462): 29 Mad. 190, *Muthia Chetty* v. *Emperor* (Do.).
(1906) 4 Cri. L. Jour. 498 (499): 30 Mad. 162, *Doraiswami* v. *Emperor* (Do.).
(1909) 9 Cri. L. Jour. 84 (84): 1908 P. R. 21, *Gopal Singh* v. *Emperor* (Do.).
(1908) 8 Cri. L. Jour. 9 (10): 35 Cal. 434, In re *Memin Mahta* (Do.).
(1907) 6 Cri. L. Jour. 302 (303): 10 Oudh

S. 106, Notes 22—23.

whether an appellate Court could pass an order for security under this section where the original trial was before a Magistrate not empowered to act under this section, as for instance, a Magistrate of the third class. This conflict is set at rest by the present amendment as it makes it clear that an appellate Court can require security under the section even in cases where the original trial was before a Magistrate of the second or third class.[5]

But the power under sub-S. (3) cannot be exercised where the *offence* for which the accused is convicted does not fall within the purview of sub-S. (1).[6]

It should be noted that the power under sub-S. (3) is given to an *appellate Court* and to the *High Court in revision.* Hence, a District Magistrate exercising powers of revision has no power to order security under this section.[7]

As to whether the order under sub-S. (3) can be passed *subsequent* to the passing of the sentence, *see* Note **16**.

23. Appeal.—No appeal will lie against an order to furnish security under this section.[1-a] The reason is that the order is a separate order and not part of the sentence.

Where the right of appeal depends on the length of the period to which the accused is sentenced to imprisonment, the mere fact that he has been ordered to give security under this section will not enable him to appeal if otherwise he cannot do so, although the period of imprisonment to which he would become liable in case of his non-compliance with the order added to the substantive sentence passed against him would reach or exceed the appealable limit.[1]

The appellate Court can, while upholding the conviction, set aside the order for security to keep the peace passed against the accused under this section, the order of the appellate Court in such a case being only an "incidental order" which it is expressly empowered to pass under S. 423, Cl. (*d*).[2]

Cas. 287, *Baijnath* v. *Emperor* (Do.).
(1907) 6 Cri. L. Jour. 276 (277): 1907 P. R. 6, *Radha Singh* v. *Emperor* (Do.).
(1907) 5 Cri. L. Jour. 88 (89): 30 Mad. 48, *Paramasiva* v. *Emperor* (Do.).
(1918) 43 Ind. Cas. 796 (796): 1918 Cal. 517, *Karim Baksh* v. *Emperor* (Do.).
(1924) 1924 Cal. 540 (540), *Eusafali Ahmad Khairaj* v. *Emperor* (Do.).
(1913) 14 Cri. L. Jour. 592 (592): 16 Oudh Cas 281, *Bharat Singh* v. *Emperor* (Appellate Court could pass such an order).
(1917) 1917 Pat. 701 (702), *Buchan Singh* v. *Emperor* (Do.).
(1910) 11 Cri. L. Jour. 480 (481): 33 All. 48, *Dharam Das* v. *Emperor* (Do.).
(1924) 1924 Nag. 49 (50): 19 Nag. L. R. 154, *Hasan Beg* v. *Emperor* (Do.).
(1897-1901) 1 Upp. Bur. R. 9 (10), *Queen-Empress* v. *Nga Po Maung* (Do.).
(1920) 1920 Oudh 226 (226): 23 Oudh Cas. 380, *Lachmi Narain* v. *Emperor* (Do.).
(1921) 1921 All. 217 (217): 43 All. 372, *Tilak Roy* v. *Emperor* (Do.).
(1908) 8 Cr. L. Jour. 267 (269) (Bom.), *Emperor* v. *Bhan Singh* (Do.).
(1914) 1914 Mad. 269 (270), In re *Gunda Ganji Reddi* (Do.).
(1914) 1914 Mad. 562 (563): 37 Mad. 153, *Solai Goundan*, In re (Do.).
(1918) 1918 All. 95 (95), *Mahabir* v. *Emperor* (Do.).
(5) (1927) 1927 Pat. 37 (37), *Jai Singh* v. *King-Emperor.*
(6) (1923) 1923 Mad. 133 (133), *Thirumal Reddi*, In re.
(1902) 29 Cal. 393 (394), *Kinoosheikh* v. *Dar Astullah Mollah* (Theft).
(1901) 1901 Pun. L. R. 127, *Badrauddin* v. *Emperor.*
(7) (1918) 1918 All. 216 (216), *Doobar Tewari* v. *Emperor.*
[But see (1897-1901) U. B. R. Vol. I, 9 (10), *Queen-Empress* v. *Nga Po Maung* (Rule is different in Upper Burma by virtue of a Local Regulation).

Note 23.

(1-a) (1889) 2 Weir 460 (460), *Rowtha Goundan* v. *Muthuswamy Goundan.*
(1) (1904) 1 Cri. L. Jour. 1054 (1055): 7 Oudh Cas. 338, *Megai* v. *Emperor.*
[See also (1889) 2 Weir 460 (460), *Rowtha Goundan* v. *Muthusawmi Goundan.*]
(2) (1903) 30 Cal. 101 (102), *Abdul Wahed-ud-din* v. *Amiran Bibi.*
(1881) 1 A. W. N. 154 (155), *Empress* v. *Jeonath.*
[But see (1870) 13 Suth. W. R. Cr. 73 (75), Re *Imamoodeen* (Case under Code of 1861).]

24. Revision.—The question of requiring security for keeping the peace is a matter left largely to the discretion of the Court convicting the accused and the High Court in revision will generally be reluctant to interfere with the exercise of such discretion.[1] But the High Court *can* interfere and will do so if the circumstances of any case require such interference.[2] **S. 106, Note 24.**

B.—Security for keeping the Peace in other cases and security for good behaviour.

107*. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the First Class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate *if in his opinion there is sufficient ground for proceeding* may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. **S. 107.**

Security for keeping the peace in other cases.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the Magistrate's jurisdiction.

***(CODE OF 1882—Ss. 107 & 108.)**

B.—Security for keeping the Peace in other Cases and Security for good behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency-Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the First Class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the Peace within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such

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Note 24.

(1) (1921) 1921 Pat. 472 (473), *Ramlakhan Mahto* v. *Emperor.*
(1904) 1 Cri. L. Jour. 3 (4) (Bom.), *Emperor* v. *Raoji Fulchand.*
(1920) 1920 All. 164 (164): 42 All. 345, *Emperor* v. *Dharam Raj.*
(2) (1926) 1926 All. 168 (168), *Mirao* v. *Emperor.*

S. 107.

Procedure of Magistrate not empowered to act under sub-section (1).

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise, than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court) and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under *sub-section* (3) may in his discretion detain such person in custody *pending further action by himself under this chapter.*

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limits, the Magistrate, may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Procedure of Magistrate, etc., not empowered to act under Section 107.

108. When any Magistrate not empowered to proceed under S. 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under S. 107. A Magistrate before whom a person is sent under this Section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

(CODE OF 1872—Ss. 491, 494 Proviso, 498, Para. 1, 502, Para. 7.)

Summons to any person to show cause why he should not give bond to keep peace.

491. Whenever a Magistrate of a Division of a District, or a Magistrate of the First Class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

Explanation I.—A summons calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

Explanation II.—A Magistrate may recall a summons issued under this Section if he thinks proper.

SYNOPSIS.

S. 107.

		Note No.
I	LEGISLATIVE CHANGES	1
II	SCOPE AND OBJECT OF SECTION	2
III	"IS INFORMED"	3
	(1) WHETHER PROCEEDINGS CAN BE INITIATED ON ORDERS OF SUPERIOR COURT	4
	(2) INFORMATION WHICH HAS ALREADY BEEN SUBJECT OF JUDICIAL PROCEEDING, WHETHER CAN BE BASIS OF ACTION UNDER THIS SECTION	5
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	(5) WHETHER SUIT FOR MALICIOUS PROSECUTION LIES IN RESPECT OF INFORMATION GIVEN UNDER SECTION ..	8

Warrant of arrest.

494. * * * * *

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

Time for which person may be bound to keep peace.

498. The period for which the Magistrate may bind a person to keep the peace, with or without security, shall not exceed one year.

Recovery of penalty from principal.

502. * * * * *

Proceedings under this Chapter may be taken, either in the District in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any District where the person it is desired to bind may be.

(CODE OF 1861—Ss. 282, 285 and 289.)

Summons to any person to show cause why he should not enter into a bond to keep the peace.

282. It shall be lawful for the Magistrate of the District or other Officer exercising the powers of a Magistrate, whenever he shall receive credible information that any person, whether a European British Subject or not,. is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, to smmon such person to attend at a time and place mentioned in summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties as such Magistrate shall think fit.

Warrant of arrest.

285. * * * * *

Provided that, whenever it shall appear to the Magistrate or other Officer as aforesaid, upon the report of a Police-officer or upon other credible information, the substance of which report or information shall be recorded that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person.

Limit for confinement.

289. The period for which the Magistrate or other Officer as aforesaid may bind a person to keep the peace with or without security, shall not exceed one year. * * *

S. 107, Note 1.

SYNOPSIS.

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IV	"ANY PERSON IS LIKELY TO COMMIT A BREACH OF THE PEACE OR DISTURB THE PUBLIC TRANQUALITY"	10
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A rightful act cannot be made the subject of proceeding under this section. See Note 11.

Bail and detention in custody. See S. 117, Note 5 (IX).

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Initiation of proceedings in disregard of Sub-S. 2. See Note 19, Pts. 6 to 8.

Joint enquiry. See S. 117, Note 13.

Nature of proceeding. See S. 117, Note 4.

Persons against whom proceedings can be taken. See Note 10.

Procedure to be followed in the enquiry. See S. 117, Note 4.

"Require such person to show cause." See S. 112, Note 3.

Security proceedings in cases of disputes relating to immoveable property. See S. 144, Note 2 and S. 145, Note 4.

Special powers of District Magistrates, whether can be delegated. See Note 19, Pt. 3.

Transfer under S. 526. See S. 117, Note 5 (VII).

1. Legislative Changes.—

Difference between the Codes of 1872 *and* 1861—

The Code of 1861 (282) gave the power of drawing up proceedings for security to keep the peace to "Magistrate of the District or other officer exercising the powers of Magistrate", whereas S. 491 of the Code of 1872 conferred the power on a "Magistrate of a division or a district or a Magistrate of the first class."

Changes made in 1882— S. 107, Note 1.

(1) The Presidency Magistrate was made one of the Magistrates who could take action under this section.

(2) Under the Code of 1872, it was provided that proceedings under the section "may be taken either in the district in which the breach of the peace is apprehended or in any district where the person it is desired to bind may be". The Code of 1882 provided that action might be taken on "information that any person is likely to commit a breach of the peace within the local limits of such Magistrate's jurisdiction or that there is within such limits a person who is likely to commit a breach of peace . . . in any place beyond such limits." *See* Note 19.

(3) The Code of 1872 expressly provided that proceedings might be started on the basis of any report or information "which appeared credible and which the Magistrate believed." The Code of 1861 also used the word "credible" before the word "information" in the section. There are no corresponding words in the Code of 1882.

(4) The Code of 1872 expressly provided that a summons to show cause under the section might be recalled at any time by the Magistrate if he thought proper to do so. This provision was omitted in the Code of 1882.

(5) The word "wrongful" before the words "act that may probably occasion a breach of peace" was newly introduced in the Code of 1882 giving effect to the undermentioned decisions under the previous Codes[1] *See* Note 11.

(6) The previous Codes provided for the extension of the period of security after it had been ordered, under certain circumstances (*Vide* S. 290 of the Code of 1861 and 499 of the Code of 1872). No corresponding provision was made in the Code of 1882.[2]

Changes made in 1898—

(1) The words referring to the disturbance of public tranquillity were newly added. *See* Note 12.

(2) Sub-S. (2) was substituted for the words referring to territorial jurisdiction which occurred in the Code of 1882.

(3) Sub-Ss. (3) and (4) were newly added.

Changes made in 1923—

(1) The words "if in his opinion there is sufficient ground for proceeding" have been inserted in sub-S. (1), Compare S. 204. *See* Note 13.

Section 107—Note 1.

(1) (1873) 19 Suth. W. R. 47 (Cr.), *Kashi Chandur* v. *Hur Kishore.*
(1878) 3 Cal. L. R. 280 (281), Re *Sheo Surn.*
[See also (1877) 1877 Pun. Re. Cr. No. (1), *Crown* v. *Mt. Zenura.*]

(2) *The following decisions under the prior Codes are no longer of any practical importance.*
(1872) 18 Suth. W. R. 57 (58), Re *Gooroo.*
(1871) 15 Suth. W. R. 18 (18), Re *Kalinath Biswas.*
(1867) 7 Suth. W. R. 26, *Kalicharan* v. *Bunkar.*
(1867) 7 Suth. W. R. 23 (24), *Diego De Silva* v. *Jehangeer.*

S. 107, Notes 1—3.

(2) The words "pending further action by himself under this chapter" in sub-S. (4) have been substituted for the words "until the completion of the enquiry hereinafter prescribed". *See* Note 21.

2. **Scope and object of Section.**—Section 106 and this section deal with the circumstances under which a person can be required to give security for keeping the peace. While the former provides for security being taken on *conviction* for certain offences, the present section provides for the taking of security in *other cases*. Hence, where a person is convicted of an offence falling within the scope of S. 106 and it is considered necessary to bind over the accused to keep the peace, the proper procedure is that under S. 106 and if the Magistrate fails to avail himself of his powers under that section he cannot draw up proceedings against the accused under the present section, on the same-materials.[1]

The section is *preventive* and not *punitive*. In other words, the section is not intended for the punishment of past offences but for the *prevention* of acts that may amount to or lead to a breach of the peace hereafter.[2] But the section is applicable notwithstanding that the acts alleged as giving rise to an apprehension of breach of the peace on the part of a person constitute in themselves specific offences for which he may be punished.[3]

In proceedings commenced under this section the Magistrate can only require *security for keeping the peace*. He has no power to order *attachment of property*.[4] Similarly, he cannot require a person to execute a bond to observe certain time limits for attendance at a Mosque,[5] so also, a woman cannot be ordered by a Magistrate to enter into a bond not to commit adultery.[6]

The institution of proceedings under the section is not an accusation of an offence; and therefore, if the information proves to be false, the Court has no power to act under S. 250, *infra*.[7]

For the relative scope of this section and S. 145, *see* Notes under S. 145.

3. "**Is informed**".—A Magistrate has no jurisdiction under this section to proceed against any person where there is no information against him. Thus, where *A* presented a petition to a Magistrate alleging that *B* was likely to commit a breach of the peace and praying that he should be bound over and the Magistrate on taking his statement came to the conclusion that *A himself* was a quarrelsome person and called upon him to show cause why he should not be bound down, it was held that the Magistrate's action was *ultra vires* as there was no information against *A*.[1] But there is no restriction as to the *source* of the information on which a Magistrate can act under this section.[2] Thus the

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Note 2.

(1) (1871) 3 N.-W.P. 96 (97), *Queen* v. *Powell*.
(2) (1931) 1931 Lah. 191 (194): 12 Lah. 457, *Shadi Lal* v. *Emperor*.
(1908) 8 Cri. L. Jour. 128 (129): 35 Cal. 674, *Ramchandra Haldar* v. *Emperor*.
(1895) Rat. 830 (831), *Queen-Empress* v. *Dayaram*.
(1904) 6 Bom. L. R. 663 (664), In re *Shivram Parashram*.
(3) (1918) 44 Ind. Cas. 38 (40): 1918 Pat. 183, *Khetraboo Sahur* v. *Emperor*.
(4) (1924) 1924 Oudh 345 (346), *Ram Sarup* v. *Emperor*.
(5) (1876) 1876 Pun. Re. No. 10 (17) (Cr.), *Shahab-ud-din* v. *Crown*.
(6) (1877) 1877 Pun. Re. No. 1 (Cr.), *Crown* v. *Mt. Zenura*.
(7) (1935) 1935 Lah. 29 (30), *Rohal* v. *Kauva*.

Note 3.

(1) (1920) 1920 Lah. 100 (101): 1 Lah. 554, *Abdul Karim* v. *Emperor*.
(2) (1881) 3 All. 545 (553) (F. B.), *Empress* v. *Muhammad Jaffar*.
(1867) 8 Suth. W. R. 79 (80), *Tarinee Kant* v. *Lahoroory*.

Magistrate can draw up proceedings on the basis of a Police report,[6] or the report of a Subordinate Magistrate[4] or the information given by a private individual.[5] Proceedings can also be drawn up on the basis of information derived from a previous trial of the person proceeded against wherein he was acquitted[6] (*See* Note 5). But the information on which proceedings are drawn up must be clear and definite so as to afford notice to the person proceeded against of what he is to meet (*See* Note 10). S. 107, Notes 3—5.

4. Whether proceedings can be initiated on orders of superior Court.—An assault case in which the accused was fined was brought to the notice of the High Court by the complainant preferring a petition to it and the High Court, holding that the accused should have been required to furnish security to keep the peace, directed the Magistrate to summon the accused to show cause why he should not be ordered to furnish security. A majority of the Full Bench of the Allahabad High Court held that the High Court had power under S. 297 of the Code of 1872 (now S. 439) to order a Magistrate to take proceedings under S. 491 (now S. 107) and that the proceedings drawn up in obedience to such order were legal.[1] Spankie, J., on the other hand, held that the question of initiating proceedings under this section is entirely within the *discretion* of the Magistrate.[2] But the High Court may instruct the Magistrate to act under this section and the High Court's decision may be regarded as one mode of "informing" the Magistrate.[3]

5. Information which has already been subject of judicial proceeding whether can be basis of action under this section.—Although S. 403 or S. 494 does not apply to proceedings under this section, yet, on general principles of justice, a person should not be vexed repeatedly with proceedings under it on the same facts as those which formed the foundation for previous proceedings wherein those facts were found insufficient to justify an order for security.[1]

(1887) 9 All. 452 (464), *Queen-Empress* v. *Abdul Qadir.*
(1884) 6 All. 132 (136), *Empress* v. *Babua* (Information may be hearsay).
[See also (1930) 1930 Mad. 975 (976), (Magistrate not bound to disclose source of information).]
(3) (1932) 1932 All. 670 (672), *Anantapadmanabha* v. *Emperor.*
(1868) 10 Suth. W. R. 41 (41) (Cr.), *Brindaban Saha,* In re.
(1869) 4 Beng. L. R. 46 (51) (F. B.), *Behari Patak* v. *Mahomed.*
(1874) 21 Suth. W. R. 28 (28) (Cr.), *Queen* v. *Ram Chunder Roy.*
(1869) 6 Bom. H. C. R. 1 (5), *Reg.* v. *Jivanji.*
(4) (1871) 8 Bom. H. C. R. 162 (163), *Reg.* v. *Irapa.*
(1864-65) 2 Mad. H. C. R. 240 (242), *Ex parte Nellikel.*
(5) (1932) 1932 All. 670 (672), *Lakshmi Narain* v. *Emperor.*
(1867) 7 Suth. W. R. 30 (Cr.), *Queen* v. *Krishtendro Roy.*
(1926) 1926 Mad. 521 (524): 49 Mad. 315, *Sanjivi Reddy* v. *Kondagiri Koneri Reddi.*
(6) (1922) 1922 Oudh 273 (274, 275), *Emperor* v. *Gobardan Singh.*
(1868) 10 Suth. W. R. 1 (2), Re *Narasingh Narain.*

Note 4.

(1) (1881) 3 All. 545 (548, 554) (F. B.), *Empress* v. *Mohd. Jafir* (Per *Pearson* and *Oldfield, JJ., Spankie, J.* Contra).
(2) [*See also the following cases.*
(1924) 1924 Cal. 540 (540), *Haneef Sheikh* v. *Jabani Mandal* (Magistrate should not draw up proceedings merely because the District Magistrate directs him to do so).
(1925) 1925 Cal. 262 (262), *Phani Bhusan* v. *Kurcja Behari* (Sessions Judge cannot set aside in Revision order of Magistrate refusing to draw up proceedings and order him to draw up proceedings).]
(3) (1881) 3 All. 545 (548, 554), *Empress* v. *Mohammad Jafir.*

Note 5.

(1) (1918) 41 Ind. Cas. 991 (992): 1918 Mad. 555: 41 Mad. 246, In re *Nagireddi* v. *Konda Reddy.*
(1933) 1933 Mad. W. N. 915 (916), *Satwaji Rao* v. *Emperor.*
(1929) 1929 Mad. 842 (844), *Rangaswami* v. *Emperor.*
(1913) 14 Cri. L. Jour. 559 (560, 561): 36 Mad. 315, *Mulhia Moopan,* In re (Obiter).
[See (1871) 3 N.-W.P. 96 (97), *Queen* v. *Powell* (Where a Magistrate (on conviction for assault) has omitted to take security under S. 106 he can only proceed under S. 107 on fresh or further information other than that derived from the trial that the parties were likely to commit breach

S. 107, Notes 5—8.

But where the prior order with reference to an "information" is not one finally disposing of the matter, there is no bar to proceedings being started again on the same basis.[2] Thus, where the previous order was only one allowing the police to withdraw their charge sheet under S. 107 with a view to laying a fresh one after omitting some of the persons included therein, proceedings on the basis of the second charge sheet are not barred though both the charge sheets were based on the same facts.[3] Similarly, where a Magistrate on receiving a Police report praying for action against a certain party under S. 107 issues warning notices to both the parties concerned, he does not thereby become *functus officio* and there is nothing to preclude him from drawing up proceedings under the section thereafter.[4] So also, where a Magistrate on receiving a Police report asking for action under S. 107 against certain persons declines to institute proceedings against some of them and the case is subsequently transferred to another Magistrate, the latter is not precluded from starting proceedings against them on the basis of the same information.[5]

It should also be noted that a criminal prosecution against a person and a security proceeding against him on the same facts are independent and do not exclude each other; and the failure of the criminal prosecution is no bar to the proceeding under this section.[6]

6. Information under section is not "Complaint".—An essential element of a "complaint" as defined in S. 4 (*h*) is that it must contain an allegation that some person *has committed an offence.* The essence of an information under this section (S. 107) is that some person *is likely* to commit a breach of the peace or do any other act specified in the section. Hence an information under this section is not a "complaint" within S. 4 (*h*).[1] *See also* Note 14.

7. Person proceeded against whether entitled to copy of information received by Magistrate.—A Magistrate taking action under this section is not bound to disclose the source of the information received by him. Hence the information does not form "part of the record" within S. 548, *infra,* and the person ordered to show cause why he should not be required to give security is not entitled to a copy of the information on which the order is based.[1]

8. Whether suit for malicious prosecution lies in respect of information given under section.—There is a conflict of decisions as to whether a suit for malicious prosecution is maintainable in respect of proceedings under this

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of peace).

See also (1913) 14 Cri. L. Jour. 189 (189), *Chandan Sahu* v. *Bhadai Rai* (Discharge of person informed against on ground that Police report of date mentioned in proceedings not in existence—Mistake of date—Second proceeding based on report of real date not barred).]

(2) See (1929) 1929 Cal. 506 (506, 507), *Abdul Mannaf* v. *Mohd. Nurulla.*

(3) (1913) 14 Cri. L. Jour. 559 (560, 561): 36 Mad. 315, In re *Muthia Moopar.*

(4) (1929) 1929 Cal. 506 (506, 507), *Abdul Manaf* v. *Mohammad Nurulla.*

(5) (1932) 1932 Cal. 864 (865): 59 Cal. 1484, *Golam Rahaman* v. *Kalipada Manna.*

(6) (1922) 1922 Oudh 273 (274), *Emperor* v. *Gobardan Singh.*

[See however (1933) 1933 Mad. W. N. 915 (916), *Satwajee Rao* v. *Emperor.*]

Note 6.

(1) (1932) 1932 All. 670 (671), *Lakshmi Narain* v. *Emperor.*

(1924) 1924 Lah. 630 (630), *Shamasuddin* v. *Ram Dayal Singh.*

(1928) 1928 Lah. 694 (694), *Hari Singh* v. *Jagta.*

Note 7.

(1) (1930) 1930 Mad. 975 (976), *Anantapadbanabiah* v. *Emperor.*

section. On the one hand, it has been held by the High Courts of Allahabad[1] and Calcutta[2] that such proceedings are of a *quasi* criminal nature and can give rise to an action for damages for malicious prosecution. On the other hand, it has been held by the Madras High Court[3] that a suit for malicious prosecution can be brought only when there has been a prosecution for an *offence* and as proceedings under the section do not involve any such prosecution, they cannot afford a cause of action for a suit for malicious prosecution. S. 107, Notes 8—10.

There is also a conflict of view on the question whether in cases in which information against a person is laid before a Magistrate under this section, but the Magistrate does not see fit to take any action and no preliminary notice to show cause under S. 112 is issued against the person informed against, a suit for malicious prosecution will lie. According to the High Court of Madras the prosecution cannot be deemed to have been started at all and hence, there can be no suit for malicious prosecution.[4] The Calcutta High Court has on the other hand held that a suit for malicious prosecution will lie even in such a case because, according to it, the prosecution commences with the information to the Magistrate.[5]

No suit for malicious prosecution lies in respect of proceedings under this section (as in other cases) if they have not been started without reasonable and probable cause.[6]

9. Whether suit for defamation will lie in respect of information under section.—Statements contained in an information to the Magistrate under this section are absolutely privileged and cannot be made the ground of a suit for defamation against the informant.[1] The privilege extends also to statements made by witnesses to a Police-officer to whom the Magistrate has referred, for investigation and report, the information he has received under this section.[2]

As to whether the Magistrate has power to call for such a report, *see* Note 14, *infra*.

10. "Any person is likely to commit a breach of peace or disturb the public tranquillity".—The information on which proceedings can be started under the section should be to the effect that the person to be proceeded against is likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity.[1] The information must be of a clear and definite kind directly affecting the person against whom proceedings are to be drawn up and it should disclose tangible facts and details so that it may afford notice to such

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Note 8.

(1) (1919) 1919 All. 388 (389): 41 All. 503, *Nizullah Khan* v. *Emperor*.
(1921) 1921 All. 173 (173): 43 All. 402, *Chiranji Singh* v. *Dharam Singh*.
(2) (1915) 27 Ind. Cas. 449 (451): 1915 Cal. 79, *Narayan* v. *Fulman*.
(1912) 18 Ind. Cas. 737 (739) (Cal.), *Crowdy* v. *O'Reilly*.
(3) (1902) 13 Mad. L. J. 370 (370), *Kandaswamy* v. *Subramania*.
(4) (1926) 1926 Mad. 521 (522, 524): 49 Mad. 315, *Sanjivi Reddi* v. *Gondagari Koneri Reddi*.
(1902) 13 Mad. L. J. 370 (370), *Kandaswamy Asari* v. *Subramania Pillay*.
(5) (1915) 27 Ind. Cas. 449 (452): 1915 Cal. 79, *Narayan Singh* v. *Fulman Singh*.
(6) (1925) 1925 Pat. 469 (470), *Harihar Singh* v. *Dasrath Ahir*.

Note 9.

(1) (1926) 1926 Mad. 521 (524, 525): 49 Mad. 315, *Sanjivi Reddi* v. *Kondagan Koneri Reddy*.
(1913) 18 Ind. Cas. 737 (742) (Cal.), *Crowdy* v. *O'Reilly*.
(2) (1926) 1926 Mad. 521 (523, 525): 49 Mad. 315, *Sanjivi* v. *Koneri*.

Note 10.

(1) (1904) 1 Cri. L. Jour. 696 (697) (All.), *Narindra Bahadur Pal* v. *Emperor*.
(1866) 6 Suth. W. R. 93, Re *Birreshuree*.
(1903) 1903 Pun. L. R. No. 115, p. 484,

S. 107, Note 10.

person of what he is to come prepared to meet.[2] The reason is that the jurisdiction to bind over a person in proceedings commenced under the section arises only when it is proved by definite evidence of *facts* that he is likely to do any of the acts specified therein.[2-a] Hence, proceedings under the section cannot be commenced on the basis of information which merely contains, vague recitals borrowed from the words of the section.[3] Nor is a mere statement that the person in question is using threats of violence to the opposite party[4] or has committed "diverse acts of oppression"[4-a] sufficient to justify action being taken. Similarly, a police report which merely says that the person sought to be bound over is an overbearing and quarrelsome man and that it is necessary to place him under security is not sufficient to justify proceedings against him.[5]

The mere fact that enmity or ill feeling exists between two parties is no ground for instituting proceedings under this section against one or both of them.[6] Hence, the fact that there has been a series of disputes and litigation between the parties[7] or that the parties are continually bringing false cases against each other[8] or that they had taken different sides in Municipal politics[9] is not sufficient for taking action under this section. Similarly, a party cannot be bound over merely because he has been boycotting another party.[10]

Sultan Mubaraz v. *Mt. Bano.*

(2) (1904) 1 Cri. L. Jour. 58 (59) (Cal.), *Pram Krishna Saha* v. *Emperor.*
(1922) 1922 Cal. 97 (99), *Aimuddin* v. *Emperor.*
(1884) 6 All. 26 (29) (F. B.), In re *Jai Prakash Lal* (Police report of the vaguest kind, containing no information directly suggesting a breach of the peace, contemplated or instigated, held insufficient for action under S. 107).
(1921) 1921 Pat. 440 (443), *Grant* v. *Emperor.*
(1914) 1914 Sind 8 (11): 8 S. L. R. 207, *Farid Imambux* v. *Pirm Kouro.*
(2-a) (1921) 1921 Lah. 183 (184), *Nitia Nand* v. *Crown* (Order based upon vague evidence dealing in generalities and not specifying any of the petitioners as having any particular cause for hostilities is not justifiable).
(1926) 1926 Lah. 689 (689), *Joti Sarup* v. *Emperor* (Mere *opinion* of witnesses that accused is likely to do such acts is not enough).
(1931) 1931 Lah. 184 (184), *Suraj Parkash* v. *Emperor* (Do.).
(1882) 1882 Pun. Re. No. 11, p. 15, *Thana Ram* v. *Empress* (Do.)
(1925) 1925 Lah. 135 (136), *Joti Malik* v. *Emperor* (Evidence vague and general—No specific act attributed to accused—He cannot be bound over).
(1920) 1920 Nag. 203 (203, 204), *Mohon* v. *Emperor* (Proceedings under S. 107 cannot be based upon mere hearsay evidence).
(1921) 59 Ind. Cas. 374 (375): 1920 Pat. 687, *Lakshmi Singh* v. *Emperor* (Some acts of accused should be proved).
(1906) 4 Cri. L. Jour. 363 (365) (Lah.), *M. R.* v. *E.* (Order binding over is illegal in absence of proof of some specific act of accused).
(1912) 13 Cri. L. Jour. 720 (720) (Lah.), ***Sher Singh* v. *Hari Singh.***
(1915) 26 Ind. Cas. 638 (639): 37 All. 33: 1914 All. 268, *Brij Nandan* v. ***Emperor.***
(1931) 1931 Lah. 191 (194): 12 Lah. 457, ***Shadi Lal* v. *Emperor*** (It is incumbent on the prosecution to give clear proof of acts or specific conduct on the part of the person proceeded against from which a reasonable immediate inference can be drawn that a disturbance of the peace or breach of public tranquillity is likely).
7 Bur. 116, *Nga Po.*
(1919) 49 Ind. Cas. 642 (645): 1919 Pat. 22, *Ghasi Ram* v. *Emperor.*
(3) (1929) 1929 Pat. 67 (68), ***Amanat Ali* v. *Emperor.***
(1931) 1931 Pat. 347 (349), ***Raghunathpuri*** v. *Premnarain Puri.*
(4) (1922) 1922 Pat. 209 (210), ***Nand Kishore*** *Nath Sahai Deo* v. ***Emperor.***
(4-a) (1902-03) 7 Cal. W. N. 32 (33), ***Sheikh*** *Jinuat* v. ***Sheikh Rhusen.***
(5) (1888) 1888 Pun. Re. No. 16, p. (31), ***Banarsi Das*** v. ***Empress.***
(1888) 1888 Pun. Re. No. 21, p. (41), *Empress* v. *Shimbhu.*
(6) (1928) 1928 Lah. 243 (244), ***Parman Rani*** v. ***Emperor.***
(1914) 1914 Oudh 305 (306), ***Thakur Sheo*** *Singh* v. ***Emperor.***
(1871) 3 N.-W.P. 96 (97, 98), ***Queen* v.** *Powell.*
(1904) 1 Cri. L. Jour. 696 (697) (All.), *Narendra* v. *Emperor.*
(1911) 12 Cri. L. Jour. 186 (186) (Lah.), *Sherkhan* v. *Emperor.*
(1894) 7 C. P. L. R. 9 (10), ***Emperor* v.** *Balaji.*
(1904) 1 All. L. J. 418 (419), ***Narendra*** v. ***Emperor.***
(1922) 1922 Cal. 97 (99), ***Ainuddin* v.** *Emperor.*
(1894) 7 C. P. L. R. 9 (10), ***Balajee Dada*** *Singroo,* In re.
(7) (1916) 17 Cri. L. Jour. 484 (485): 1917 All. 421, *Mathura Sahu* v. *Emperor.*
(8) (1906) 4 Cri. L. Jour. 429 (430) (Lah.), *Radha Kishen* v. *Emperor.*
(9) (1928) 1928 Lah. 863 (864), ***Kura Mal* v.** *Emperor.*
(10) (1913) 14 Cri. L. Jour. 238 (238) (All.), ***Behari* v. *Emperor.***
(1922) 1922 Cal. 97 (99), ***Aminuddin* v.** ***Emperor.***

S. 107, Note 10.

Moreover, where there is a dispute between two parties, all persons who are interested in the dispute and who belong to one side or the other cannot be proceeded against indiscriminately. No action can be taken against any one of them unless the facts show that *he* is likely to commit a breach of the peace or do any of the other acts mentioned in the section.[11]

Proceedings can be drawn up under the section against persons who are likely to *abet* the commission of the acts mentioned in it.[12] But a person cannot be bound over to keep the peace merely because his servants, agents or partisans are likely to break the peace or disturb the public tranquillity.[13] It should also be noted that a person cannot escape liability under the section on the ground that the acts imputed to him were committed under the orders of his master.[14]

It is not necessary for taking action under the section to show that he has *actually done* any of the acts mentioned in it; it is only a *likelihood* of his doing such acts that is necessary.[14-a] Conversely, the mere fact that a person was likely to commit a breach of peace in the *past* is no ground for proceeding against him under this section. No action can be taken against him under it unless the facts point to the likelihood of a breach of the peace or disturbance of the public tranquillity in the *future*.[15] It has even been held that though

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(11) (1922) 1922 Cal. 97 (99), *Aminuddin* v. *Emperor*.
(1887) 9 All. 452 (464), *Queen* v *Abdul Kadir*.
(1911) 12 Cri. L. Jour. 186 (186) (Lah.), *Sher Khan* v. *Emperor*.
(1916) 17 Cri. L. Jour. 400 (400): 1916 All. 100: 38 All. 468, *Sambhunath* v. *Emperor*.
(1919) 49 Ind. Cas. 642 (645): 1919 Pat. 22, *Ghasi Ram* v. *Emperor*.
(1921) 59 Ind. Cas. 374 (375): 1920 Pat. 687, *Lachmi Singh* v. *Emperor* (Where, however, wrongful acts are committed or threatened to be committed jointly by number of individuals and not only by some of them, the act is the act of all and therefore all of them are liable under S. 107).
(1910) 11 Cri. L. Jour. 719 (720) (All.), *Jagat Narain* v. *Emperor*.
(1904) 1 Cri. L. Jour. 58 (59) (Cal.), *Pran Krishna Saha* v. *Emperor*.
(1934) 1934 Pesh. 21 (21), *Dir Muhammad* v. *Emperor* (Civil dispute going on for sometime between the parties—No likelihood of breach—Security proceedings are uncalled for—And only one party should not be bound down).
(1874) 21 Suth. W. R. 2 (3, 4), *Pratab Chandra Barooah*, In re.

(12) (1883) 6 All. 26 (29), Re *Jai Prakash*.
(1922) 1922 Nag. 180 (181), *Baines* v. *Emperor* (It is a "wrongful act" which may probably occasion a breach of peace).
(1912) 13 Cri. L. Jour. 170 (172): 33 All. 775, *Emperor* v. *Murli Singh*.
(1904) 1 Cri. L. Jour. 344 (348): 31 Cal. 350, *Surya Kanta* v. *Emperor*.
(1917) 38 Ind. Cas. 758 (759): 1916 Pat. 52, *Bala Lal Mahton* v. *Emperor* (Section applies to a person who asserts a claim by keeping himself in the background and preparing to enforce the claim through a servant who is continuously armed).
(1910) 11 Cri. L. Jour. 719 (720) (All.), *Jagat Narain* v. *Emperor* (It is common and proper practice to take security from leaders of factions shown to be likely to commit breach of peace as it is often impossible to bind over all the members of one or more parties).
[But see (1912) 13 Cri. L. Jour. 126 (126): 1912 P. R. 4, *Devrat Singh* v. *Crown* (Submitted the decision is wrong).]

(13) (1882) 10 Cal. L. R. 430 (432), In re *Charoo Chandra Mullick* (Non-resident zamindar cannot be bound over to keep the peace, merely because his local agents are committing acts likely to cause a breach of the peace).
(1872) 17 Suth. W. R. 54 (54) (Cr.), *Ram Coomar Banerji* v. *Rajah Gopal Singh Deb* (It is illegal to take recognizance from one person in order to prevent another from committing a breach of the peace).
(1872) 9 Beng. L. R. 229 (234), Re *Sutherland*.
(1904) 1 Cri. L. Jour. 696 (697) (All.), *Narendra Bahadur Pal*, In re.
(1872) 18 Suth. W. R. 11 (11), *Sutherland* v. *Crowdy*.
(1910) 11 Cri. L. Jour. 719 (720) (All.), *Jagat Narain* v. *Emperor* (Person cannot be bound over merely because he is wealthy or influential member of party which is likely to break the peace).

(14) (1905) 2 Cri. L. Jour. 554 (558) (Cal.), *Srikantanath Shaha* v. *Emperor*.
(14-a) (1904) 1 Cri. L. Jour. 58 (59) (Cal.), *Pran Krishna Sala* v. *Emperor*.
(1864) 1 Suth. W. R. 45, *Queen* v. *Sectaram*.

(15) (1884) 1884 All. W. N. 54 (55), *Empress* v. *Batuk* (Mere fact that accused and others had quarrelled among themselves and assaulted each other not enough).
(1897-1901) 1 U. B. R. 16 (18), *Nga Po Tin* v. *Queen-Empress* (Accused was alleged to have instigated the throwing of stones at a theatre. *Held*, he should be prosecuted. Presumption as to future conduct may often but not always be drawn from past actions).
(1908) 7 Cri. L. Jour. 232 (232) (Lah.), *Beli Ram* v. *Emperor* (A hasty

S. 107, Notes 10—11.

there may be an apprehension of breach of peace at the time of the commencement of proceedings under the section, if the apprehension ceases subsequently before the final order for security is passed, the proceedings must be cancelled.[16] But where it is likely that a breach of peace will take place in the near future, security should be taken even though the occasion on which ill feelings between the parties *first* came to ahead has passed away.[17]

In proceedings under this section the Court is entitled to take into consideration the utterance of threats by a party on different occasions, as well as the previous relations of the parties and the antecedent and other existing circumstances.[18] But the mere use of bombastic language does not render the person using it liable to be dealt with under the section.[19] The mere absence of actual overt acts on the part of the person sought to be bound over, during the past six months is not conclusive proof that he is not likely to do any of the acts mentioned in the section.[20] It is not necessary for proceedings being drawn up under the section against any person that it must be shown that he intends to do any *definite* act[21] although, as already said, the information on which action can be taken should otherwise be of a clear and definite nature. A *bare possibility* of breach of the peace is not enough to justify proceedings under this section; there must be at least a reasonable probability of such a breach.[22]

11. **"Wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity".**—The mere fact that a person is likely to

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speech likely to cause a breach of the peace does not justify an order under this section against the speaker when all fear a breach of the peace ceases before the order is made).

(1876) 2 Weir 49 (49), (The act of which information is given must be one which is shown to be in contemplation at the time of the information given and not merely one a repetition of which may be expected or apprehended from past misconduct of the kind without anything further).

(1897-1901) U. B. R. Cr. Pro. 15 (15), *Queen-Empress* v. *Nga Hmyin* (Do.).

(1904) 1 Cri. L. Jour. 755 (756) (Bom.), In re *Shivram Parashram* (It cannot be presumed from the fact that a person had done a wrongful act in the past that he is likely to do the same again).

(1927) 1927 Pat. 231 (232), *Mirza Zulfakar Beg* v. *Emperor* (Where the evidence showed that the persons were likely to cause a breach during the last *Moharam* festival. *Held*, that it cannot be presumed that they were likely to do the same at the next festival and that security should not be taken).

(1904) 1 Cri. L. Jour. 360 (361, 362): 26 All. 190, In the matter of the petition of *Basdeo* (Do.).

[See also (1893-1900) L. B. R. 204 (204), *Queen-Empress* v. *Chido Bon* (Security should not be demanded from person who is already undergoing a sentence of imprisonment for a criminal offence).]

(16) (1927) 1927 Pat. 231 (232), *Zulfakar Beg* v. *Emperor*.

(1875) 23 Suth. W. R. 19 (20), *Mohunt Luchmee Dass* v. *L. J. Crowdy*.

(17) (1911) 12 Cri. L. Jour. 493 (494) (All.), *Ajodhya Prasad* v. *Emperor*.

[See also (1904) 1 Cri. L. Jour. 344 (348): 31 Cal. 350, *Surya Kanta* v. *Emperor* (Merely because a breach of peace was averted by precautionary measures taken by the authorities the accused cannot claim to be discharged from liability to be bound over).]

(18) (1911) 12 Cri. L. Jour. 104 (Mad.), In re, *Chinna Thambi Rowthan*.

(1904) 1 Cri. L. Jour. 344 (348): 31 Cal. 350, *Surjya Kanta* v. *Emperor* (Threats of violence are sufficient to indicate intention to commit breach of peace).

[But see (1929) 1929 Nag. 328 (332), *Kashiram Hazari* v. *Asaram* (Threatening to beat a person saying why he served a particular person and asking another to give up serving a particular person on pain of being involved in litigation are not threats of violence of such a nature as would in law justify the passing of an order under S. 107).]

(19) (1911) 12 Cri. L. Jour. 104 (105) (Mad.), In re *Chinna Thambi Rowthan* (Where the accused were alleged to have said "if the suit went on we would plant a flag on the Nairkotta and build a mosque"; *Held*, that this was mere bombast and did not justify the Court in calling on them to furnish security).

(20) (1918) 44 Ind. Cas. 122 (123): 1918 Pat. 383, *Ohidudin Chowdury* v. *Emperor*.

(21) (1918) 47 Ind. Cas. 72 (73): 1918 All. 93, *Jaguri Ram* v. *Emperor*.

[But see (1897-1901) 1 U. B. R. 16 (18), *Nga Po Kin* v. *Queen-Empress* (There must be evidence to show that some specific act likely to amount to, or to occasion, a breach of the peace is contemplated).]

(22) 3 J. G. Shome L. R. 37, In re, *Sykes*.

do any act that may probably occasion a breach of the peace or disturb the public tranquillity is not sufficient to form the basis of a proceeding under this section. It is necessary that the act should be a *wrongful* one. A *rightful* act cannot be made the subject of proceedings under this section, even though it may provoke a breach of the peace or disturb the public tranquillity. The section must be used to *protect* persons exercising their legal rights and not to interfere with such rights.[1] **S. 107, Note 11.**

The words "wrongful act" in the section mean "an act forbidden by the penal statutes of India or declared to be penal or wrongful by such statutes" and not merely an improper or immoral act.[2] Thus the leading of a procession in violation of a prohibitory order under S. 144,[3] the interference with the worship in a temple of persons entitled to worship there in their own way[4] and the performance of ceremonies invoking the blowing of a conch in a place which is not set apart for the purpose and where no such ceremonies have taken place, with the deliberate intention of insulting a class of Mahommedans[5] are all *wrongful acts*. *See also* the following cases.[6]

On the other hand, the *bona fide* exercise of the right to go in procession along a public road without infringing the law in any way[7] the blowing of a conch in connection with the ceremonial acts of worship in accordance with established usage at a place fixed for the purpose,[8] the killing of a dedicated bull,[9] the killing of cows quietly or secretly in a mosque or in a private house,[10]

Note 11.

(1) (1907) 6 Cri. L. Jour. 230 (231): 34 Cal. 935, *Din Dayal* v. *Emperor*.
(1910) 11 Cri. L. Jour. 355 (356): 32 All. 571, *Mohammad Yakub* v. *Emperor*.
(1912) 13 Cri. L. Jour. 143 (144) (Mad.), *Guruswami Nadan* v. *Emperor*.
(1890) 14 Bom. 25 (27), In re, *Atmaram*.
(1929) 1929 Mad. 842 (844), *Rangaswami* v. *Emperor*.
(1915) 25 Ind. Cas. 989 (900): 1915 Mad. 81, In re *Desikachari*.
(1932) 1932 Lah. 101 (103), *Baburam* v. *Emperor*.
(1926) 1926 Lah. 683 (684): 7 Lah. 482, *Khazan Chand* v. *Emperor*.
(1926) 1926 Lah. 695 (695), *Thakar Singh* v. *Crown*.
(1885) 7 All. 461 (477), *Queen-Empress* v. *Ramzan*.
(1904) 1 Cri. L. Jour. 940 (941) (Bom.), *Emperor* v. *Chambasawa*.
(1918) 39 Ind. Cas. 480 (482): 1918 Upp. Bur. 53: (1916) 2 U. B. R. 157, *Nga Ti* v. *Maung Khaw Van*.
(1907) 11 Cal. W. N. 255 (255) (N.), *Srish Chandra* v. *Emperor*.
(1934) 1934 Oudh 179 (181), *Nisar Husain Khan* v. *Emperor* (Person attempting to take peaceful possession of property which he believes to be entitled to—Order under S. 107 should not be passed—But if he makes show of armed force action can be taken).
[See also (1934) 1934 Pat. 104 (105), *Saligram Singh* v. *Baijnath Singh* (Holding *hat* on own land on same day of rival *hat*—No resort to wrongful Act—Order under S. 144 is bad —Proper course is to bind down person committing wrongful Act under S. 107).]
(2) (1920) 1920 Pat. 550 (552), *Pir Ali* v. *Emperor*.
(3) (1928) 1928 Cal. 438 (440), *Satindranath Sen* v. *Emperor*.
(1915) 16 Cri. L. Jour. 46 (48): 1914 All. 268: 37 Cal. 33, *Brijnandan Prasad* v. *Emperor*.
(4) (1920) 1920 Pat. 661 (662), *Gurdeo Singh* v. *Emperor*.
(5) (1912) 13 Cri. L. Jour. 170 (171): 33 All. 775, *Emperor* v. *Murli Singh*.
(6) (1905) 2 Cri. L. Jour. 415 (417) (Cal.), *Bisarat Ali* v. *Umapad*.
(1920) 1920 Pat. 667 (670), *Bepin Behari Mukerji* v. *Emperor* (Manager of a Zamindar resorted to *acts of violence* in realising tolls from *hat* users—Action wrongful).
(1934) 1934 Oudh 179 (181), *Nisar Husain Khan* v. *Emperor* (If a person goes to take possession of land taking an armed body of men and threatens the tenants and forces them to pay rent to him, action under this section can be taken).
(7) (1915) 16 Cri. L. Jour. 46 (48, 49): 1914 All. 268: 37 All. 33, *Brijnandan Prasad* v. *King-Emperor*.
(1929) 1929 Lah. 138 (140), *Lal Chand* v. *Emperor* (Procession with music before mosque in pursuance of old custom).
(1908) 7 Cri. L. Jour. 504 (505) (Cal.), *Feroze Ali Mullick* v. *Emperor* (When a party have the right to take a procession along a particular road they cannot be properly bound down because some one else proposes to interfere with that right).
(1912) 13 Cri. L. Jour. 143 (144) (Mad.), *Guruswami Nadan* v. *Emperor* (Every one has a right to carry a palanquin in procession along public street).
(8) (1912) 13 Cri. L. Jour. 170 (172): 33 All. 775, *Emperor* v. *Murli Singh*.
(9) (1920) 1920 Pat. 550 (552), *Pir Ali Kasabi* v. *Emperor*.
(10) (1910) 11 Cri. L. Jour. 355 (357): 32 All. 571, *Mohammad Yakub* v. *Emperor*.

S. 107, Note 11.

the exercise by a co-sharer of his lawful rights in improving the joint property even though the other co-sharer objects thereto[11] and the resistance to or protest against the invasion of one's legal rights[12] are not "wrongful acts".

A woman cannot be bound over under this section on the ground that she is likely to commit adultery and that her act may probably provoke the husband to commit a murder. The reason is that under S. 497 of the Penal Code (adultery) the *wife* cannot be punished for adultery even as an abettor and cannot be said to have committed a wrongful act.[13] *See also* the following cases.[14]

In proceedings under this section, an attempt must always be made by the Magistrate to ascertain the legal rights of the parties before he binds down one or the other of them. If he finds that the question of the respective rights and obligations of the parties is not easy of solution by him in the proceeding, he ought not to bind down one of the parties alone so as to give an unfair advantage to the other but should bind down both of them.[15]

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(11) (1926) 1926 Lah. 695 (696): 8 Lah. 98, *Thakur Singh* v. *Crown*.

(12) (1920) 1920 All. 28 (29): 43 All. 283, *Janki Prasad Tewari* v. *Emperor* (A person is justified in posting men for the *defence* of his property).

(1907) 5 Cri. L. Jour. 344 (347) (Cal.), *Maigh Lal Singh* v. *Ambica Jha* (When it is not proved that the accused were the aggressors in the dispute and that the opposite party were in peaceful possession, accused alone cannot be bound over).

(1899) 3 Cal. W. N. 463 (464), *Bejoy* v. *Empress*.

(1909) 10 Cri. L. Jour. 221 (223): 5 N. L. R. 94, *Hira Singh* v. *Mohan Singh* (Resistance to illegal manner of enforcing legal right is no ground for binding over).

(1904) 1 Cri. L. Jour. 1076 (1077) (Mad.), *Chandrasekara Dalait* v. *Emperor* (Mokhasadar's protest—Zamindar's illegal interference with Mokhasadar's possession).

(1903) 2 Cri. L. Jour. 338 (339) (Cal.), *Bhabataram Ghose* v. *Bankatesh Lal* (Unauthorised action of co-owner in surveying joint lands).

(1899) 3 Cal. W. N. 299 (N.), *Kali Prasanna Bhaduri* v. *Empress* (Where breach of the peace is apprehended person entitled to the possession of the disputed land should not be called upon to give security for he cannot be regarded as an aggressor and wrong-doer in defending rights found in his favour).

(13) (1877) 1877 Pun. Re. No. 1 (Cr.), *Crown* v. *Mt. Zenura*.

(14) (1918) 44 Ind. Cas. 965 (966): 1918 All. 102 (All.), *Mahu* v. *Emperor* (Opening cattle market by side of an old one not necessarily wrongful act).

S. C. Oudh 77, *Queen-Empress* v. *Saiyid Muhammad Askari* (No one is entitled to molest others in the orderly and decent exercise by them of their religion, in the edifices of religion, in private houses, or in such public places as the Magistrate permits).

(1884) 1884 All. W. N. 57 (57, 58), In re *Syed Husain* (Servants of a proprietor who assemble for the purpose of ploughing a land already lawfully put into the possession of their master, do not form an unlawful assembly).

(1883) 6 All. 26 (29), Re *Jai Prakash* (Process issued against *A* because his servants were about to sow certain lands. The lands were lands in which *A* had every right to sow. *Held*, process issued was illegal).

(1933) 1933 Lah. 36 (36), *Ram Krishan* v. *Emperor* (Act of creditors whereby they threatened to get zamindars imprisoned for not paying their debt is not sufficient for action even if such act may cause tension likely to cause breach of peace).

(1898) 25 Cal. 798 (802), *Driver* v. *Queen-Empress* (Mere fact that a person not in possession grants leases to tenants does not necessarily constitute a wrongful act).

(1921) 62 Ind. Cas. 830 (831), *Abdur Rahman* v. *Emperor* (Uttering aloud the word "Ameen" in a mosque not wrongful act).

(1902) 1902 Pun. Re. No. 15, p. (44), *Khuda Baksh* v. *Emperor* (Do.).

(1917) 39 Ind. Cas. 480 (482): 1918 U. B. 53: (1916) 2 U. B. R. 157, *Ngati* v. *Maung Kyaw Yan* (Right of public discussion and right of public meeting are rights which every subject possesses).

(1889) 1889 Pun. Re. No. 13 (58) (Cr.), *Gulam Nabi* v. *Empress* (Singing of ballads in public street—Crowds collecting to hear singing not wrongful act).

(1916) 17 Cri. L. Jour. 301 (303): 1916 All. 276, *Channilal* v. *Emperor* (Acts of such a provocative nature that the only probable result was the disturbance of the public tranquillity).

(15) (1907) 6 Cri. L. Jour. 230 (231): 34 Cal. 935, *Dindoyal*.

(1927) 1927 Pat. 314 (314, 315), *Musahele Soudagar* v. *Nidhi Ram Dutt*.

(1931) 1931 Pat. 347 (348, 349), *Raghunath Puri* v. *Prem Narain Puri*.

(1921) 63 Ind. Cas. 829 (829) (All.), *Bindraban* v. *Emperor*.

(1907) 5 Cri. L. Jour. 19 (21) (Cal.), *Bepin Behari* v. *Pranakul*.

(1908) 7 Cri. L. Jour. 403 (404, 405) (Cal.), *Baisnab* v. *Emperor*.

(1919) 49 Ind. Cas. 642 (646): 1919 Pat. 22, *Ghazi Ram* v. *Emperor*.

(1907) 11 Cal. W. N. 255 (255) (Notes), *Srish Chandra* v. *Emperor*.

(1927) 102 Ind. Cas. 781 (782) (Pat.), *Musaheb Soudagar* v. *Nidhi Ram*

S. 107, Notes 11—14.

Before taking action against a person on the ground of his being likely to do a wrongful act which may provoke a breach of the peace, it must be shown that some *definite* act is in contemplation.[16] Moreover, breach of the peace or the disturbance of public tranquillity must be not merely a *possible* but a *probable* result of the wrongful act.[17]

12. Disturbance of public tranquillity.—The words referring to the disturbance of public tranquillity did not occur in the prior Codes. The insertion of these words in the present Code shows that a person who is not likely to commit or provoke a breach of the peace but who is likely to disturb the public tranquillity can also be proceeded against under this section.[1]

13. "If in his opinion there is sufficient ground for proceeding".—This section does not contemplate the drawing up of proceedings automatically whenever information of the kind mentioned in it is received by a Magistrate. Action can be taken only when "in the opinion of the Magistrate there is sufficient ground for proceeding". Thus in each case the Magistrate has to exercise his discretion as to the credibility and sufficiency of the information received by him.[1] If he comes to the conclusion that the apprehension as to breach of peace is unfounded he need not take any action under this section.[2] Thus, though an application under this section is not a "complaint" within the meaning of S. 203 *infra*, the Magistrate can *dismiss* it by virtue of his powers under this section itself, if he considers that the application is groundless.[3] But a Magistrate under this section should act in the exercise of his own discretion. He cannot commence proceedings against any one merely because the District Magistrate directed him to do so.[4] Nor can he dismiss an application under this section, *merely* on the report of a *Zaildar*.[5]

14. Power of Magistrate to call for report from Police or Subordinate Magistrate.—The procedure provided for in Ss. 202 and 203 *infra* does not *in terms* apply to a petition asking for an order for security being passed against a person because such a petition is not a "complaint" within the meaning of those section.[1] But a Magistrate to whom such a petition is addressed is not

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Dutt.

(1919) 49 Ind. Cas. 642 (645): 1919 Pat. 22, *Ghasi Ram* v. *Emperor*.

[See (1907) 5 Cri. L. Jour. 344 (347) (Cal.), *Meigh Lal Singh* v. *Ambika Jha*.

[But compare (1906) 4 Cri. L. Jour. 456 (459) (Cal.), *Bibee Kulsum* v. *Umatul Mehdi*.]

(16) (1887) 1887 Pun. Re. No. 64 (176) (Cr.), *Empress* v. *Badhawa Singh*.

(1920) 1920 Pat. 550 (551), *Pir Ali Kasali* v. *Emperor*.

(1905) 10 Cal. W. N. xlvii (xlvii), Re *Sheo Raj*.

[See also (1925) 1925 Lah. 625 (626), *Khem Chand* v. *Emperor*.]

(17) (1914) 1914 Lah. 393 (394): 1914 P. R. 22, *Ahmad Gul* v. *Emperor* (Secret attempt to poison a man not likely to lead to breach of peace as a *probable* result).

(1906) 1906 Pun. L. R. 139, p. (463), *Muhammad* v. *Emperor* (Abduction of a woman—The possibility of breach of peace by injured husband is too remote to be held a "probable" consequence of the abduction).

Note 12.

(1) (1916) 17 Cri. L. Jour. 301 (302): 1916 All. 276, *Chunilal* v. *Emperor*.

Note 13.

(1) (1867) 8 Suth. W. R. 79 (80), Re *Tarinee Kant*.

(1875) 23 Suth. W. R. (Cr.) 58 (58), Re *Kali Prosunno*.

(1932) 1932 All. 670 (672), *Lakshmi Narain* v. *Emperor*.

(1867) 8 Suth. W. R. 85 (85) (Cr.), *Chamaro Malo* v. *Kashi Chundur Lalla* (Petition unsupported by oath or solemn information not credible information).

(1869) 6 Bom. H. C. R. Cr. 1 (5), *Reg.* v. *Jivanji Limji* (Do.).

(1866) 6 Suth. W. R. 1 (2) (Cr.), *Keshub Chundro Sundayal* (Unproved charge of false imprisonment is not the credible information contemplated in the law).

(2) (1924) 1924 Lah. 630 (630, 631), *Shams-ud-din* v. *Ram Dayal Singh*.

(3) (1924) 1924 Lah. 630 (630), *Shams-ud-din* v. *Ram Dayal Singh*.

(4) (1924) 1924 Cal. 540 (540), *Hanif Sheikh* v. *Jalain Sheikh*.

(5) (1928) 1928 Lah. 119 (120), *Musa* v. *Mam Kaur*.

Note 14.

(1) (1932) 1932 All. 670 (671), *Lakshmi Narain* v. *Emperor*.

(1928) 1928 Lah. 694 (694), *Hari Singh*

S. 107, Notes 14—19.

bound to initiate proceedings in every case. With a view to satisfy himself as to the necessity of issuing process under this section he has the right to test the accuracy of the information received by him before issuing notice to the person informed against. For this purpose, the Magistrate has *inherent power* to refer the matter to the Police[2] or to a Subordinate Magistrate,[3] for investigation or enquiry and report, before he makes up his mind as to whether notice must issue or not.

15. May require him to show cause.—An order directing a person to enter into a bond for keeping the peace is illegal if he was not summoned to show cause why such an order should not be passed against him.[1]

16. Burden of proof.—The fact that a person under this section is required to 'show cause' why he should not be ordered to give security for keeping the peace does not imply that in the subsequent enquiry which is held under S. 117 before a final order is passed, the burden of proving his innocence lies on the party who is required to show cause. As in all other criminal cases, the burden of proof is on the prosecution and not the person proceeded against.[1]

17. "With or without sureties".—In case of landed proprietors required to give security for keeping the peace their personal security should be considered sufficient.[1]

18. Who can take proceedings under section.—Proceedings under the section can be commenced only by a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class. Any other Magistrate who may consider such proceedings necessary against any person may follow the procedure laid down in sub-S. (3) if the conditions mentioned therein are present, or may communicate to any Magistrate who is empowered to start proceedings, the information which shows the desirability of commencing such proceedings.

As to who can take proceedings in the case of European British subjects see notes to S. 443, *infra*.

19. Territorial jurisdiction.—Sub-S. (2) lays down the rule as to the territorial jurisdiction of Magistrates under this section. According to it, the District Magistrate[1] and the Chief Presidency Magistrate have jurisdiction

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v. *Jagta*.
[But compare (1926) 1926 Mad. 521 (523, 525): 49 Mad. 315, *Sanjivi Reddi* v. *Koneri Reddi*.]
(2) (1932) 1932 All. 670 (672), *Lakshmi Narain* v. *Emperor*.
(1926) 1926 Mad. 521 (525): 49 Mad. 315, *Sanjeevi* v. *Koneri*.
(3) (1891) 2 Weir 51 (51), *Egambara Mudali* v. *Murugappa*.

Note 15.

(1) (1912) 13 Cri. L. Jour. 844 (845) (All.), *Jagadamba Prasad* v. *King-Emperor* (Persons who are bound over to keep the peace should be given opportunity of showing cause and all the procedure laid down by Chapter VIII of the Criminal Procedure Code should be followed).
(1882) 5 Mad. 380 (380, 381), Re *Khadar* (Witness for defence in rioting case —At the end of trial without any further proceedings witness was ordered to execute bond to keep peace: *Held*, order was illegal).
(1870) 2 N.-W.P. 189 (189), *Queen* v. *Mooney Doobey*.
(1874) 21 Suth. W. R. 37 (38), *Sahebdi* v. *Kuran*.

Note 16.

(1) (1887) 9 All. 452 (461), *Queen-Empress* v. *Abdul Kadir*.
(1870) 2 N.-W.P. 431 (432), *Queen* v. *Niranjun Singh*.
(1893) 7 C. P. L. R. 9 (11), *Empress* v. *Balajee Dada Singroo*.

Note 17.

(1) (1921) 63 Ind. Cas. 829 (829) (All.), *Bindraban* v. *Emperor*.

Note 19.

(1) (1922) 1922 All. 337 (337), *Sheobaran Dube* v. *Emperor*.

where *either* the person proceeded against *or* the place where the breach of the peace or disturbance of the public tranquillity is apprehended to take place is within the local limits of their jurisdiction. Other Magistrates empowered to act under the section can do so only if *both* the place where the breach of peace or disturbance of public tranquillity is apprehended and the person proceeded against are within the local limits of their jurisdiction.[2] A Magistrate of this class cannot start proceedings against a person who is not within his jurisdiction even on the express direction of the District Magistrate to do so.[3] A Magistrate to whom no local area has been allotted under S. 12, *ante* has jurisdiction throughout the district.[4] Where the territorial jurisdiction of the Magistrate to take proceedings under this section is challenged it is incumbent upon him to enter into the matter and decide it after taking evidence if necessary, before proceeding further.[5]

There is a conflict of decisions as to the effect of the initiation of proceedings in disregard of the provisions of sub-S. (2). According to the High Courts of Madras[6] and Calcutta[7] the proceedings in such a case are illegal and *ultra vires*; but according to the Allahabad High Court they are only irregularities which are curable under S. 537 *post*.[8]

The term "is" with reference to the person informed against in this subsection does not denote permanent or habitual residence. Proceedings can be taken against a person who at the time that they are instituted is within the jurisdiction of the Magistrate although his *residence* may be outside, such jurisdiction.[9] But the presence within the Magistrate's jurisdiction must be a *voluntary* one. Thus, presence by virtue of detention in custody[10] or in obedience to summons[11] is not enough.

20. Transfer of proceedings under section to another Magistrate for disposal.—Where proceedings under this section have been initiated by a Magistrate having local jurisdiction to do so, the District Magistrate can transfer

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[*The following cases decided under the Code of 1882 are no longer good law.*
(1892) 14 All. 49 (49), In re *Abdul Aziz.*
(1883) 6 All. 26 (28, 29) (F. B.), Re *Jai Prakash.*
(1886) 12 Cal. 133 (135, 136), *Dinonath Mullick* v. *Girija Prosanna.*]

(2) (1905) 2 Cal. L. J. 63 (N.), *Ananga* v. *Emperor.*
(1885) 11 Cal. 737 (738), In re *Rajendro Chundur Roy.*
(1934) 1934 Mad. 255 (256), *Varadarajulu Naidu* v. *Emperor.*
(1935) 1935 Pat. 131 (131), *Mahangulal* v. *Emperor* (Sub-Divisional Magistrate has no jurisdiction to initiate proceedings against person residing outside his jurisdiction).

(3) (1909) 9 Cri. L. Jour. 148 (149) (Cal.), *Nibeekar Chandra Mukerjee* v. *Emperor.*
(1935) 1935 Pat. 131 (131), *Mahangulal* v. *Emperor* (Sub-Divisional Officer has no jurisdiction to initiate proceedings against person residing outside his jurisdiction).

(4) (1902) 29 Cal. 389 (391), *Sarat Chunder Roy* v. *Bepin Chandra Roy.*
(1921) 1921 Oudh 162 (163): 24 Oudh Cas. 255, *Emperor* v. *Acharbar.*
(1932) 1932 Cal. 864 (864): 59 Cal. 1484, *Golam Rahman Khan* v. *Kalipada Manna.*

(5) (1905) 10 Cal. W. N. xxii (xxiii), *Rakhal Das Barat* v. *Emperor.*

(6) (1917) 41 Ind. Cas. 990 (993): 1918 Mad. 555: 41 Mad. 244, In re *Nagi Reddi Konda Reddy.*

(7) (1905) 10 Cal. W. N. xxii (xxiii) (Notes), *Rakhal Das* v. *Emperor.*
(1909) 1 Ind. Cas. 78 (79), *Nibikar Chunder Mukerjee* v. *Emperor* (Without jurisdiction).

(8) (1926) 1926 All. 767, *Ram Deo Singh* v. *Emperor.*

(9) (1932) 1932 All. 162 (163): 54 Cal. 341, *Hamid Hasan* v. *Emperor.*
(1920) 1920 All. 297 (297, 298), *Ziaullah Khan* v. *Emperor.*
(1915) 16 Cri. L. Jour. 618 (619): 1916 Cal. 707: 43 Cal. 158, *Emperor* v. *Durga Halwai.*
(1916) 17 Cri. L. Jour. 390 (390): 1917 All. 441: 39 All. 139, *Emperor* v. *Munna.*
(1921) 59 Ind. Cas. 413 (414): 1920 All. 297, *Zianullah Khan* v. *Emperor.*
(1897) 24 Cal. 344 (347), *Shama Charan Chakravarthi* v. *Katu Mundal.*
(1934) 1934 Mad. 255 (256), *Varadarajulu Naidu* v. *Emperor* (A stay even for a day would do).
[But compare (1897) 23 Bom. 32 (35), Re *Krishnaji.*]

(10) (1897) 23 Bom. 32 (35), Re *Krishnaji.*

(11) (1932) 1932 All. 162 (163): 54 All. 341, *Syed Hameed* v. *Empress.*

S. 107, Notes 20—22.

them to any other Magistrate who is subordinate to him and who, though lacking territorial jurisdiction, is otherwise competent to complete the proceedings.[1] But where proceedings have not been initiated at all but only an information under the section has been received, the case cannot be transferred to another Magistrate for disposal.[2] The object of sub-S. (2) of this section is to restrict only the *initiation* of proceedings against persons residing out of the jurisdiction of the District Magistrate and not to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate.[3]

21. **Sub-Sections 3 and 4.**—The Magistrate to whom a person is sent under sub-S. (3) must go through all the procedure laid down in Ss. 112 to 118 before he can bind down the person for keeping the peace.[1] Sub-S. (4) confers jurisdiction on a Magistrate to detain only a person sent to him under sub-S. (3); he cannot detain any other person though he may be before the Court.[2]

22. **Revision.**—The High Court seldom interferes in the preliminary stage with the discretion of the Magistrate in taking action under the preventive sections of the Code,[1-a] but when the material on which the orders are based are clearly insufficient to support them, the High Court will interfere.[1] When an application under this section is dismissed, further enquiry cannot be ordered under S. 436 as the application under this section is not a "complaint" within S. 436.[2] *See also* the undermentioned case[3] and Note 4, *supra*.

Note 20.

(1) (1902) 24 All. 151 (152), *Emperor* v. *Munna*.
(1924) 1924 Cal. 540 (540), *Hanif Sheik* v. *Jabani Mandal*.
(1904) 1 Cri. L. Jour. 344 (347): 31 Cal. 350, *Suriya Kanta Roy Chowdhry* v. *Emperor* (Formal orders of transfer not necessary—Mere direction to parties to appear before the other Magistrate named is enough).
(1918) 45 Ind. Cas. 160 (160): 1918 Cal. 892, *Rakhal Mandal* v. *Emperor*.
(1930) 1930 Mad. 859 (860), *Kalia Goundan* v. *Emperor* (Proceedings started by Sub-Divisional Magistrate—Transfer by District Magistrate).
(1902) 31 Cal. 350 (354), *Suriya Kanta Roy* v. *Emperor*.
[See (1915) 16 Cri. L. Jour. 55 (56): 1914 All. 546: 37 All. 20, *Govind Sahai* v. *Emperor* (It is not competent to a District Magistrate to transfer a case under S. 107 of the Criminal Procedure Code to a Magistrate of the second class under S. 528 who is incompetent to conduct and complete the proceedings).]
(2) (1917) 41 Ind. Cas. 990 (992): 1918 Mad. 555: 41 Mad. 246, In re *Nagi Reddy*.
[Compare (1917) 43 Ind. Cas. 256 (256): 1917 Pat. 8 (Pat.), *Jai Patti Mahton* v. *Nagina Singh* (Application to start proceedings against several accused—Institution of proceedings against one accused—Transfer of case —*Held*, Magistrate to whom case was transferred had power to start proceedings against other accused).
[See also (1918) 44 Ind. Cas. 122 (123): 1919 Cal. 469, *Ohiduddin Chowdhury* v. *Emperor* (District Magistrate instead of drawing up the proceedings, merely saying that he sanctioned the proceedings and sending the case to the Sub-Divisional Magistrate. *Held*, that the intention was clear and that though the District Magistrate did not express his intention strictly in accordance with law, the irregularity in expression did not deprive the trying Magistrate of jurisdiction in the case).]
(3) (1902) 31 Cal. 350 (354), *Suriya Kanta Roy* v. *Emperor*.

Note 21.

(1) (1909) 10 Cri. L. Jour. 309 (311): 1909 P. R. 7, *Emperor* v. *Hardit Singh*.
(2) (1908) 7 Cri. L. Jour. 360 (361): 31 Mad. 315, *Chidambaram Pillai* v. *Emperor*.

Note 22.

(1-a) (1934) 1934 Pat. 463 (465), *Harihara Singh* v. *Emperor* (High Court should not interfere with exercise of discretion by District Magistrate as to the section under which he should take action, *viz.*, under S. 107, 144 or 145).
(1) (1867) 8 Suth. W. R. 85 (85) (Cr.), In re *Chamarao*.
(1916) 39 Ind. Cas. 480 (481): 1918 U. B. 53: (1916) 2 U. B. R. 157, *Ngati* v. *Maung Khan Yan*.
(1924) 1924 Cal. 114 (114), *Nafar Chandra Pal* v. *Emperor*.
[See (1934) 1934 Oudh 179 (181), *Nisar Husain Khan* v. *Emperor* (Finding of the Lower Court as to fact of apprehension of breach of peace cannot be challenged in revision).]
(2) (1925) 1925 Oudh 138 (138): 28 Oudh Cas. 44, *Ram Lal* v. *Bankateshar Rawan Bahadur Pal Singh*.
[See also (1925) 1925 Cal. 262 (262), *Phani Bhusan Roy* v. *Kunja Behari Biswas* (Sessions Judge has no jurisdiction to direct Magistrate to draw up proceedings under the section).]
(3) (1926) 1926 All. 767 (768): 49 All. 228, *Ramdeo Singh* v. *Emperor* (Persons who come to High Court in revision

X. To Spread

S. 108.

Security for good behaviour from persons disseminating seditious matter.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing *or in any other manner, intentionally* X disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or

(*b*) any matter the publication of which is punishable under section 153-A of the Indian Penal Code, or

(*c*) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate, *if in his opinion there is sufficient ground for proceeding* may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, *and edited, printed and published* in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, *with reference to any matter contained in such publication* except by the order or under the authority of the Governor-General in Council or the Local Government or some officer empowered by the Governor-General in Couucil in this behalf.

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against an order under S. 107 are *expected to do so* with the utmost promptitude and certainty within thirty days of the order against which they complain).

S. 108, Notes 1—3.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION..	2
"DISSEMINATES OR ATTEMPTS TO DISSEMINATE" ..	3
MODE OF DISSEMINATION	4
THE DISSEMINATION MUST BE INTENTIONAL	5
SEDITIOUS MATTER—Cl. (*a*)	6
PROMOTING ENMITY BETWEEN CLASSES.—CL. (*b*) ..	7
"IF IN HIS OPINION THERE IS SUFFICIENT GROUND FOR PROCEEDING"	8
PRINTER OR PUBLISHER	9
"WITH REFERENCE TO ANY MATTER CONTAINED IN SUCH PUBLICATION"	10

Other Topics.

Essentials of the section. See Note 3, Pts. 2 and 3.

Except by order of Government. See Note 10, Pt. 1.

Procedure under this section is that of warrant cases. See S. 117 and S. 112.

What amounts to promoting enmity between classes. See Note 7.

1. Legislative changes.—This section is entirely new and was not found in the 1861, 1872 or 1882 Codes.

By S. 17 of the Act XVIII of 1923 (Criminal Procedure Code Amendment Act), after the words "in writing", the words "*in any other manner intentionally*" and after the words "such Magistrate" the words "*if in his opinion there is sufficient ground for proceeding*" were inserted.

And for the words "or printed or published" the words "*and edited printed and published*" were substituted.

After the figures 1867, the words "*with reference to any matter contained in such publication*" were added.

2. Scope and object of the section.—Sections 106 and 107 deal with the power to require security *to keep the peace.* This and the next two sections deal with the power to take security for good behaviour. These sections are not intended to provide for punishment of offences *already committed,*[1] but to prevent the commission of offences. In other words they embody *preventive* and not *punitive* provisions of law.[2]

Proceedings under this section are not intended to be taken so as to avoid the trouble and possible refusal of the Government to launch prosecutions under Ss. 153-A or 124-A of the Penal Code.[3]

3. "Disseminates or attempts to disseminate".—In order that a person may be bound over under this section it must be shown that the person concerned is in the habit of intentionally disseminating (scattering abroad)

Section 108—Note 2.

(1) (1928) 1928 All. 344 (345): 50 All. 854, *Chiranji Lal* v. *King-Emperor.*

(2) (1932) 1932 Lah. 559 (563), *Secretary, High Court Bar Association, Lahore* v. *Emperor.*

(3) (1928) 1928 All. 344 (344 and 345): 50 All. 854, *Chirangi Lal* v. *King-Emperor.*

or attempts to disseminate any such matter as is referred to in the section.[1] For this purpose it is necessary to show that the person proceeded against was connected *with* the dissemination of the matter in question. The mere writing of the matter disseminated or the authorship thereof is not sufficient to bring a person under this section.[2] Where persons proceeded against were merely volunteers and said to have taken part in parades, drills, and route marches and there was no evidence of dissemination of seditious matter by them, an order under this section was held not justified.[3] S. 108, Notes 3—7.

4. Mode of dissemination.—Under the section as it stood before the amendment of 1923, the section applied to disseminations of seditious matter "either orally or in writing". The words "or in any other manner intentionally" were added by the Code of Criminal Procedure (Amendment) Act of 1923. The dissemination of the offending matter need not necessarily now be, either oral or in writing. It may be, by other means, as for instance, by gramophone records.[1]

5. The dissemination must be intentional.—The dissemination or attempt to disseminate must be *intentional.* Innocent persons who disseminate matters covered by this section, such as boys who handle newspapers without knowing the contents, and persons who are merely ignorant tools in the hands of others cannot be proceeded against under this section.[1]

As to the meaning of the word intentional, *see* Note 7, *infra.*

6. Seditious Matter—Cl. (a).—It is essential for the applicability of Cl. (*a*) that the matter disseminated must be shown to be seditious.[1]

The advocacy of "Home Rule for India" or "Swaraj" with the object of obtaining for Indians, an increased and gradually increasing share of political authority,[2] or the mere preaching of the boycott of British Goods[3] or speeches and agitation, the trend of which is mainly to redress a particular grievance such as an insult of the religious sentiments of the students of a College[4] are not seditious matters, within the meaning of the section.

7. Promoting enmity between classes.—Cl. (b).—To sustain an order under Cl. (*b*), it must be shown *first* that the matter disseminated is one "the publication of which is punishable under S. 153-A" and *secondly* that the dissemination was done intentionally. S. 153-A of the Penal Code says in effect that the publication of matter is punishable, if by such publication the person publishing is making a successful or unsuccessful *attempt to promote enmity*: matter "the publication of which is punishable under S. 153-A" is therefore matter which is the vehicle of an *attempt to promote*

Note 3.

(1) (1932) 1932 Lah. 7 (9), *Jagannath Luthra* v. *Emperor.*
(1934) 1934 Oudh 70 (72): 9 Luck. 844, *Chandra Bhan Gupta* v. *Emperor* (One isolated speech without anything to show that the offence would be repeated is not enough).
(2) (1923) 1923 Bom. 255 (257): 47 Bom. 438, *T. K. Pitri* v. *Emperor.*
(3) (1933) 1933 Lah. 236 (238, 239), *Ram Phul Singh* v. *Emperor.*

Note 4.

(1) Statement of Objects and Reasons (1914).

Note 5.

(1) Legislative Assembly Debates, 1923 Jan. 18, p. 1279.

Note 6.

(1) (1916) 1916 Bom. 9 (48), *Bal Gangadhar Tilak* v. *Emperor.*
(2) (1916) 1916 Bom. 9 (44), *Bal Gangadhar Tilak* v. *Emperor.*
(1907) 6 Cri. L. Jour. 297 (300): 34 Cal. 991, *Veni Bhusan Roy* v. *Crown.*
(3) (1932) 1932 Lah. 7 (9), *Jagannath Luthra* v. *Emperor.*
(4) (1932) 1932 Lah. 559 (562), *Secretary, High Court Bar Association* v. *Emperor.*

S. 108, Notes 7—9.

enmity. If there is no such *attempt* to promote enmity, the mere fact that the matter may have a *tendency to* promote enmity is not enough to proceed against a person under this section.[1]

The Chief Court of Lower Burma has held in the undermentioned case[2] that this section will not apply unless the disseminator himself intended to provoke feelings of enmity or hatred between communities. It is submitted that this view is not correct. To accept it would mean that only persons who themselves would be liable to punishment under S. 153-A, can be proceeded against under this section.

8. **"If in his opinion there is sufficient ground for proceeding".**—Before requiring a person to show cause why security should not be required of him under this section, the Magistrate must satisfy himself, that there is sufficient ground for his acting on the information received, or in other words, that a *prima facie* case is made out on the materials before him. The Magistrate should not act upon any and every information.[1] In order that a person may be bound over under this section for sedition it must be shown that the person concerned is in the *habit* of intentionally disseminating or intends to disseminate seditious matters: in other words it must be shown that there is danger of his continuing the seditious activities unless he is prevented from doing so under this section.[2] The test is whether there is any fear or probability of the *repetition* of the offence.[3]

Thus where it was proved against the person proceeded against that he had given only *once* certain notices to a peon to be affixed in public, the contents of which were punishable under S. 153-A,[4] or where all that was proved was that he had been joining the processions and meetings arranged by an unlawful association in the organizing of which he had no hand and that out of four speeches made by him at such meetings three were not seditious[5] it was held that a resort to this section was not justified.

9. **Printer or Publisher.**—In the case of the printer or keeper of the press, although it must be assumed, that by printing, the obnoxious matter, he abets the dissemination, still in order to make him liable under this section the knowledge of the contents will have to be proved against him for such a presumption does not ordinarily arise from the ordinary course of business in a big press.[1]

But as regards the publisher no such proof is necessary and he will be liable because as publisher he must be presumed to have knowledge of the contents and his publishing is dissemination or at least an abetment of the same.[2]

Note 7.

(1) (1926) 1926 Cal. 1133 (1136), *Chakravarthy* v. *Emperor* (Dissenting from 17 Cri. L. Jour. 254).
(2) (1912) 12 Cri. L. Jour. 248 (250) (Rang.), *Dhammaloka* alias *Colvin* v. *Emperor*.

Note 8.

(1) Legislative Assembly Debates, 18th January, 1923, pp. 1246 (1254).
(2) (1933) 1933 Lah. 236 (238), *Ramphul Singh* v. *Emperor*.
(3) (1932) 1932 Pat. 213 (214), *G. Chandray* v. *Emperor*.
(1909) 10 Cri. L. Jour. 379 (380) (Bom.), *Emperor* v. *Vaman*.
(4) (1928) 1928 All. 344 (345): 50 All. 854, *Chiranji Lal* v. *Emperor*.
(5) (1932) 1932 Lah. 7 (9), *Jagannath Luthra* v. *Emperor*.

Note 9.

(1) (1923) 1923 Bom. 255 (258): 47 Bom. 438, *Pitre* v. *Emperor*.
(2) (1923) 1923 Bom. 255 (258): 47 Bom. 438, *Pitre* v. *Emperor*.

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10. "With reference to any matter contained in such publication".— The addition of these words makes the intention of the legislature clear as regards the proceedings which require sanction of the Government prior to their prosecution. Such sanction is necessary only in the case of a publication registered under the Press and Registration of Books Act, 1867.[1] S. 108, Note 10.

Security for good behaviour from vagrants and suspected persons.

109.* Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information:— S. 109.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

***(CODE OF 1882—S. 109.)**

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

(CODE OF 1872—S. 504, paras. 1 and 4 and S. 515, para. 2.)

When Magistrate may require security for good behaviour for six months.

504. Whenever it appears to the Magistrate of the District, or to a Magistrate of the first class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour for a period not exceeding six months as to him may appear good and sufficient.

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Note 10.

(1) Statement of Objects and Reasons (1914).

S. 109.

SYNOPSIS.

	Note No.
I LEGISLATIVE CHANGES	1
II SCOPE AND OBJECT OF THE SECTION	2
III SIMULTANEOUS PROCEEDINGS UNDER SS. 109 AND 110 AGAINST SAME PERSON	3
IV SIMULTANEOUS PROCEEDINGS FOR SUBSTANTIVE OFFENCE AS WELL AS UNDER THIS SECTION ..	4
V "IS TAKING PRECAUTIONS TO CONCEAL HIS PRESENCE WITHIN.....JURISDICTION"—CL. (*a*) ..	5
(1) CONCEALMENT, MEANING OF	6
(2) "WITH A VIEW TO COMMIT AN OFFENCE" ..	7
VI "WHO HAS NO OSTENSIBLE MEANS OF SUBSISTENCE" CL. (*b*)	8
VII "WHO CANNOT GIVE A SATISFACTORY ACCOUNT OF HIMSELF"—CL. (*b*)	9
VIII WHAT MAGISTRATE CAN ACT UNDER THIS SECTION.	10
(1) DISCRETION OF MAGISTRATE	11
IX JOINT ENQUIRY	12
X REVISION	13

Other Topics.

Grounds held insufficient for demanding security.
- (*a*) Being a gambler. See Note 8, Pt. 7.
- (*b*) Being a player of ring game. See Note 8, Pt. 9.
- (*c*) Belonging to a wandering tribe. See Note 8, Pt. 6.
- (*d*) Conviction for bad livelihood. See Note 8, Pt. 8.
- (*e*) "Doing no work." See Note 8, Pt. 8.

Residence of persons proceeded against need not be within the local jurisdiction of the Magistrate. See Note 10, Pt. 2 ..

Want of means of subsistence is not an offence. See Note 8, Pt. 1.

Powers of Magistrate of Division of District, being a Magistrate of the second class, to inquire.

A Magistrate in charge of a Division of a District, exercising the powers of a Magistrate of the second class, may make any inquiry necessary under this Chapter, and may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

515. * * * * * * *

Place where proceedings may be held.

Proceedings may be taken under this chapter, against persons amenable to its provisions, in any District where they may be.

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(CODE OF 1861—S. 295.)

When Magistrate may require security for good behaviour for six months.

295. Whenever it shall appear to the Magistrate of the District or to an Officer exercising the powers of a Magistrate that any person is lurking within his jurisdiction not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate or other Officer as aforesaid to require security for the good behaviour of such person for a period not exceeding six months.

1. Legislative Changes.—

S. 109, Notes 1—5.

In the 1861 and 1872 Codes the word "*lurking*" was used, instead of the words "taking precautions to conceal his presence"; and the maximum period of security was *six months*.

Under the Code of 1882 the maximum period of security was raised to one year thus bringing it in accord with Ss. 107 and 108.

In 1898, the word '*an*' before the word '*offence*' was changed into '*any*'.

2. Scope and object of the section.—This section deals with proceedings against persons, who, in English Law, would be classed as rogues and vagabonds.[1] The object of the section is to frustrate the criminal designs of such persons *before* they are carried out.[2] The section is not intended for taking security from persons suspected of having *committed* a particular offence.[3] Nor is it meant to be used as a means of getting every suspected habitual offender and village loafer confined in jail, and thus saving trouble to the Police and the village authorities. It is only when the ordinary means of detection and prevention of crime and ensuring good behaviour have been adopted and have failed, that resort to the special means provided by this and the next section is justifiable.[4]

Under Ss. 106—108, *infra*, the bond may be "'with or without" sureties. But under this and the next section, the bond must always be *with* sureties.

3. Simultaneous proceedings under Ss. 109 and 110 against same person.—*See* S. 110, *infra*.

4. Simultaneous proceedings for substantive offence as well as under this section.—Where a person is tried and convicted of an offence, in respect of a particular incident, he cannot be proceeded against under this section also for the same incident. Thus, when a person, who was found riding a *stolen camel* was challenged by the police and on his being unable to give a satisfactory account of himself, was arrested and convicted under S. 411 of the Penal Code, simultaneous proceedings under this section for the same act were held not justified.[1]

5. "Is taking precautions to conceal his presence within.....jurisdiction"—Cl. (a).—There is a difference of opinion as to the correct interpretation of these words. In the undermentioned decisions of the High Court of Allahabad it was held that the words "within the local limits of such Magistrate's jurisdiction" qualified the word "presence", that, in order that Cl. (*a*) might apply, there must be a concealment of the fact that he is within the Magistrate's jurisdiction and that therefore, if the presence within the Magistrate's jurisdiction is well known an attempt to conceal the presence at a *particular spot* or at a *particular time* is not within the applicability of Cl. (*a*).[1]

Section 109—Note 2.

(1) [See the meaning "Vagabond" in Wharton's Law Lexicon.]
[See also (1912) 13 Cri. L. Jour. 239 (240) (Cal.), *Narendra Mohan Ghose Chowdhury*, In re.]
S. C. Oudh 73, *Queen-Empress* v. *Ajudhia Bania*.

(2) (1929) 1929 All. 33 (36, 37) (F.B.): 50 All. 909, *Emperor* v. *Phuchai and another*.

(3) (1872) Rat. 63 (63), *Reg.* v. *Bhuja*.

(4) (1907) 5 Cri. L. Jour. 377 (381) (Rang.), *Nga Po Aung* v. *Emperor*.

Note 4.

(1) (1928) 1928 Lah. 928 (929), *Lal* v. *Emperor*.

Note 5.

(1) (1927) 1927 All. 50 (51): 49 All. 240,

S 109, Note 5.

Thus *In Emperor* v. *Bhairon*[2] where certain persons, well known residents of village *A*, were found in the dark outside a house in village *B* (*A* and *B* being both within the Magistrate's jurisdiction) with house-breaking implements and when challenged by the Police they ran away, it was held that Cl. (*a*) did not apply. The same view has been adopted by the High Courts of Calcutta[3] and Patna.[4] In *Gagan Chandra De* v. *Emperor*,[5] Rankin, C. J., observed as follows:—"The idea is that someone may be taking precaution to conceal himself within the local limits of the Magistrate's jurisdiction, not to conceal himself as one who hides from a Policeman but to conceal the fact of his infesting the Magistrate's jurisdiction, and, in that class of cases, if there is reason to believe that this is a precaution taken with a view to commit an offence; the Magistrate can require him to give security. It is reasonable in that view that Cl. (*a*) and Cl. (*b*) should be found together, treating a man who has no ostensible means of subsistence and cannot give satisfactory account of himself as a person of the same kind as a person trying to escape notice and to inhabit the locality without his presence in the locality becoming known, and doing this for the purpose of committing an offence". In *Emperor* v. *Phuchai*[6] which was a decision by a Bench of five Judges of the High Court of Allahabad, the majority of the Judges came to the conclusion that a person may come within Cl. (*a*) even if the residence within the local limits of the Magistrate's jurisdiction was well known, thus overruling the previous decisions of that Court. According to Sulaiman, C. J., the words "within the local limits of the Magistrate's jurisdiction" modify the word '*conceal*' so that if the concealment is to be effected within the jurisdiction of the Magistrate, Cl. (*a*) will apply even though the residence within jurisdiction is well known. According to Weir and Kendall, JJ., those words modify the words "is taking precautions" so that if the precautions are taken within jurisdiction, Cl. (*a*) applies. Banerji and Boys, JJ., adhered to the view expressed in *Bhairon's* case. The view of the majority in the above Full Bench decision of the Allahabad High Court was also followed by the Patna High Court in a later decision.[7]

The words "is taking" in the clause mean "has taken" or "has been taking" and apply to a person who has been arrested by the police under S. 55 although in such a case it cannot be said that *at the time* of his being produced before the Magistrate he *is taking* precautions to conceal his presence.[8]

It is not necessary to bring a case within the section that the person proceeded against should have followed a continuous course of conduct in taking precautions to conceal his presence. Even a single attempt at concealment may be enough.[9]

Emperor v. *Bhairon*.
(1927) 1927 All. 592 (592): 49 All. 844, *Emperor* v. *Hinayat Ullah*.
(2) (1927) 1927 All. 50 (51): 49 All. 240, *Emperor* v. *Bhairon*.
(3) (1929) 1929 Cal. 729 (730), *Gobra Badia* v. *Emperor*.
(1918) 1918 Cal. 887 (887), *Reshu Kaviraj* v. *Emperor*.
(1929) 1929 Cal. 775 (776), *Gagan Chandra De* v. *Emperor*.
(4) (1926) 1926 Pat. 569 (571), *Rambirich Ahir* v. *Emperor*.
(5) (1929) 1929 Cal. 775 (776), *Gagan Chandra De* v. *Emperor*.
(6) (1929) 1929 All. 33 (36): 50 All. 909, *Emperor* v. *Phuchai*.
(7) (1935) 1935 Pat. 69 (72), *Emperor* v. *Bishri Sahara*.
(8) (1935) 1935 Pat. 69 (72), *Emperor* v. *Bishri Sahara* (Following 1926 Pat. 569).
(9) (1934) 1934 Oudh 367 (368), *Manik* v. *Emperor*.
(1935) 1935 Pat. 69 (71), *Emperor* v. *Bishri Sahara*.
(1926) 1926 Pat. 569 (571), *Rambirik Ahir* v. *King-Emperor*.

S. 109, Notes 6—7.

6. Concealment—Meaning of.—In order that Cl. (*a*) might apply, the person proceeded against must have taken precautions to conceal his presence. Concealing a man's *presence* is not identical with his concealing *himself* and a man may not conceal his presence at a place and yet may conceal his identity.[1] Thus giving out false names is concealment of the identity of the individuals concerned but is not necessarily a concealment of their presence.[2] But the giving out of false name by a man, in conjunction with other circumstances, for example, when he disguises himself or hides himself, or when it is his duty to disclose his identity, or absence from residence, as in the case of criminals ordered to notify their residence under S. 565 of the Code, may amount to "concealing his presence".[3] Again there can be no concealment of a man's presence where he gives true *information* as to his name and address when asked.[4] Thus it has been held that a man who is deliberately preparing to commit a burglary and when challenged by the Police admits his intention, cannot be said to be concealing his presence and cannot be dealt with under this section.[5] Where accused requested others not to mention their *business* to others, it does not imply that they are taking precautions to *conceal* their presence; the fact that accused were seated near a village well does not necessarily justify the inference that they were taking precautions to conceal their presence; nor would the fact that they refused to give their names to an ordinary person justify such an inference.[6]

There is a difference of opinion as to whether a concealment, in order to come within the section should be *continuous*. According to the High Court of Calcutta the concealment must be continuous and Cl. (*a*) does not apply to a momentary effort at concealment to avoid detection or arrest.[7] Passing under a false name or taking precautions to conceal one's presence or identity at a place amounting to a continuous course of conduct is what is meant by the clause.[8] In the undermentioned case it was even held that a person brought under arrest cannot be proceeded against under this section,[9] though this opinion has not been followed in any other decision. According to the High Courts of Allahabad and Patna no time-limit can be placed on the taking of precautions and in every case it would be a question of fact.[10] It is submitted that the latter view is correct.

7. "With a view to commit an offence".—The object of the concealment must be with a view to committing some offence. Concealment with a view to avoid observation or arrest[1] or a mere disinclination to the society of the

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Note 6.

(1) (1929) 1929 All. 33 (35): 50 All. 909 (F.B.), *Emperor* v. *Phuchai*.
[But see (1934) 1934 All. 45 (51): 56 All. 314, *Kashi Nath* v. *Emperor*.]
(2) (1924) 1924 All. 202 (203), *Sheo Prasad* v. *Emperor*.
(3) (1929) 1929 All. 33 (35): 50 All. 909, *Emperor* v. *Phuchai*.
(4) (1929) 1929 Cal. 729 (730), *Gobra Badia* v. *Emperor*.
(5) (1927) 1927 All. 592 (592): 49 All. 844, *Emperor* v. *Himayutullah*.
(6) (1924) 1924 All. 202 (203), *Sheo Prasad* v. *Emperor*.
(7) (1918) 1918 Cal. 887 (888), *Reshu Kabiraj* v. *Emperor* (*Per* Huda, J.).
(1925) 1925 Cal. 616 (618), *Shaikh Piru* v. *King-Emperor*.
[See also (1929) 1929 Cal. 729 (730), *Gobra Badia* v. *Emperor*.]
(8) (1925) 1925 Cal. 616 (618), *Sheikh Piru* v. *King-Emperor*.
(9) (1918) 1918 Cal. 887 (888), *Reghu Kabiraj* v. *Emperor*.
(10) (1929) 1929 All. 33 (37): 50 All. 909, *Emperor* v. *Phuchai*.
(1926) 1926 Pat. 569 (571): 6 Pat. 177, *Rambirich Ahir* v. *Emperor*.
(1930) 1930 Pat. 497 (497), *Sukhan Ahir* v. *Emperor*.

Note 7.

(1) (1912) 13 Cri. L. Jour. 161 (161 and

S. 109, Notes 7—8.

police and endeavouring to avoid them by running away on their approach[2] does not by itself show that the person concealing himself was doing so with a view to commit an offence. Thus where persons are accosted by the police while going away from the village and give false names in the first instance and then give the correct names, that, by itself, will not amount to taking precautions with a view to commit an offence.[3] Similarly, where *A* went about in Madras under an *alias* alleging falsely that he was going in for the B. A. Examination, it was held that his conduct showed a desire to conceal the fact of his presence in Madras, but that in the absence of proof of intention to commit an offence he could not be called upon to furnish security under this section.[4] In the undermentioned case[5] it was held that the fact that the accused took precautions to conceal his presence within jurisdiction, together with the fact that he ran away on the approach of the police warranted the inference that he was taking the precautions with a view to commit an offence. Similarly, a person who gives a false name and delivers letters secretly containing incitement to commit crime or demanding money for the means of committing crime is within Cl. (*a*).[6] The clause is, however, one which should be used with proper discretion and was never intended to apply to a person merely found talking at night time with bad characters in a place which is open to the public.[7]

Where a person falsely personates another with a view to commit an offence by such personation he does not come within this section the reasons being that his object is to commit an offence by false personation and not by concealing his presence.[8]

8. **"Who has no ostensible means of subsistence"—Cl. (b).**—Merely to be penniless or out of work is not an offence. Many an honest man will find himself in either predicament. So it is not the object of the law that such people should be put on security.[1] Unless, therefore, there is reasonable ground for suspecting, that a person, who is unable to prove the source of his livelihood, is sustaining himself by *dishonest means*, he will not come under the purview of this section.[2] Further under S. 118 *infra*, the Magistrate has to consider, whether the order for security is really necessary either for keeping the peace or for maintaining good behaviour, which is a matter for Magistrate's judicial discretion.[3] Thus if a cooly could not show any immediate work, it does not mean, he has no ostensible means of livelihood.[4] As long as, a young man out of employment is staying in his father's house and that father is a man of substance and able, if necessary, to support him, he cannot be said to be in want

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162) (Cal.), *Satish Chandra Sargor* v. *Emperor*.
(1925) 1925 Cal. 616 (618), *Sheikh Piru* v. *King-Emperor*.
(1929) 1929 All. 33 (47): 50 All. 909, *Emperor* v. *Phuchai*.
(1926) 1926 Lah. 368 (368), *Gandoo* v. *Emperor*.
(2) (1926) 1926 Pat. 569 (571), *Rambirich Ahir* v. *King-Emperor*.
(3) (1924) 1924 All. 202 (203), *Sheo Prasad* v. *Emperor*.
(4) (1932) 1932 Mad. W. N. 1347 (1349), *Bashyam*, In re.
(5) (1930) 1930 Pat. 497 (498), *Sukhan Ahir* v. *King-Emperor*.
(6) (1914) 1914 Cal. 585 (585), *Preonath* v. *Emperor*.
(7) (1926) 1926 Pat. 569 (571), *Rambirich Ahir* v. *King-Emperor*.
(8) (1934) 1934 All. 45 (51): 56 All. 314, *Kashi Nath* v. *Emperor* (*Per* King and Kendal, JJ.—Sulaiman, C. J. dissenting).

Note 8.

(1) (1926) 1926 Cal. 648 (649): 53 Cal. 345, *Victor* v. *Emperor*.
(2) (1926) 1926 Cal. 648 (649): 53 Cal. 345, *Victor* v. *Emperor*.
(3) (1894) Rat. Un. Re. Cr. Cas. 723 (724), *Queen-Empress* v. *Kala*.
(1926) 1926 Cal. 648 (649): 53 Cal. 345, *Victor* v. *Emperor*.
(4) (1925) 1925 Cal. 616 (618, 619), *Sheikh Piru* v. *Emperor*.

of ostensible means of subsistence.[5] The mere fact, that a person belongs to a wandering tribe,[6] or that he is a gambler or opium smoker[7] or that he does not work at present and was previously convicted of bad livelihood[8] or that he has no means of subsistence except through a play of ring game which by itself is not an offence[9] is not a sufficient ground for demanding security under this section.

9. **"Who cannot give a satisfactory account of himself"—Cl. (b).**— There is a conflict of opinion as to the interpretation of these words also. On the one hand it has been held that the words do not mean "explain what he was doing" or "explain his conduct" at any *particular time or place* but mean an explanation of his *general course of conduct* as distinct from a momentary behaviour.[1] Thus according to this view if a man proves that he is a resident of the neighbourhood and is a man of substance; he must be said to be able to give a satisfactory account of himself although he is not able or does not give any convincing explanation why on a particular night he was found prowling about in a lonely place.[2] On the other hand it has been held that though a man cannot be called upon to explain how he spends his leisure, if he is caught spending a portion of that leisure in a manner giving rise to grave suspicion and can give no account of the incident he cannot be said to be able to give a satisfactory account of himself. According to this view if a house-holder catches a man in his garden in the middle of the night armed with a jemmy and he cannot or will not explain what he was doing at that hour, in that place, he must be held to be "unable to give a satisfactory account of himself" and cannot escape by saying that he is a well-known respectable member of the society.[3] In the undermentioned case[4] it was held that the words mean that the person proceeded against has to satisfactorily account for his presence *within the limits of the Magistrate's jurisdiction.* According to this view if a person is present within such limits to which he does not belong and there are circumstances justifying a suspicion that he is not there for an innocent purpose, he has got to explain his presence.

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(5) (1912) 13 Cri. L. Jour. 161 (162): 39 Cal. 456, *Satish Chandra Sargor* v. *Emperor.*
(1921) 64 Ind. Cas. 141 (142) (Lah.), *Abdul Rashid* v. *Emperor.*
(6) (1883) 2 Weir 53 (53), *Yerukala Manipathi Polugadu,* In re.
(7) (1872-1892) L. B. R. 246 (246), *Queen-Empress* v. *Nga Win.*
(8) (1900-1901) 5 Cal. W. N. 28 (29), *Queen* v. *Pooran Agarwala.*
(1909) 9 Cri. L. Jour. 527 (528) (All.), *Mahdeo* v. *King-Emperor.*
(9) (1913) 14 Cri. L. Jour. 452 (453): 40 Cal. 702, *Bengali Shah* v. *Emperor.*

Note 9.

(1) (1929) 1929 All. 33 (37): 50 All. 909 (F. B.), *Emperor* v. *Phuchai* (*Per* Sulaiman, C. J., Boys, Kendall and Weir, JJ., contra).
(1918) 1918 Cal. 887 (887), *Reshu Kabiraj* v. *Emperor.*
(1929) 1929 Cal. 729 (730), *Gobra Badia* v. *Emperor.*
(2) (1929) 1929 All. 33 (37): 50 All. 909, *Emperor* v. *Phuchai.*
(1919) 1919 All. 369 (370), *Lallu* v. *Emperor.*
(1917) 18 Cri. L. Jour. 825 (825) (Cal.), *Reshu Kabiraj* v. *Emperor.*
(1920) 1920 All. 138 (138), *Nanka* v. *Emperor.*
(1911) 12 Cri. L. Jour. 536 (536) (All.), *Sharif Ahmad* v. *King-Emperor* (Peon in the employ of the Municipality and whose occupation and place of residence are well-known, but who, according to the Magistrate, "prowls about at night, associates with scoundrels, bolts from the place and is armed with and uses a lathi" cannot be proceeded against under S. 109).
(3) (1929) 1929 All. 33 (43): 50 All. 909, *Emperor* v. *Phuchai* (*Per* Boys, J.).
[See also (1935) 1935 Pat. 69 (72), *Emperor* v. *Bishi Sahara* (Merely giving correct name and address not enough to escape liability).]
(4) (1925) 1925 Cal. 616 (619), *Sheikh Piru* v. *King-Emperor.*

S. 109, Notes 9—12.

Where the explanation, if true, is consistent with the circumstances it must be held that a satisfactory account has been given.[5] Where *A* fled to avoid an arrest and after the warrant was withdrawn, he came back to his house and kept himself in seclusion to avoid curious inquiries, it was held that he gave a satisfactory account of himself.[6] "The greatest criminal in the world is not liable to be questioned as to his presence in his own house unless there is some outstanding charges against him".[7]

But where a person was found in a district other than his own and in the house of a dangerous political conspirator, and gave an account which was, in the main false, it was held that he did not give a satisfactory account of himself.[8]

10. What Magistrate can act under this section.—It has been held by Sulaiman, C. J., in *Emperor* v. *Phuchai*[1] that in order to give jurisdiction to a Magistrate to act under Cl. (*a*) of the section it is necessary that the *concealment* should have been effected within the local limits of his jurisdiction. Weir and Kendall, JJ., in the same case, have on the other hand held that the words "within the local limits of such Magistrate's jurisdiction" modify the words "is taking precautions" thus seeming to suggest that it is the Magistrate within whose jurisdiction the *precautions* are taken that has power to proceed under Cl. (*a*).

In order to give jurisdiction to the Magistrate under Cl. (*b*) of the section it is, however, not necessary that the person sought to be proceeded against should have his *residence* within the jurisdiction of such Magistrate. It is enough if the person proceeded against is found within such jurisdiction.[2] It is immaterial also how the accused came within such jurisdiction *i.e.*, whether of his own accord or whether under an arrest legal or illegal.[3] Where the account a person gives of his presence within the limits of a particular Magistrate's jurisdiction is satisfactory, he cannot be called upon by such Magistrate to give an account of his presence in another Magistrate's jurisdiction.[4]

11. Discretion of Magistrate.—The words "such Magistrate may" show that it is in the discretion of the Magistrate to proceed or not against a person under this section. In exercising such discretion care should be taken to see that the stringent provisions of the section are not abused and made an engine of oppression.[1]

12. Joint Enquiry.—*See* S. 117, Cl. 5, *infra*.

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(5) (1925) 1925 Cal. 616 (619), *Sheikh Piru* v. *King-Emperor*.
(1927) 1927 All. 592 (592): 49 All. 844, *Emperor* v. *Himayat Ullah* (Person caught *admitting* intention to commit burglary cannot be said to be unable to give satisfactory account of himself).
(6) (1912) 13 Cri. L. Jour. 161 (162): 39 Cal. 456, *Satish Chandra Sarkar* v. *Emperor*.
(7) (1912) 13 Cri. L. Jour. 161 (162): 39 Cal. 456, *Satish Chandra Sarkar* v. *Emperor*.
[See also (1925) 1925 Cal. 616 (618), *Sheikh Piru* v. *King-Emperor*.]
(8) (1912) 13 Cri. L. Jour. 239 (240) (Cal.), *Narendra Mohan Ghose* v. *Emperor*.

Note 10.

(1) (1929) 1929 All. 33 (34, 35): 50 All. 909 (F.B.), *Emperor* v. *Phuchai*.
(2) (1900) 2 Weir 53 (54), *Narasimhappa*, In re.
(3) (1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho Dhobi*.
(4) (1912) 13 Cri. L. Jour. 161 (162): 39 Cal. 456, *Satish Chandra* v. *R*.

Note 11.

(1) (1926) 1926 Cal. 648 (649): 53 Cal. 345, *Victor* v. *Emperor*.

13. **Revision.**—The question whether the circumstances of a case are suspicious is mainly a question of fact, and if a Magistrate is satisfied that the circumstances in which a person was found are not suspicious and that there is no need for him to call upon such person to give security under this section, the High Court will rarely interfere with his decision.[1] S. 109, Note 13.

110.* Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the local Government, receives information that any person within the local limits of his jurisdiction— S. 110.

Security for good behaviour from habitual offenders.

(*a*) is by habit a robber, house-breaker, thief *or forger*, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(*d*) *habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under S.* 489-*A*, *S.* 489-B, *S.* 489-*C or S.* 489-*D of that Code, or*

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

***(CODE OF 1882—S. 110.)**

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual, robber, house-breaker or thief, or an habitual receiver of stolen property, knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury, such Magistrate

Security for good behaviour from habitual offender.

Note 13.

(1) (1934) 1934 All. 24 (25), *Emperor* v. *Gyan Singh.*

S. 110.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
REGISTRATION UNDER CRIMINAL TRIBES ACT, III OF 1911—WHETHER CONSTITUTES A BAR TO PROCEEDINGS UNDER THIS SECTION	3

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may, in manner hereinbefore provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

(CODE OF 1872—Ss. 505 and 506.)

When Magistrate may require security for good behaviour for one year.

505. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief,

or a receiver of stolen property, knowing the same to have been stolen,

or of notoriously bad livelihood, or is a dangerous character,

such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

Procedure where security required for more than one year.

506. Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief,

or a receiver of a stolen property, knowing the same to have been stolen,

or of a character so desperate and dangerous as to render his release without security, at the expiration of the limited period of one year, hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period not exceeding three years, for which the sureties should be responsible for such person's good behaviour; and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

(CODE OF 1861—Ss. 296 and 297.)

When Magistrate may require security for good behaviour for one year.

296. Whenever it shall appear to such Magistrate or other Officer as aforesaid from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of notoriously bad livelihood, it shall be competent to such Magistrate or other Officer as aforesaid to require security for the good behaviour of such person for a period not exceeding one year.

How to proceed in cases beyond one year.

297. Whenever it shall appear to such Magistrate or other Officer as aforesaid from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the Magistrate or other Officer as aforesaid shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

	Note No.
PROCEEDINGS UNDER S. 109 AND S. 110..	4
PROCEEDINGS UNDER S. 107 AND S. 110	5
PROCEEDINGS UNDER S. 108 AND S. 110	5-a
SECTION 401, I.P.C. AND S. 110	6
"RECEIVES INFORMATION"	7
"WITHIN THE LOCAL LIMITS OF HIS JURISDICTION" ..	8
GENERAL JURISDICTION OF THE MAGISTRATE	9
IS BY HABIT A ROBBER, THIEF, ETC.—CL. (*a*) ..	10
HABITUAL RECEIVER OF STOLEN PROPERTY—CL. (*b*) ..	11
HABITUALLY PROTECTS OR HARBOURS THIEVES, ETC., CL. (*c*)	12
HABITUAL OFFENDER—CL. (*d*)	13
OFFENCES INVOLVING A BREACH OF THE PEACE—CL. (*e*)	14
DESPERATE AND DANGEROUS CHARACTER—CL. (*f*) ..	15
LOCAL ACTS CONTAINING SIMILAR PREVENTIVE PROVISIONS FOR SECURITY	16
PRACTICE—ARREST AND DETENTION	17
BOND FOR SECURITY	18

Other Topics.

Admissibility of evidence of commission of substantive offence. See S. 117, Note 11.

Admissibility of evidence of previous conviction. See S. 117, Note 10.

Evidence of general repute. See S. 117 Note 7.

Habit and habitually, meaning of. See Note 10, Para. 1; Note 12, Pt. 7; Note 13, Pt. 1.

Habitually protects or harbours.

(*a*) Assistance in concealment of stolen property. See Note 12, Pt. 1.

(*b*) Harbouring a thief. See Note 12, Pt. 7.

Joint enquiry. See S. 117, Note 13.

Joint trial whether is an irregularity or illegality. See S. 117, Note 14.

Order of compensation. See S. 117, Note 5 (V).

Presence of person and not his residence is necessary. See Note 8, Pts. 3, 4.

Revision. See S. 118, Note 11.

Right to recall P.W.'s for cross-examination under S. 256. See S. 117.

Sufficiency of evidence. See S. 117, Note 12.

Value of information received, its credibility. See S. 112, Note 3.

1. Legislative changes.--

The following changes were introduced by the Amending Act, XVIII of 1923:--

(1) The words 'or forger' have been newly added in Cl. (*a*). As to the effect of the addition, *see* Note 10, *infra*.

(2) Clause (*d*) has been remodelled and re-enacted with certain additions so as to make its scope wider and include certain other offences.

2. Scope and object of the section.—The object of the section is *preventive* and not *punitive*, and is not intended as a punishment for past

S. 110, Note 2.

offences.[1] It is aimed at protecting society from dangerous characters against the perpetration of crimes by placing them under such substantial but not excessive security as would prevent them from resorting to evil courses.[2] Its object is not to fill the jails with bad characters but to bring reasonable pressure to bear on such persons to respect the law.[3] The section is not intended to provide an indirect means of securing conviction for the police who have failed in the prosecution of a charge for a substantive offence,[4] or who are afraid that a prosecution for a substantive offence is likely to fail.[4-a] Where proceedings under this section follow soon after discharge or an acquittal for a substantive offence, the Court must be satisfied that such proceedings were not instituted with a view to get a person punished indirectly and the Court should scrutinise the evidence with the greatest care and see that the same materials and evidence which formed the basis of the previous charge do not also form the basis of the security proceedings.[5]

The preventive jurisdiction with which the Magistrate is vested under this section serves as a powerful means to secure the interests of the community from injury at the hands of hardened offenders. The powers under this section should however be exercised with caution and *discretion*.[6] The security law is a hard law and ought not to be used as an engine of oppression and for oppressive purposes.[7] Where proceedings under this section are taken against a person

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Section 110—Note 2.

(1) (1904) 1 Cri. L. Jour. 3 (4) (Bom.), *Emperor* v. *Raoji Fulchand*.
(1885) 10 Bom. 174 (175), In re *Rajah Valad Hussein Saheb*.
(1869) Rat. Un. Cr. Cases 23 (23), *Reg.* v. *Sundar Bhim*.
(1933) 1933 All. 859 (859), *Jafar Husain* v. *Emperor*.
(1930) 1930 All. 23 (24), *Alayar Khan* v. *Emperor*.
(1920) 1920 All. 205 (205): 43 All. 563, *Gandharp Singh* v. *Emperor*.
(1885) 7 All. 67 (72), *Empress* v. *Kandhara*.
(1913) 14 Cri. L. Jour. 5 (21) (Cal.), *Rajendra Narayan* v. *Emperor*.
(1877-78) 1 Cal. L. R. 268 (271), In the matter of *Umbika Proshad*.
(1921) 1921 Lah. 179 (179), *Jogat Singh* v. *Emperor*.
(1866) 1866 Pun. Re. No. 53, *Crown* v. *Mussammat Mooneah*.
(1881) 3 Mad. 238 (239, 240), *Pedda Siva Reddi*, In re.
(1903) 6 Oudh Cas. 199 (199), Re *Mangal*.
S. C. Oudh 73, Re *Ajudhia Bania*.
(2) (1899) 9 All. W. N. 114 (114), *Hamid Ullah Khan*, In re.
(1929) 1929 All. 608 (608), *Beni Singh* v. *Emperor* (Proceedings under the said section cannot, therefore, be taken against a person who is already placed under security by another Magistrate).
(1901) 1901 2 Pun. L. R. 69 (70), *Bar-Kat* v. *Crown*.
(1911) 12 Cri. L. Jour. 328 (328) (Mad.), In re *Billa Appayya*.
(3) (1914) 1914 Lah. 492 (493): 1914 P. R. 6, *Mahala* v. *The Crown*.
(1901) 1901 Pun. Re. No. 28, p. 87, *Wasaya* v. *Emperor*.
(1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomed Ibrahim* v. *Crown*.
(4) (1909) 9 Cri. L. Jour. 528 (529) (All.), *Shiam Lal* v. *King-Emperor*.
(1907) 5 Cri. L. Jour. 191 (193, 194) (Cal.), *Alep Pramanic* v. *The Crown*.
(1921) 60 Ind. Cas. 673 (673): 23 Oudh Cas. 371, *Raja Ram* v. *Emperor*.
(1922) 1922 Oudh 26 (26), *Bhaghat Prasad* v. *Emperor* (Accused arrested on suspicion of complicity in a dacoity case but released as there was no sufficient evidence. Held evidence of alleged participation in the dacoity case should not be allowed to go in).
(4-a) (1928) 1928 All. 682 (684): 51 All. 459, *Manni Lal* v. *Emperor*.
(5) (1927) 1927 All. 473 (474), *Lachman* v. *Emperor*.
(1924) 1924 All. 142 (142), *Jhandu Singh* v. *Emperor*.
(1910) 11 Cri. L. Jour. 36 (37): 32 All. 55, *Raj Karan* v. *Emperor*.
(1909) 9 Cri. L. Jour. 528 (529) (All.), *Shiam Lal* v. *Emperor*.
(1926) 1926 Lah. 190 (191): 2 Lah. 184, *Abdullah* v. *Emperor*.
(1925) 1925 Oudh 49 (49), *Sital Din* v. *King-Emperor*.
(1925) 1925 Oudh 501 (501, 502): 27 Oudh Cas. 327, *Bahadur* v. *Emperor*.
(6) (1913) 14 Cri. L. Jour. 5 (21) (Cal.), *Rajendra Narayan* v. *King-Emperor*.
(1881) 6 Cal. 14 (15, 16), *Emperor* v. *Kala Chand Das*.
(1872) 4 N.-W. P. 117 (120), *Misree Lal*, In re.
(1892) 14 All. 45 (46), Re *Daulat Singh*.
(1868-69) 4 Mad. H. C. xlvi (xlvi).
(1893-1900) L. B. R. 223 (225, 226), *Queen* v. *Nga On*.
(7) (1901) 1901 Pun. L. R. 18, *Nasir Baksh* v. *Empress*.
(1892) 1892 Pun. Re. No. 5, *Yaglie* v. *Empress*.
(1898) 1898 Pun. Re. No. 4, p. 33, *Sukha* v. *Queen-Empress*.
(1911) 12 Cri. L. Jour. 542 (545) (Oudh), *Gur Baksh Singh* v. *Emperor*.
(1930) 1930 All. 37 (37, 38), *Emperor* v. *Kudua Bari*.

after his release from jail in pursuance of a sentence for a substantive offence or for failure to furnish security in pursuance of a prior order under this section the Court should be careful to see that he has had sufficient *locus penitentiae* to reform himself. It is not fair to run a man in as a *budmash* before he has had sufficient opportunity of showing that he is willing to adopt an honest course of livelihood.[8]

Where a Magistrate specified under this section received information that a person within the local limits of his jurisdiction falls under one or other of the six categories mentioned in the section, he should pass a preliminary order under S. 112, *infra* charging him under one or other of the clauses of this section, issue a summons or a warrant to him as under S. 114, and then hold a judicial enquiry as to the truth or otherwise of the information on which he has taken action.[9] Proceedings under this section are *judicial* and not executive,[10] and the Court cannot without any inquiry and following the appropriate proceedings prescribed therefor order a person to furnish security. Thus, the Court cannot while sentencing a man to conviction for a substantive offence direct him to furnish security after his release without following the procedure prescribed in this chapter.[11] Similarly a District Magistrate cannot, upon the receipt of a police report that a person is an undesirable man, order him to leave the town at once on pain of being prosecuted as a bad character.[12]

3. **Registration under Criminal Tribes Act, III of 1911—Whether constitutes a bar to proceedings under this section.**—It is not illegal to take proceedings under this section against persons already registered under S. 4 and other sections of the Criminal Tribes Act, III of 1911. While the control that

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(8) (1905) 2 Cri. L. Jour. 86 (87) (All.), *Emperor* v. *Husain Ahmad*.
(1904) 1 Cri. L. Jour. 801 (803): 31 Cal. 783, *Junab Ali* v. *Emperor*.
(1916) 17 Cri. L. Jour. 185 (186): 1916 Cal. 344: 43 Cal. 1128, *King-Emperor* v. *Sheikh Abdul*.
(1918) 22 Cal. W. N. 100, *Mauthura Nath* v. *King-Emperor*.
(1917) 18 Cri. L. Jour. 710 (710): 1917 Oudh 350, *Akbara* v. *Emperor*.
(1906) 3 Cri. L. Jour. 96 (97): 28 All. 306, *Emperor* v. *Ranjit*.
(1924) 1924 Oudh 84 (85): 26 Oudh Cas. 242, *Shakur* v. *Emperor*.
S. C. Oudh 70, *Empress* v. *Ram Pattan*.
(1916) 17 Cri. L. Jour. 85 (86): 1916 U. B. 11: 2 U. B. R. 86, *Nga Po Hmi* v. *Emperor*.
(1872-1892) Low. Bur. R. 420 (420), *Empress* v. *Nga Luke*.
(1872-1892) 1 Low. Bur. R. 533 (533), *Empress* v. *Nga Lein Baw U*.
(1893-1900) 2 L. B. R. 204 (204), *Empress* v. *Chido Bon*.
(1897-1901) Upp. Bur. R. 22 (22, 23), *Empress* v. *Nga Ngwe Gaing*.
(1926) 1926 Sind 69 (69): 19 Sind L. R. 176, *Thanwor* v. *Emperor*.

(9) (1926) 1926 Lah. 45 (46), *Sohan Singh* v. *Emperor*.
(1930) 1930 All. 274 (274): 52 All. 448, *Chandan* v. *Emperor*.
(1920) 1920 All. 268 (269): 42 All. 646, *Rajbansi* v. *Emperor*.
(1927) 1927 Oudh 306 (308): 2 Luck. 157, *Emperor* v. *Ram Ghulam*.
(1885) 1 Burma 398, *Nga Than Yon*, In re.

(10) (1904) 1 Cri. L. Jour. 99 (100): 1903 P. R. 27, *Nur Din* alias *Kada* v. *Emperor*.
(1919) 47 Ind. Cas. 277 (278, 279): 1919 Mad. 633, *Kripa Sindu Naiko* v. *Emperor*.

(11) (1878) 1 All. 666 (668), *Empress* v. *Pratab*.
(1881) 1 All. W. N. 154 (155), *Empress* v. *Jeonath*.
(1871) 3 N.-W. P. H. C. R. 126 (126, 127), *Queen* v. *Hearn*.
(1865-67) 3 Bom. H. C. Cr. 39 (40), *Reg.* v. *Krishnaji Bapuji Gaikwad*.
(1862) 1 Bom. H. C. 91 (92), *Reg.* v. *Bhaya valad Surjim*.
(1888) 9 Cal. 215 (217), *Tamiz Mandal* v. *Umid Kariger*.
(1865) 3 Suth. W. R. 23 (25), *Empress* v. *Beharee*.
(1875) 24 Suth. W. R. Cr. 10 (11), *Queen* v. *Ganga Ram Potdar*.
(1883) 1883 Pun. Re. No. 6, *Empress* v. *Rahim Baksh*.
(1880) 1880 Pun. Re. No. 21, *Empress* v. *Budha Singh*.
(1871) 1871 Pun. Re. No. 9, *Crown* v. *Buldeo*.
(1870) 1870 Pun. Re. No. 29, *Ratan Singh* v. *Mussammat Rukha*.
(1869) 1869 Pun. Re. No. 38, *Crown* v. *Dance*.
(1867) 1867 Pun. Re. No. 34, *Mussammat Aldee* v. *Mussammat Mammoo*.
(1866) 1866 Pun. Re. No. 18, *Megh Singh* v. *Jeymul Singh*.
(1893-1900) L. B. R. 254 (254), *Nga Hne* v. *Queen-Empress*.
(1872-92) 1 L. B. R. 75 (77, 78), *Crown* v. *Nga Kyauk Lon*.

(12) (1921) 1921 All. 145 (145), *Ram Prasad* v. *Emperor*.

S. 110, Notes 3—5.

is obtained over a person by registering him as a member of the criminal tribes is sufficient to prevent him from committing many of the acts for which preventive action under Chapter VIII of the Code may be necessary, he has, notwithstanding such control, enough liberty left in him to pursue a career of crime bringing him within Cls. (*a*) to (*e*) of this section or being in himself dangerous to society within the meaning of Cl. (*f*). It depends on the facts and circumstances of each case whether security should be demanded under this section also. In such cases, it is important to see the conduct of the person sought to be proceeded against subsequent to his registration under the Criminal Tribes Act.[1]

4. Proceedings under Ss. 109 and 110.—The two Ss. 109 and 110 contemplate different classes of cases. Where a person is amenable under S. 109, he can hardly be amenable under this section also. Hence a person cannot be ordered to be bound over in one and the same proceedings and on the same materials both under S. 109 and this section, especially where the preliminary order under S. 112 is with regard to S. 110.[1]

An order under this section cannot be passed while an order under S. 109 is in force.[2]

A person called upon to give security under S. 109 and a person called upon to give security under S. 110 cannot be dealt with together in one and the same inquiry.[3]

5. Proceedings under Ss. 107 and 110.—Where a Magistrate takes proceedings under this section and issues notice for a charge under Cl. (*e*) of this section, he cannot, after inquiry, pass an order for security under S. 107 without issuing a fresh notice under S. 112. The facts to be proved under Cl. (*e*) of this section and those to be proved under S. 107 are different.[1] Similarly, where notice is issued to show cause why a person should not be bound over to keep the peace under S. 107, he cannot be directed *after inquiry* to execute a bond for good behaviour under this section.[2] But, where after issuing summons under S. 107, the Magistrate took proceedings under this section and the evidence was recorded at length and the proper procedure as to trial of warrant cases was followed, and there was no *prejudice* to the parties, it was held to be a mere irregularity which was cured by the provisions of S. 537.[3]

Note 3.

(1) (1927) 1927 Cal. 213 (213, 214): 54 Cal. 279, *Badu Mir* v. *Emperor.*
(1919) 48 Ind. Cas. 510 (512): 1919 Cal. 872, *Ghulam Rasul* v. *Emperor.*

Note 4.

(1) (1915) 16 Cri. L. Jour. 626 (626): 1916 Mad. 1126 (Mad.), *Venkatachalam Chetty* v. *The Chairman, Municipal Council, Erode.*
(1915) 16 Cri. L. Jour. 631 (631): 1916 Mad. 567: 38 Mad. 555, In re *Rangaswami Pillai.*
(1910) 11 Cri. L. Jour. 50 (50) (Mad.), *Kakal Reddi Alias Govindan and another* v. *Emperor.*
(1909) 10 Cri. L. Jour. 243 (243) (Mad.), *Manikkam alias Manikka Asari* v. *Emperor.*
(1897) Rat. Un. Cri. C. 946 (947), *Queen-Empress* v. *Balya Bin Bhimappa.*
(1892-1900) 2 L. B. R. 40 (40), *Emperor* v. *Nga Po Saung.*
(1897-1901) Upp. Bur. R. 24 (25), *Empress* v. *Nga Ye E.*
(2) (1904) 1 Cri. L. Jour. 457 (459) (Cal.), *Gholam Ali* v. *Emperor.*
(1911) 15 Cal. W. N. cciv., *Das Pramanik* v. *Emperor.*
[But see (1929) 1929 Sind 166 (167): 23 S. L. R. 438, *Fateh* v. *Emperor.*]
(3) (1905) 2 Cri. L. Jour. 224 (225): 8 Oudh Cas. 91, *Emperor* v. *Mehen* Alias *Bhagwan Das.*

Note 5.

(1) (1907) 30 Mad. 282 (283), *Krishnaswami* v. *Vanamamalai.*
(2) (1898) 25 Cal. 798 (802), *Driver* v. *Queen-Empress.*
(1884) 1884 A. W. N. 54 (55), *Empress* v. *Batuk.*
(3) (1913) 14 Cri. L. Jour. 65 (66) (Mad.), *Sangamma Naik* v. *Emperor.*

S. 110, Notes 5-a—7.

5-a. **Proceedings under Ss. 108 and 110.**—The mere fact that the facts of a case fall within the purview of S. 108 does not make this section inapplicable.[1]

6. **Section 401, I.P.C., and S. 110.**—Section 401 of the Penal Code provides for the punishment of persons belonging to a wandering or other gang of persons associated together for the purpose of habitually committing theft or robbery. An order under this section is only preventive and is not a punishment for any offence and hence does not bar a prosecution for the substantive offence under S. 401 of the Penal Code.[1]

7. **"Receives information".**—Before a Magistrate can take action under this section he should have information that the person sought to be proceeded against is a habitual offender coming under one or other of the six clauses mentioned in the section.[1] There is, however, no limitation as to the *nature* of the information to be received[2] or as to the *source* from which it may be derived.[3] Nor is any *quantum* of information a necessary condition for the Magistrate to take action.[4] If a Magistrate receives information of the barest kind to the effect that a person is a habitual thief, it is within his powers to take action under the section and the legality of the action cannot be questioned though undoubtedly a prudent Magistrate might not consider information sufficient to cause him to take action under the preventive sections unless it gave substantial details against the person in question.[5] The Magistrate is bound to enquire *judicially* into the truth of the information under S. 117 and should exercise a proper discretion and see that the information is precise and proper.[6] The Magistrate can if he thinks fit take information on oath before proceeding under S. 112.[7] Where a memorial was sent by the tenants of a Zamindar alleging several acts against him and the report of the Sub-Divisional Officer thereon did not substantiate the allegations, it was held that the District Magistrate was not justified in taking proceedings on the basis of the same.[8] Similarly, a mere petition not based on any complaint or deposition given on solemn affirmation which merely stated that the Tipperah Rajah's people were intimidating the ryots was held not to constitute credible information upon which action could be taken.[9]

Note 5-a.

(1) (1919) 1919 Cal. 702 (705): 46 Cal. 215, *Monindra Mohan Sanyal* v. *Emperor.*

Note 6.

(1) (1920) 1920 Cal. 87 (88): 47 Cal. 154, *Kasem Ali* v. *Emperor.*
(1934) 1934 Sind 195 (196): 28 Sind L. R. 199, *Jumo Indris* v. *Emperor* (Order under S. 110, Criminal Procedure Code, 1898, if makes S. 75 applicable).

Note 7.

(1) (1900-2) 1 L. B. R. 75 (77, 78), *Crown* v. *Nga Kyank Lon.*
(2) (1904) 1 Cri. L. Jour. 807 (808): 27 All. 172, Re *Mithu Khan.*
(3) (1904) 1 Cri. L. Jour. 807 (808): 27 All. 172, Re *Mithu Khan.*
(1913) 14 Cri. L. Jour. 5 (22) (Cal.), *Rajendra Narayan Singh* v. *Emperor.*
(1922) 1922 Pat. 586 (587): 1 Pat. 621, *Hiranand Ojha* v. *Emperor.*
(1868) 10 Suth. W. R. Cr. 41 (42), In the case of *Brindaban Shaha* (Police report).
(1871) 8 Bom. H. C. R. 162 (163), *Reg.* v. *Irapa Bin Basapa* (Report of another Magistrate).
(1867) 7 Suth. W. R. Cr. 30 (30), *Queen* v. *Kristendas Rao* (Private complaint or petition).
(1903) 2 Weir 54 (54), *Tayakat Vasudevan Tirunambu* (Do.).
(1910) 11 Cri. L. Jour. 3 (4): 3 Sind L. R. 132, *Emperor* v. *Gokal* (Do.).
(4) (1927) 1927 Oudh 306 (307): 2 Luck. 157, *Emperor* v. *Ram Gulam.*
(1913) 14 Cri. L. Jour. 5 (22) (Cal.), *Rajendra Narain Singh* v. *Emperor.*
(5) (1927) 1927 Oudh 306 (307): 2 Luck. 157, *Emperor* v. *Ram Gulam.*
(6) (1925) 1925 Sind 204 (206): 19 Sind L. R. 96, *Khairo* v. *Emperor.*
(1900-2) 1 L. B. R. 75 (77, 78), *Crown* v. *Nga Kyank Lon.*
(1925) 1925 Sind 236 (237), *Sultan Khan* v. *Emperor.*
(7) (1905) 2 Cri. L. Jour. 462 (462, 463): 1905 U. B. R. Cr. P. C. 29, *Emperor* v. *Nga Po Thaung.*
(8) (1924) 1924 Cal. 114 (114, 115), *Nafar Chandra* v. *King-Emperor.*
(9) (1867) 8 Suth. W. R. Cr. 85 (85), *Chamara Malo* v. *Kashi Chunder Lalla.*

S. 110, Notes 7—8.

The information on which the Magistrate institutes proceedings cannot be used as *evidence* against the person sought to be bound over.[10]

8. "**Within the local limits of his jurisdiction**".—The section requires that the person proceeded against should be within the local limits of the Magistrate's jurisdiction at the time when proceedings are taken against him. Otherwise, the Magistrate cannot take action under this section.[1] Thus, where proceedings under this section were instituted against *A* in Barisal District while he was in jail at Calcutta on the date of the making of the report by the police on which report the proceedings were founded it was held that *A* was not within the limits of the jurisdiction of the Magistrate at Barisal District and therefore he had no jurisdiction to institute the proceedings.[2]

The expression "within the local limits" is not used in the sense of *residing* within the jurisdiction but in a literal and physical sense of being within the territorial limits. The person proceeded against need not therefore be a permanent resident within the local limits of the Magistrate's jurisdiction. It is sufficient if he is actually present within such limits when proceedings are taken.[3] A Magistrate can thus take action under this section against a person who resides outside his jurisdiction but is found within the limits of his jurisdiction;[4] it is sufficient to give the Magistrate jurisdiction if the evil habits of the person proceeded against are practised and a evil reputation acquired within the local limits of the jurisdiction.[5] Even where the person is undergoing imprisonment within the local limits of the Magistrate's jurisdiction[6] or is arrested outside his jurisdiction and brought before him,[7] it has been held that the Magistrate can take proceedings against him. But the section does not enable the police to arrest and get a person within the local limits for the purpose of giving jurisdiction to a particular Magistrate.[8]

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(10) (1904) 1 Cri. L. Jour. 807 (808, 809): 27 All. 172, In re *Mithu Khan*.
(1871) 8 Bom. H. C. R. 162 (163) (Cr.), *Reg.* v. *Irapabin Basapa Etal*.
[See also (1869) 11 Suth. W. R. Cr. 6 (6), In re *Mullick Fakir Uddin*.]

Note 8.

(1) (1906) 3 Cri. L. Jour. 246 (246, 247) (Cal.), *Sona Ram, R. Sangma* v. *King-Emperor*.
(1912) 13 Cri. L. Jour. 796 (797) (Bom.), In re *Ramjibhai Waghti Bhai*.
(1931) 1931 Cal. 65 (65), *Sonakai Biswas* v. *Emperor*.
(1867) 1867 Pun. Re. No. 40, *Kootba*.
(2) (1928) 29 Cri. L. Jour. 842 (843) (Cal.), *Satindra Nath Sen* v. *Emperor*.
(3) (1931) 1931 Cal. 65 (65), *Sonardi Biswas* v. *Emperor*.
(1919) 49 Ind. Cas. 165 (166, 167): 1919 Cal. 460, *Lakhi Narain Das* v. *Emperor*.
(1904) 1 Cri. L. Jour. 438 (442): 31 Cal. 419, *Kasi Sundara Rai* v. *Emperor* [Occasional residence within jurisdiction sufficient].
(1915) 16 Cri. L. Jour. 618 (619): 1916 Cal. 707: 43 Cal. 153, *Emperor* v. *Durga Halwai*.
(1918) 46 Ind. Cas. 152 (156): 1919 Cal. 702: 46 Cal. 215, *Manindra Mohan* v. *Emperor*.
(1916) 17 Cri. L. Jour. 390 (390): 1917 All. 441, *Emperor* v. *Munna*.
(1922) 1922 All. 86 (87), *Bhola* v. *Emperor*.
(1907) 5 Cri. L. Jour. 249 (251) (Bom.), *Emperor* v. *Bapu Yelappa*.
(1927) 1927 Sind 59 (60): 20 Sind L. R. 310, *Gulam Kadir* v. *Emperor*.
[But see (1901) 1901 Pun. Re. No. 12, *Crown* v. *Kalu*.
(1900) 27 Cal. 993 (995), *Ketaboi* v. *Queen-Empress*.
(4) (1912) 13 Cri. L. Jour. 781 (781): 36 Mad. 96, *Kora Rangan*, In re.
(5) (1915) 16 Cri. L. Jour. 618 (619): 1916 Cal. 707: 43 Cal. 153, *Emperor* v. *Durga Halwai*.
(1918) 47 Ind. Cas. 277 (278, 279): 1919 Mad. 633, *Kripasindhu Naiko* v. *Emperor*.
(6) (1916) 17 Cri. L. Jour. 88 (90): 1916 Low. B. 1: 8 L. B. R. 353, *Emperor* v. *Nga Saing*.
[But see (1908) 7 Cri. L. Jour. 447 (447): 4 L. B. R. 148, *Emperor* v. *Po Thaw*.]
(7) (1916) 17 Cri. L. Jour. 319 (320): 1917 Low. Bur. 140: 8 L. B. R. 378, *Emperor* v. *Nga Po Aung*.
(1918) 46 Ind. Cas. 152 (156): 1919 Cal. 702: 46 Cal. 215, *Monindra Mohan* v. *Emperor*.
(1919) 49 Ind. Cas. 165 (166, 167): 1919 All. 188: 41 All. 272, *Lakhi Narain* v. *Emperor*.
(1929) 1929 Sind 166 (166, 167): 23 Sind L. R. 438, *Emperor* v. *Fateh*.
[See however (1884) 1884 A. W. N. 85, *Empress* v. *Cheta*.]
(8) (1885) 1885 Pun. Re. No. 43, p. 89, *Empress* v. *Murli*.

S. 110, Notes 9—10.

9. General jurisdiction of the Magistrate.—The section empowers only the Magistrates mentioned therein to deal with cases arising thereunder. Orders made by any other Magistrate are invalid and without jurisdiction.[1] A First Class Magistrate not specially empowered under this section cannot exercise jurisdiction under it.[2]

In the case cited below[3] it was held that the proceedings under this section should be disposed of by the Magistrate by whom they were initiated and consequently a First Class Magistrate before whom proceedings under this section were initiated could not after recording evidence send up the proceedings to the District Magistrate and the latter could not act under S. 27 of the Bombay Regulation XII of 1827 and place restrictions upon the liberty of the accused.

10. Is by habit a robber, thief, etc., Cl. (a).—To sustain a charge under Cl. (*a*), the person proceeded against must be proved to be by *habit* a robber, housebreaker, thief or forger.[1] The word "habit" implies a tendency or capacity resulting from the repetition of the same acts. It implies frequent practice or use and connotes depravity of character as evidenced by the frequent repetition or commission of offences referred to in the section.[2] It should not be restricted to mean inclination by nature. It means a persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts.[3] Habit has to be proved by aggregate of facts and mere suspicion or complicity in isolated offences is not evidence of habit, unless there is direct evidence to establish his complicity in such cases as to lead to a reasonable and definite conclusion that he is a habitual thief. The evidence must be specific and relate to particular instances within the knowledge of witnesses.[4]

By habitual thief or robber is meant a person who has committed thefts and robberies in the past and is ready to commit them again whenever opportunity occurs.[5] The mere fact that a man was a bad character and had been sent to jail or was once convicted of theft[6] or that he associated with a thief or a bad character[7] or that a police-officer gave it as his opinion that he was a habitual

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Note 9.

(1) (1916) 17 Cri. L. Jour. 141 (142): 1916 All. 222, *Puran* v. *Emperor.*
(2) (1896) Rat. 838, *Empress* v. *Khandu Ganu.*
(1872-1892) L. B. R. 239 (240), *Empress* v. *Nga Kala.*
(1920) 1920 Pat. 25 (27), *Rameshwar Dusadh* v. *Emperor.*
(1933) 1933 All. 676 (677), *Sundar Lal* v. *Emperor* (Government has power to pass general order authorising First Class Magistrates to take action under S. 110).
(3) (1912) 13 Cri. L. Jour. 748 (748) (Bom.), *Emperor* v. *Kisan Kevji.*

Note 10.

(1) (1901) 3 Bom. L. R. 269 (270), *Emperor* v. *Kaka.*
(1880) 1880 Pun. Re. No. 32, p. 79, *Ishar Singh* v. *Emperor.*
(1924) 1924 Pat. 498 (499), *Sheikh Amjad Ali* v. *King-Emperor.*
(2) (1927) 1927 Pat. 126 (128): 6 Pat. 1, *Bhubaneshwar Kuer* v. *Emperor.*
(3) (1924) 1924 Nag. 19 (21), *Local Government* v. *Hanmant Rao.*
(4) (1928) 29 Cri. L. Jour. 574 (575) (Lah.), *Rahman* v. *Emperor.*
(1930) 1930 Lah. 345 (346), *Lilu* v. *Emperor.*
(1926) 27 Cri. L. Jour. 1067 (1067) (Lah.), *Sohna* v. *Emperor.*
(1892) 1892 Pun. Re. No. 12, p. 27, *Dhari* v. *Queen-Empress.*
(1924) 1924 Pat. 498 (499), *Amjad Ali* v. *Emperor.*
(1924) 1924 Pat. 500 (501), *Ramlagan Ahir* v. *Emperor.*
(1871) 6 Mad. H. C. R. 120 (121), In re *Shriram Venkataswami.*
(5) (1893) Rat. 639 (642), *Sherkhan.*
(1872-92) L. B. R. 542 (543), *Queen-Empress* v. *Nga Shwa Pyin.*
(6) (1901) 3 Bom. L. R. 269 (270), *King-Emperor* v. *Kaka.*
(1910) 11 Cri. L. Jour. 638 (638) (Mad.), *Karuppan Servai,* In re.
(1934) 1934 All. 735 (737), *Raghubar Dayal* v. *Emperor* (Previous conviction 12 years ago not a justification for binding him over under S. 110).
[See also (1879) Rat. Uur. 143 (144) Appa.].
(7) (1933) 1933 All. 859 (860), *Jafar Hosain* v. *Emperor.*

S. 110, Notes 10—12.

thief[8] was held not to be sufficient for binding over a person under this clause. Where the charge against a person is that he is a habitual robber the fact that he gathers bad characters at his house does not go far enough to be in itself relevant. It would be necessary to show that the bad characters were robbers or have been gathered there for the purpose of committing robbery or theft.[9] Where the only evidence against a person was that he was found hiding himself in a bush and when his person was searched certain articles not claimed by him to be his own, were found upon him, and he was not charged with any offence in respect of those articles, it was held that he was not a habitual offender within the meaning of this clause.[10] The fact that a person is by habit thief, robber, etc.; can be proved by the evidence of *general repute*. As to what is general repute and for a further discussion of the admissibility of evidence of general repute, *see* Note 7 under S. 117, *infra*.

It may be noted that the section does not refer to a person who is by habit a *dacoit*. The reason is that being a member of a gang of dacoits is a substantive offence punishable under S. 401 of the Penal Code. Hence, where notice was issued to four persons stating that they formed a habitual gang for committing robbery it was held that they became members of a gang of dacoits and that no action could be taken under this section.[11]

Habitual forger.—The words 'or forger' in this clause have been newly added by the amending Act, XVIII of 1923. Prior to such amendment it was held that a habitual forger should not be proceeded against under this section. But this view is no longer law under the present section.[12]

11. Habitual receiver of stolen property, Cl. (b).—To substantiate a charge under this clause, the fact that the person proceeded against is a habitual receiver of stolen property knowing the same to be stolen, has to be proved. This may be proved by evidence of general repute. No specific offence need be proved.[1] Mere rumours and suspicions are not however enough to substantiate a charge under this clause.[2] Where the persons proceeded against belonged to a class of people called *Mewatis* who were considered to be persons occupying themselves in receiving stolen property and offences of similar nature and that the villagers were in considerable terror of the *Mewatis*, it was held that this was not sufficient to sustain a charge under this clause without there being any tangible evidence that they were receivers of stolen property.[3]

12. Habitually protects or harbours thieves, etc., Cl. (c).—This clause is designed to meet the cases of professional receivers of stolen property who assist the thief after theft by relieving him and encouraging him, protecting him from discovery and arrest and helping him to dispose of his stolen property.

(1907) 6 Cri. L. Jour. 403 (404) (Cal.), *Nilkamal Das* v. *Emperor*.
(1911) 12 Cri. L. Jour. 542 (543) (Oudh), *Gurbaksh* v. *Emperor*.
(8) (1930) 1930 Nag. 148 (149), *Kondia* v. *Emperor*.
(9) (1925) 1925 All. 694 (696): 47 All. 733, *Budhan* v. *Emperor*.
(10) (1911) 12 Cri. L. Jour. 359 (359) (Mad.), *Madira Nagadu* v. *Emperor*.
(11) (1925) 1925 All. 250 (250, 251), *Ram Prasad* v. *Emperor*.
(1929) 1929 All. 813 (813), *Ram Rup Bhar* v. *Emperor*.
(12) (1914) 1914 Lah. 575 (576): 1914 P. R. 21, *Crown* v. *Chuni*.
(1900) 1900 Pun. Re. No. 28, pp. 58, 59, *Mahain* v. *Queen-Empress*.

Note 11.

(1) (1892) 1892 Pun. Re. No. 12, p. 27 (28), *Dhari* v. *Queen-Empress*.
(2) (1921) 60 Ind. Cas. 669 (670), *Hanram Das* v. *Emperor*.
(3) (1905) 2 Cri. L. Jour. 88 (89) (All.), *Emperor* v. *Hurmat*.

The acts which amount to harbouring must be done with the intention of screening the offender from legal punishment or of preventing him from being apprehended. Where a man, from motives of humanity and without any intention of enabling the fugitive to escape from justice, gives him food and surgical assistance while he was wounded, it has been held that he is not liable to be bound over under this clause.[1] The fact that a landlord has tenants of bad character, that he lends money or paddy to them whenever they are in difficulties because they are his tenants, and that he settles disputes between two men, one of whom is a thief and the other is not, is not also sufficient to make him liable under this clause.[2] Nor is the mere association with a gang of dacoits or the failure to oppose them or give assistance to the police when the gang settled in the neighbourhood, sufficient to justify action under this clause.[3]

The manager of a public shrine which does not belong to him and is not under his exclusive control and which is also open to the public cannot be called upon to furnish security under this clause, although some thieves have been arrested in the shrine on several occasions and it is generally used as a gambling resort visited by bad characters, inasmuchas, the shrine is not his house and he cannot be said to harbour thieves.[4] Similarly, it has been held that the mere fact that the person proceeded against derived his subsistence from keeping prostitutes in his house although sometimes thieves visited his house was not a sufficient ground to justify an action under this clause.[5] Where the evidence amounted to nothing more than that some persons said to be of bad character had been seen on occasions at the *Kothar* where the accused did his work, it was held that the Court was not justified in holding that the accused habitually protected and harboured thieves.[6] Where thieves have been living with *B*, his son *A* cannot be held guilty of harbouring them.[6-a]

As in the foregoing clauses it is necessary to prove that the person proceeded against is by *habit* protector or harbourer of thieves. Isolated cases are not sufficient to prove habit or character. One or two cases may not be sufficient, but a number of similar incidents cease to be isolated facts and become evidence of habit and character. How many facts have to be proved to enable the Court to draw a reasonable inference of habit cannot be laid down by any hard and fast rule; it depends on the facts and circumstances of each case.[7]

A person cannot be called upon to give security under this clause for harbouring *dacoits*. Such a person should be dealt with under S. 216-A of the Penal Code for a substantive offence.[8]

13. Habitual offender—Cl. (d).—Cl. (*d*) prescribes certain offences the habitual commission or the abetment of which or the attempt to commit which is a ground for taking action under this section. For instance, where a

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Note 12.

(1) (1910) 11 Cri. L. Jour. 490 (492): 1910 U. B. R. Cr. P. C. 4, *Nga Pu Gyi* v. *Emperor*.

(2) (1907) 6 Cal. L. Jour. 711 (712), *Nukamal Das*.

(3) (1915) 16 Cri. L. Jour. 805 (806): 1915 All. 464, *Mharban Singh* v. *Emperor*.

(4) (1910) 11 Cri. L. Jour. 603 (604) (Lah.), *Soman* v. *Emperor*.

(5) (1881) 1881 Pun. Re. No. 2, p. 2, *Sultan* v. *Empress*.

(6) (1912) 13 Cri. L. Jour. 760 (762): 15 Oudh Cas. 263, *Jai Govind* v. *Emperor*.

(6-a) (1934) 1934 Lah. 62 (63), *Ajaib Singh* v. *Emperor*.

(7) (1933) 1933 Pat. 189 (190), *Firanji Rai* v. *Emperor*.

(8) (1928) 1928 All. 682 (684), *Manni Lal Awasti* v. *Emperor*.

S. 110, Notes 13—15.

person repeatedly and persistently committed acts of extortion which consisted of compelling the merchants to sign agreements not to import foreign cloth by resort to picketting and the levying of fines, and by also resorting to picketting in the case of merchants who traded in such cloths it was held that he was liable to be bound over under this clause.[1] This clause does not apply to a person who has a reputation of habitually bringing false claims in a Civil Court though such a person may be punishable under S. 209 of the Penal Code, but he does not by so doing commit the offence either of extortion or of attempting to commit extortion.[2]

14. Offences involving a breach of the peace—Cl. (e).—As to what is meant by offences involving a breach of the peace, *see* Notes to S. 106, *ante*.

A person cannot be bound over under this clause unless it is found that he has *habitually* committed or attempted to commit or abetted the commission of such offences. Where it was found that the *naib* of two co-sharers Zamindars who were brothers had led several riots in their interests and had been convicted in several cases and that certain lathials were always employed to help their cause, it was held that one of the brothers who was the *Muktear* practising and residing out of the place and who was shown not to have been implicated in the acts ought not to have been bound over, but that the other who resided at the place and whose complicity was established was rightly bound over under this clause.[1] Where a person being aware that violence is the reasonable outcome of the doctrine he preaches, conducts a propaganda against forces of law and order and instigates breaches of peace, he is an *abettor* of an offence involving a breach of the peace and can be bound over under this clause.[2]

Where an order binding over a person under Cl. (*f*) was passed and on appeal, the District Magistrate found that Cl. (*e*) was more appropriate, it was held that inasmuch as Cl. (*f*) described the offence in Cl. (*e*) in an aggravated form, the District Magistrate had power to reduce the security and pass an order under this clause.[3]

15. Desperate and dangerous character—Cl. (f).—A man of desperate and dangerous character means a person who shows such a reckless disregard of the safety of the person or the property of his neighbours that his being at large without security would be detrimental to the community.[1] Thus where certain tenants formed themselves into a party to compel the Zamindar to settle with them certain lands which were thrown out by a river into the zamindari

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Note 13.

(1) (1924) 1924 Nag. 19 (21), *Local Government* v. *Hanmant Rao*.
(2) (1917) 18 Cri. L. Jour. 651 (652): 1917 Oudh 117: 20 Oudh Cases 129, *Kushal* v. *Emperor*.
(1918) 47 Ind. Cas. 81 (81): 1917 Nag. 32, *Bapujee* v. *Emperor*.
(1884) 1884 Pun. Re. No. 25, p. 43, *Ganeshi* v. *Emperor*.

Note 14.

(1) (1910) 12 Cri. L. Jour. 164 (166): 38 Cal. 156, *Kaliprasanna Basu Roy Chaudery* v. *Emperor*.
(2) (1931) 1931 Cal. 18 (19, 22), *Satindra Nath Sen* v. *Emperor*.
[See also (1904) 1 Cri. L. Jour. 438 (441): 31 Cal. 419, *Kasi Sundar Roy* v. *Emperor* (The conduct of a person who abets other people to commit offences involving a breach of the peace in order to compel the ryots to pay enhanced rent falls under this clause).]
(3) (1920) 1920 Nag. 67 (67), *Azizal Jabar Khan* v. *Emperor*.

Note 15.

(1) (1907) 6 Cri. L. Jour. 1 (3) (Cal.), *Wahid* v. *Emperor*.
(1918) 1918 All. 318 (319), *Ishwari Dutt* v. *Emperor*.
(1934) 1934 Cal. 482 (485): 61 Cal. 588, *Parbati Charan Baisya* v. *Emperor* (The word "neighbours" must be taken to mean the members of the community).

tract and agreed to divide the lands amongst all of them and many loots and assaults were committed by them against the Zamindar and the recalcitrant members, it was held that action could be taken against the tenants under this clause.[2] Similarly, where it was proved that a person was associating with a number of persons who were known to be members of a revolutionary party and there were indications that he was in sympathy with them, it was held that he could be bound over under this clause.[2-a] Similarly, where a person who was present in the precincts of the Court was proved to have threatened an assessor and warned him that if he did not give his opinion in favour of the accused he would be killed by pistol or bomb, it was held that he was a desperate and dangerous character.[2-b] But the mere fact that a person happens to be of a litigious disposition[3] or is a habitual gambler or opium smoker[4] or is of a quarrelsome and turbulent nature[5] or is a general nuisance to his neighbours[6] cannot, however, make him a desperate and dangerous character within the meaning of this clause. Thus, where it was found that the persons proceeded against had made themselves objectionable in the neighbourhood and had been annoying the villagers in various ways by kicking at their doors in nights and throwing brickbats on the roofs and annoying respectable women, it was held that they were not liable to be bound over under this clause.[7] Similarly the mere fact that a person was caught while committing adultery[8] or, that he committed an assault for which he was tried and acquitted[9] was held not to be a circumstance which would make him a dangerous and desperate character.

Where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of this section and he is also being proceeded against under this clause, it is a mere inference of fact from the nature of the offences as to whether he is not also a dangerous and desperate character.[10]

16. Local Acts containing similar preventive provisions for security.— For cases under other Local Acts which contain similar provisions for taking preventive action, see the undermentioned decisions.[1]

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(2) (1927) 1927 Pat. 126 (129, 130): 6 Pat. 1, *Bhubaneshwar Kuer* v. *Emperor.*

(2-a) (1933) 1933 All. 674 (674), *Ajay Kumar Ghosh* v. *Emperor.*

(2-b) (1935) 1935 All. 638 (638), *Tek Chand* v. *Emperor.*

(3) (1918) 1918 All. 318 (319), *Iswari Dutt* v. *Emperor.*

(1930) 1930 Lah. 1051 (1054), *Ahmad Ali* v. *Emperor.*

(1927) 1927 Pat. 126 (128): 6 Pat. 1, *Bhubaneshwar* v. *Emperor.*

(4) (1880) 1880 Pun. Re. No. 33 (Cr.), p. 80, *Shibdat* v. *Empress.*

1 Bur. 246, *Nga Wini.*

(5) (1931) 1931 All. 437 (438), *Bangi Lal* v. *Emperor.*

(1905) 1 Cri. L. Jour. 710 (712): 27 All. 92, *Kallu* v. *Emperor* (Where there is an apprehension of violence on the part of a person, he ought to be bound over under S. 107 and not under this section).

(1866) 6 Suth. W. R. Cr. 6 (6), In re *Narain Sooboodhi.*

(1922) 1922 Nag. 180 (182), *Baines* v. *Emperor.*

(1872) 4 N.-W.P. 117 (120), *Queen* v. *Misree Lal and Udder.*

(6) (1915) 1915 All. 352 (353), *Muhammad Asghar Khan* v. *Emperor.*

(1931) 1931 All. 437 (438), *Banji Lal* v. *Emperor.*

(7) (1901) 5 Cal. W. N. 249 (250), *Akhoy Kumar Chatterjee* v. *Empress.*

(8) (1930) 1930 Lah. 1051 (1054), *Ahmad Ali* v. *Emperor.*

(9) (1910) 11 Cri. L. Jour. 663 (664) (Mad.). In re *Muthu Pillai.*

(10) (1909) 10 Cri. L. Jour. 460 (462) (Cal.), *Parasulla* v. *Emperor.*

Note 16.

(1) *Burmah Habitual Offenders' Restriction Act II of* 1919.

(1921) 22 Cri. L. Jour. 477 (478) (Rang.), *Emperor* v. *Po Mya* (Scope of Act discussed).

(1920) 1920 Low. Bur. 135 (136): 10 L. B. R. 274, *Emperor* v. *Po Mya* (Do.).

(1926) 98 Ind. Cas. 714 (714), *Emperor* v. *Nga Khaw Hla* (Person placed under security under S. 110 of the Code cannot be proceeded against under the Act).

(1923) 1923 Rang. 134 (134), *Pan Zyaw* v. *Emperor* (Cumulative orders under S. 118 of the Code and S. 7 of the Act bad).

(1925) 1925 Rang. 69 (70): 2 Rang. 524, *Parsodan* v. *Emperor* (Procedure

S. 110, Note 17.

17. Practice—Arrest and Detention.—S. 55, sub-S. (1), Cl. (*c*) empowers the police to arrest without a warrant certain classes of habitual offenders described in this section. Proceedings under this section may follow an arrest under S. 55.[1] Where a Police-Officer arrests a person with a view to take proceedings under this section, he should specify one of the clauses given in S. 55 although it may be for the cause so stated he intends to proceed under this section.[2] But a Magistrate should not detain a person in custody until the police are able to make out a case against him under this section specially where he has been arrested on suspicion in a cognizable offence and no case is made out against him.[3]

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laid down in S. 117 of the Code to be followed).

(1925) 1925 Rang. 112 (112): 2 Rang. 641, *San Dun* v. *Emperor* (Evidence to be recorded in the presence of the accused).

(1924) 1924 Rang. 22 (22): 1 Rang. 447, *Nga Pan Yin* v. *Emperor* (Nature of evidence required).

(1925) 1925 Rang. 69 (70): 2 Rang. 524, *Parsodan* v. *Emperor* (Amount and terms of the bond).

(1923) 1923 Rang. 102 (103): 11 L. B. R. 383, *Nag Ba* v. *Emperor* (Order confining a man to the four corners of his house bad).

(1925) 1925 Rang. 214 (215): 3 Rang. 74, *Maung Thwe* v. *King-Emperor* (Omission to state the period of restriction in the preliminary order—Effect of).

(1925) 1925 Rang. 277 (277): 3 Rang. 156, *Nga Po Than* v. *Emperor* (Grounds for passing an order—Being an old offender is no ground).

(1925) 1925 Rang. 279 (279), *Emperor* v. *Nga Tha* (Restriction under S. 9 of the Act).

(1923) 1923 Rang. 68 (69), *Emperor* v. *Nga Kula* (Held, security bond not necessary).

Burmah Gambling Act.

(1905) 2 Cri. L. Jour. 378 (379, 380): 3 L. B. R. 21, *Tet Pya* v. *King-Emperor* (Scope of S. 17 of the Act).

(1897-1901) U. B. R. Vol. I, 228 (228), *Nga Hok* v. *King-Emperor* (Do.).

(1905-1906) 3 L. B. R. 94 (95), *King-Emperor* v. *Kyaw Dun* (Police cannot arrest under S. 55 persons who earn livelihood by means of gambling).

(1905) 2 Cri. L. Jour. 317 (319) (Rang.), *Nga Tet Pya* v. *Emperor* (Order under S. 17 of the Act is appealable).

(1905) 3 L. B. R. 21 (22), *Emperor* v. *Kyaw Dun* (Do.).

[See also (1905) 2 Cri. L. Jour. 306 (307): 28 All. 210, *Emperor* v. *Abdus Samad*.]

Burmah Expulsion of Offenders Act, 1926.

(1929) 1929 Rang. 254 (255): 7 Rang. 266, *Emperor* v. *Nga Sein Gyi*.

Burmah Opium Act VIII of 1909.

(1926) 1926 Rang. 182 (182): 4 Rang. 123, *Emperor* v. *Nga Kyaw Hla* (A person who earns his living in whole or in part by unlawful sale of opium, can be placed on security under S. 3 of the Burmah Habitual Offenders Restriction Act).

(1924) 1924 Rang. 244 (245): 2 Rang. 61, *Emperor* v. *Nga Kyaung* (Scope and effect of S. 3 of the Act).

(1919) 1919 U. B. 27 (27): 3 U. B. R. 117, *Law Kaw* v. *Emperor* (Procedure prescribed in S. 110 of the Code to be followed).

Punjab Restriction of Habitual Offenders Act V of 1918.

(1919) 1919 Lah. 87 (87), *Bhana* v. *Emperor* (Cumulative orders under S. 7 of the Act and S. 118 of the Code are illegal).

(1921) 1921 Lah. 163 (163), *Konwar* v. *Emperor* (Do.).

(1920) 1920 Lah. 330 (330): 1 Lah. 100, *Kabir Buksh* v. *Emperor* (Where to an order under S. 118 of the Criminal Procedure Code for security which is passed first, a restriction order is also added, it is the latter order of the restriction that must be set aside. Both cannot stand).

(1929) 1929 Lah. 803 (803), *Ahaman* v. *Emperor* (Suspicion of complicity in isolated offences no ground for passing an order under the Act).

(1928) 1928 Lah. 851 (851), *Khuda Yar* v. *Emperor* (Procedure to be followed under the Act same as that in S. 110 of the Code).

(1921) 1921 Lah. 380 (380), *Crown* v. *Suhela* (Order of restriction for a period exceeding one year does not require confirmation by Sessions Judge).

Section 27 of the Bombay Regulation XII of 1827.

(1886) Rat. 289 (290), *Queen-Empress* v. *Babu* (Under S. 27 security can be taken for good behaviour).

(1905) 7 Bom. L. R. 459 (460), *Emperor* v. *Gahina* (When notice can be issued under S. 27).

(1906) 3 Cri. L. Jour. 338 (341) (Bom.), *Emperor* v. *Kartik* (Conditions necessary for taking action under the section).

Frontier Regulations.

(1920) 1920 Sind 51 (52, 53): 1 Sind L. R. 215, *Bhaul Khan* v. *Emperor* (Sind Frontier Regulation order under Ss. 20 (1) and 24 (1) not revisable).

(1874) 1874 Pun. Re. No. 19 (Cr.), *Crown* v. *Durbari Mal*.

Note 17.

(1) (1930) 1930 Pat. 103 (104), *Ramnandan Singh* v. *Emperor*.

(1913) 14 Cri. L. Jour. 618 (618): 35 All. 407, *Nepal* v. *Emperor*.

[See also (1893-1900) L. B. R. 270 (272, 273), *Queen-Empress* v. *Nga Po Saing*.]

(2) (1926) 1926 Sind 190 (191): 20 Sind L. R. 85, *Hardayal Singh* v. *Emperor*.

(3) (1914) 1914 All. 413 (413), *Emperor* v. *Ganesh*.

S. 110, Notes 17—18.

In an enquiry under this section, the Magistrate derives jurisdiction to issue a warrant only after he has the necessary information and passes the preliminary order under S. 112.[4] Where the police reported against a person to the Magistrate under this section and the latter neither issued summons nor warrant, it was held that the subsequent arrest by the police was unauthorised.[5]

18. Bond for security.—*See* Note 5 to S. 118.

In proceedings under this section a Police-Officer is not authorised to take a bond for the production of a person before the police.[1]

S. 111.

111. [*Repealed. Vide S. 8 of the Cr. L. Am. Act XII of 1923*].

S. 111.*

Proviso as to European vagrants.

111*. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Sections 109 and 110 will now apply equally to Europeans and Indians.

S. 112.

Order to be made.

112†. When a Magistrate acting under section 107, section 108, section, 109, or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

***(CODE OF 1882—S. 111.).**

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

(CODE OF 1872—S. 517.)

Chapter not applicable to European British Subjects.

517. The provisions of this chapter shall not apply to European British Subjects.

†(CODE OF 1882—S. 112.)

Order to be made.

122. When a Magistrate acting under section 107, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the

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(1921) 1921 All. 278 (280): 43 All. 186, *Rahu* v. *Emperor*.
(1912) 13 Cri. L. Jour. 827 (828) (All.), *King-Emperor* v. *Paimal Nai*.
(1919) 1919 All. 160 (161): 41 All. 483, *Maiku* v. *Emperor*.
(4) (1926) 1926 Sind 288 (289, 290): 20 Sind L. R. 122, *Jatoi* v. *Emperor*.
(1921) 22 Cri. L. Jour. 228 (229): 42 All. 646, *Rajbansi* v. *Emperor*.
(5) (1925) 1925 Lah. 623 (623), *Kala* v. *Emperor*.

Note 18.

(1) (1925) 1925 Lah. 152 (152), *Hamid Ali* v. *Emperor*.

S. 112.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
SUBSTANCE OF THE INFORMATION	3
AMOUNT OF THE BOND TO BE EXECUTED	4
CHARACTER AND CLASS OF SURETIES	5
AMENDMENT OF NOTICE	6
EFFECT OF NON-COMPLIANCE WITH THE SECTION ..	7
JOINT ORDER AGAINST TWO OR MORE PERSONS ..	8
SECURITY AGAINST PERSON IN IMPRISONMENT ..	9
ORDER IF A PUBLIC DOCUMENT	10

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amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

(CODE OF 1872—S. 492, Para. 1, S 509, Para. 1, and S. 515, Para. 1.)

492. Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if the security is called for, the number of sureties required, and the amount in which they are to be bound respectively, and the time and place at which the person summoned is required to attend.

Form of summons.

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509. Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order. * * * * * * *

Contents of order for security.

515. The provisions of sections four hundred and ninety-two and four hundred and ninety-four relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not in custody, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Issue of summons and warrant of arrest.

(CODE OF 1861—Ss. 283, 300 and 306).

283. The summons shall set forth the substance of the information, the amount of the bond, and the term for which it is to be in force, and if security is called for, the number of sureties required, and the amount in which they are to be bound respectively. Such summons shall be served in the manner provided by this Act for the service of a summons on an accused person.

Form of Summons.

300. In every instance in which security for good behaviour shall be required by the Court of Session or the Magistrate or other Officer as aforesaid, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order. The security-bond shall be in the form (F) given in the Appendix, or to the like effect.

What the order for security is to contain.

Other Topics.

Contents of the order.
(*a*) Extent of information. See Note 3, Pt. 4.
(*b*) Source of information. See Note 3, Pt. 18.
Fitness of Security. See S. 122.
Omission to set forth substance of information. See Note 7.
Order should be in writing. See Note 2, Pt. 1.
Order need not contain list of witnesses. See Note 2, Pt. 5.
"Require any person to show cause." See Note 2, Pts. 1 to 3.
Revision. See S. 118, Note 12.
Term of security. See S. 118, Note 2.

1. Legislative Changes.—

(1) Under the Codes of 1861 and 1872 there was no provision for an *order in writing* being made as required by this section, before proceedings were initiated for security to keep the peace or for good behaviour. A *summons* had, however, to be sent to the party proceeded against in proceedings for security for *keeping the peace*, specifying the particulars specified in this section.[1]

(2) There is no difference between the Codes of 1882 and this Code in this respect.

2. Scope of the section.—Where a Magistrate gets information of the kind specified in Ss. 107, 108, 109 or 110 and is of opinion that there is sufficient ground for proceeding, the first thing that he should do is to pass an order in writing under this section against the person concerned.[1] The order should thereafter be served on such person under Ss. 114 and 115, *infra* or, if he is present in Court, it should be read out to him under S. 113, *infra*, so that he may have an opportunity to show cause why the proceedings should not be taken against him.[2]

The provisions of the section must be strictly complied with.[3] The order should set forth—

(1) The substance of the information received by the Magistrate on which he has decided to act;

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306. The several provisions of the last preceding Chapter relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, shall apply to proceedings taken under this Chapter against persons required to give security for their good behaviour.

Issue of summons and warrant of arrest.

Section 112—Note 1.

(1) [See also (1869) N.-W. P. 304 (305), *Queen* v. *Nijabut Hossein*.
(1871) 3 N.-W. P. 96 (98), *Queen* v. *Powell*.
(1872) 18 Suth. W. R. 57 (58), *Gooroo Doss Roy*, In re.
(1868) 9 Suth. W. R. 16 (16), *Kalipershod Sirdar* v. *Futtehchand*.
(1871) 15 Suth. W. R. 43 (44), *Koonj Behari* v. *Eknath*.
(1881) 3 All. 545 (548), *Empress* v. *Muhammad Jafir* (Code of 1872).
(1875) 7 N.-W. P. 233 (234), *Queen* v. *Kidarnath*.
(1881) 1 All. W. N. 155 (156), *Gholam Hiader* v. *Gholam Kadir*.
(1882) 1882 Pun. R. No. Cr. 27, p. 34 (35), *Khuda Baksh* v. *Empress*.
(1876) Weir, 3rd Edn., 720 (721).
(1874) 21 Suth. W. R. 6 (6), *Ram Kishore Acharjee* v. *Arip Khan*.
(1873) 20 Suth. W. R. 36 (36), *Queen* v. *Ganga Singh*.

Note 2.

(1) (1914) 1914 All. 466 (467): 36 All. 262, *Emperor* v. *Rameshwar*.
(1920) 1920 All. 268 (269, 270): 42 All. 646, *Rajbansi* v. *Emperor*.
(1912) 13 Cr. L. Jour. 844 (845) (All.), *Jagadamba* v. *King-Emperor*.
(1919) 1919 Upp. Bur. 27 (27): (1918) 3 U. B. R. 117, *Law Kaw* v. *Emperor*.
(1921) 60 Ind. Cas. 420 (421): 42 All. 646, *Rajbansi* v. *Emperor*.
(2) [See (1874) 22 Suth. W. R. 68 (69), *Queen* v. *Shukur*.
(1873) 20 Suth. W. R. 57 (58), *Queen* v. *Abdul Huq*.
(1876) 25 Suth. W. R. 50 (50), *Abdool Bari and others, Petitioners*.
(1885) 11 Cal. 13 (14), *Queen* v. *Ishwar Chandra Sur*.
(3) (1924) 1924 All. 695 (695), *Ullam Chand* v. *Emperor*.

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(2) The amount of the bond to be executed;

(3) The term for which such bond is to be in force; and

(4) The number, character and class of sureties, if any, required.[4]

It is not necessary to give anything more than the particulars stated above. Thus, the order need not set forth a list of the witnesses in support of the proceeding.[5]

An order under this section cannot impose any conditions not referred to in the section. Thus a condition that the persons proceeded against should undertake that no attempt would be made by them or their agents to realise rents by force and that nothing would be done to induce a breach of the peace, could not be imposed in the order under this section.[6]

The procedure provided by this section and S. 117, must, with necessary modifications and additions, be followed where it is intended to take preventive action under S. 7 of the Burmah Habitual Offenders Restriction Act, 1919.[7]

3. **Substance of the information.**—A Magistrate acting under this section is bound to set forth in his order in writing the *substance* of the information on which he purports to act.[1] The object of this requirement is to make the person proceeded against clearly understand what the matter is upon which he has to show cause[2] to afford him reasonable opportunity to come prepared to meet the case against him and to enable him to get his evidence ready.[3]

It is only the *substance* of the information that need, however, be set forth in the order. There is a difference of opinion as to the *extent* of the information that is to be given as the "substance of the information received". According to the Chief Court of Oudh[4] it is not necessary to state more than will show the person proceeded against, the particular *section or sub-section* on which the Court proposes to proceed against him. The order need not show the *nature of the case* against him. A Magistrate may get information, for example, under S. 110 which is itself very meagre and lacking in details and may decide to act upon it. It may be unwise for him to take such action without carefully checking such information, but he has jurisdiction to take such action and if his information is meagre, the substance of the information would also be necessarily meagre, and it is sufficient for him to state it to make the order

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(1882) 8 Cal. 724 (727), *Abasu Begum* v. *Umda Khanum*.
(1872-1892) Low. Bur. R. 398 (398), *Nga Than Yon*, In re.
(4) 1 Bur. 398, *Nga Than Yon*, In re.
(5) (1907) 7 Cri. L. Jour. 146 (150): 35 Cal. 243, *Chintamon* v. *Emperor*.
(1913) 14 Cri. L. Jour. 5 (22) (Cal.), *Rajendra Narain Singh* v. *Emperor*.
(6) (1906) 4 Cri. L. Jour. 456 (459, 460) (Cal.), *Bibee Kulsum* v. *Umatul Mehdi*.
(7) (1925) 1925 Rang. 69 (70): 2 Rang. 524, *Parsodan* v. *Emperor*.

Note 3.

(1) (1907) 6 Cri. L. Jour. 1 (2), *Wahid Ali Khan* v. *Emperor* (Held that in this case the order set forth the substance of the information sufficiently).
(1914) 1914 Sind 8 (10): 8 Sind L. R. 207, *Farid Imambux* v. *Piru Kauro*.
[See (1900-2) 1 L. B. R. 75 (77), *Crown* v. *Nga Kyauk Lon*.]
(2) (1904) 1 Cri. L. Jour. 807 (809): 27 All. 172, *Mithu Khan*, In re.
(3) (1908) 7 Cri. L. Jour. 146 (151): 35 Cal. 243, *Chintamon Singh* v. *Emperor*.
(1930) 1930 Mad. 859 (860), *Kalia Goundan* v. *Emperor*.
(1926) 1926 Sind 69 (71): 19 Sind L. R. 176, *Tanwor* v. *Emperor*.
(1874) 22 Suth. W. R. 36 (37), *Queen* v. *Ram Churan Chung*.
(4) (1927) 1927 Oudh 306 (308): 2 Luck. 157, *Emperor* v. *Ram Gulam* (1926 All. 759 and 60 Ind. Cas. 420 dissented from).

legal. If he has taken action on insufficient information, the proceedings may, *on the evidence,* be found to have been without justification, but this will not affect the legality of the order itself. The High Court of Calcutta has also held that it is sufficient to specify the section or sub-section under which the party is proceeded against.[5] Suhrawardy, J., said "the words 'substance of the information' mean such or so much of the information as would enable the party to know under what clause of S. 110 he is charged or to what particular class of offenders he is said to belong.....I concede that *where possible,* the repetition of the words of the section should be avoided, but it may not be possible in every case." And Graham, J., said "As I understand the words, it means *substance* as distinguished from *details or particulars* and I do not think that it was ever contemplated that the proceeding should set out details in the manner of a charge drawn up at a trial." The High Court of Allahabad while agreeing with the view of the Chief Court of Oudh has added that where the particular clause of the section refers to two or more offences, that particular offence which is appropriate to the particular case should also be mentioned in the order.[6] Their Lordships observed: "We would note, if the principle which we have approved be not accepted, the utter impossibility of drawing the line at any place or of offering the Magistrates any guiding principle which would assist them in determining how much information is to be given". The High Court of Madras has, on the other hand, taken the view that it is not sufficient to specify the section or clause of the section under which the Magistrate proposes to proceed but that the order should give the time and place of facts charged and sufficient *details* which would enable the accused to know what he has to meet.[7] This view is based on the principle that an order under this section is something in the nature of *indictment* or *charge* and that, therefore, it should contain substantial particulars indicating the grounds upon which the information to the Magistrate is based.[8]

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It is submitted that the latter view is not correct. Under Ss. 107 to 110 a Magistrate may receive information which may itself be meagre and it is not possible for him always to set forth in his order anything more than what he has himself received and on which he has decided to act. The extent of the information, therefore, which must be set forth must depend, in each case, upon the circumstances of that case. For example in cases coming under S. 107 there may be information in regard to some circumstances which render it probable

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(5) (1929) 1929 Cal. 739 (740, 742), *Bhutnath* v. *Emperor* (1926 All. 759, 43 Mad. 450, Dissented from).

(6) (1930) 1930 All. 274 (274): 52 All. 448, *Chandan* v. *Emperor* (1927 Oudh 306 approved).
(1918) 1918 All. 93 (93), *Jaguji Rai* v. *Emperor*.
[But see (1926) 1926 All. 759 (760), *Nihal* v. *Emperor*.
(1920) 1920 All. 268 (270): 42 All. 646, *Rajbansi* v. *Emperor*.]

(7) (1919) 1919 Mad. 633 (636), *Kripasindhu* v. *Emperor*.
(1920) 1920 Mad. 534 (538): 43 Mad. 450, *K. Ranga Reddi*, In re.
[See also (1925) 1925 Mad. 189 (191), *Kutti Goundan*, In re.
(1930) 1930 Mad. 859 (860), *Kalia Goundan* v. *Emperor*.]
[See also (1933) 1933 Mad. W. N. 875 (876), *Bahadur Jalinaik* v. *Emperor* (Mere reference to police report not enough—Magistrate should extract and state plainly the facts which in his opinion, will, if established by evidence necessitate the taking of security).]

(8) (1926) 1926 All. 759 (760): 49 All. 5, *Nihal* v. *Emperor*.
(1920) 1920 All. 268 (270): 42 All. 646, *Rajbansi* v. *Emperor*.
(1930) 1930 Mad. 331 (335): 53 Mad. 173, In re *Karuthaswami Servai* (Resembles a charge).
(1921) 60 Ind. Cas. 420 (421): 42 All. 646, *Rajbansi* v. *Emperor*.

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that a person is likely to commit a breach of the peace.[9] In such cases it is possible to give some details of the information received and a mere assertion that the Magistrate is informed that a breach of the peace is likely to occur may not be sufficient.[10] But in cases coming under S. 110 the information may consist merely of reports which he has heard from sources which he considers reliable. It may be the barest information lacking in details and particulars. An order setting forth, in such a case, that he has received reliable information that the applicant is a habitual thief or receiver of stolen property is a sufficient compliance with the law.[11]

It is however necessary where a person is sought to be proceeded against under S. 110 that the *sub-section* under which he is charged should be specified. It is not enough merely to assert that he has committed an offence generally under S. 110.[12] Nor is an order proper which does not specify what the section is under which the party is proceeded against. Where a notice was by no means clear whether the accusation which the party had to meet was one under S. 109 or under S. 110 of the Code, it was held that there was no sufficient compliance with the section.[13]

Since the order has to set forth only the substance of the information received by the Magistrate *under Ss.* 107, 108, 109 *or* 110, it should not contain matters which are not relevant under those sections. The Magistrate shall be careful to see that his order is in the terms of the section which he proposes to apply.[14] Thus the fact that a man is *suspected* to have committed a certain crime is not a legitimate ground for taking action under S. 110 and consequently an order under this section that a person is "strongly suspected" of having committed offences cannot be said to be properly drawn up.[15] Similarly an order stating "you have only a nominal means of livelihood except the proceeds of theft or burglary" or "you have a bad reputation in the vicinity of your village" is not a proper order.[16] Again where a Magistrate passed an order to the following effect, namely, "you have been suspected of the following crimes—Crime No. 24, crime No. 23, crime No. 13, and crime No. 8," it was held that it was impossible for the suspect to know what crime No. 24, etc., referred to and that the substance of the information received could not be said to have been set forth in the order as required by this section.[17]

The "substance of the information received" will not include the *source* of the information which need not therefore be set out in the order.[18] Nor is

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(9) (1896) 16 All. W. N. 73 (73), In the matter of the petition of *Kala*.
(10) (1884) 6 All. 214 (219), *Empress* v. *Nathu*.
(11) (1896) 16 All. W. N. 73 (73), In the matter of the petition of *Kala*.
(1919) 1919 Pat. 337 (338), *Dohra Ahir* v. *Emperor*.
(12) (1926) 1926 Lah. 45 (46), *Sohan Singh* v. *Emperor*.
(13) (1885) 11 Cal. 13 (14), *Ishwar Chandra Sur*, In re.
[See also (1897-1901) 1897-1901 Upp. Bur. R. 16 (16), *Nga Po Kin* v. *Queen-Empress* (Magistrate intending to proceed under S. 107, but asking for security for *good behaviour*).]
(14) (1925) 1925 All. 694 (695): 47 All. 733, *Budhan* v. *Emperor*.
(15) (1928) 1928 All. 1 (2, 3), *Emperor* v. *Babu Ram*.
(1928) 1928 All. 357 (358), *Emperor* v. *Kurwa*.
(1912) 13 Cri. L. Jour. 784 (784) (Cal.), *Deputy Legal Remembrancer* v. *Kadir Mirza* (Suspect stated to be "by general repute" a thief and burglar, instead of "by habit" such thief or burglar).
(16) (1929) 1929 All. 813 (813), *Ram Rup Bhar* v. *Emperor*.
(17) (1928) 1928 All. 357 (359), *Emperor* v. *Kurwa*.
(18) (1904) 1 Cri. L. Jour. 807 (809): 27 All. 172, In the matter of *Mithu Khan*.
(1913) 14 Cri. L. Jour. 5 (22) (Cal.), *Rajendra Narayan* v. *Emperor*.
(1930) 1930 Mad. 975 (976), *Anantapadmanabhiah* v. *Emperor*.
(1904) 1 Cri. L. Jour. 807 (809): 27

S. 112, Notes 3—5.

the person proceeded against entitled to a *copy* of the information on which the Magistrate decided to act.[19]

With a view to satisfy himself as to the desirability or urgency of issuing a notice under this section the Magistrate has, for obvious reasons the right to test the accuracy of the information received by him before issuing the notice. He may for this purpose, call for a report from the Police,[20] or from a Subordinate Magistrate.[21] He may also, if he thinks fit, take information on oath in the presence of the accused before framing his order.[22]

4. Amount of the bond to be executed.—In fixing the amount of security a Magistrate should consider the status of life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment that can be awarded under S. 123 *infra*, it must be remembered, is provided as a protection to society against the perpetration of crime by the individual, and not as a punishment for a crime committed; and being made conditional on default of furnishing security, it is only reasonable and just that the individual should be afforded a fair chance, at least of complying with the required condition of furnishing security.[1]

Where an order directed the suspect to execute a bond for Rs. 100 and to furnish two sureties for Rs. 300, it was held that there was only one penalty of a bond and that the principal being bound in that amount, the sureties were bound for the same amount.[2]

Where an order required the suspect to furnish a bond for Rs. 1,000 "with respectable sureties" it was held that it was necessary to specify whether each and all the sureties are liable for the amount of Rs. 1,000 or whether they are liable for Rs. 1,000, between them. These particulars should be specified in order to prevent misunderstandings later on.[3]

There is no power to require that the amount of the security should be deposited in *cash*.[4] The provisions only contemplate the execution of a *bond*.

5. Character and class of sureties.—The order under this section should specify the *character and class* of sureties, if any, required.[1] The view that a Magistrate has no power to require that the security should be given by a particular class of persons[1-a] is not correct. No further conditions or

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All. 172, In the matter of *Mithu Khan*.
(1913) 14 Cri. L. Jour. 5 (22), *Rajendra Narayan Singh* v. *Emperor*.

(19) (1930) 1930 Mad. 975 (976): 54 Mad. 422, *Anantapadmanabhiah* v. *Emperor*.

(20) (1932) 1932 All. 670 (672), *Lakmi Narain* v. *Emperor*.

(21) (1891) 2 Weir 51, *Ekambara Mudali* v. *Murugappa Chetty* (Sub-Divisional Magistrate may call for report from Taluk Magistrate).

(22) (1905) 2 Cri. L. Jour. 462 (462): 1905 U. B. R. Cr. P. C. 29, *Emperor* v. *Nga Pa Taung*.

Note 4.

(1) (1869) 4 Mad. H. C. Re. Appendix 46 (47).
(1901) 1901 Pun. Re. No. 28, *Wasaya* v. *Emperor*.
(1900) 1900 Pun. Re. 24, p. 53, *Barkal* v. *Empress*.
(1933) 1933 All. 674 (676), *Satgur Dayal* v. *Emperor*.

(2) (1897-1901) Upp. Bur. R. 24 (25) (Cr.). *Emperor* v. *Nga Ye*.

(3) (1914) 1914 Lah. 492 (492): 1914 P. R. 6, *Mahala* v. *Emperor*.

(4) (1870) 2 N.-W. P. 295 (296), *The Queen* v. *Sheo Baksh*.

Note 5.

(1) (1903-04) 2 L. B. R. 40 (40, 41), *Emperor* v. *Nga Po Saung*.

(1-a) (1907) 5 Cri. L. Jour. 148 (151): 18 Pun. Re. Cr. 1906, *Emperor* v. *Kaim Khan*.
(1867) 1867 Pun. Re. No. 49 Cr., p. 88, *The Crown* v. *Gullo* (Case under 1861 Code).

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restrictions, however, than what may be comprised in the words "Character and Class" can be set forth in the order. Thus the Court cannot, in its order under this section direct that the sureties shall be residents of a particular *locality*[2] or that they should be able to control the persons for whom they were sureties.[3] The reason is that such a direction does not come within the words "Character or class" of the sureties. There is a difference of opinion on the question whether the Court can, *under* S. 122 *infra*, reject a surety as being unfit in the sense that he is not living near the accused and may not be able to influence and insure his behaviour.[4]

An order requiring the sureties to be "respectable house-holders"[5] or to be "land-holders"[6] is valid as setting forth the "Character or class" of the sureties required. Similarly an order that the sureties should not be inferior in standing to the accused and should be of respectable character, is also proper. But the power to specify the character and class of the sureties must be reasonably exercised and the order must be such that if a suspect have a *bona fide* intention to be of good behaviour it will not be impossible for him to find sureties.[7] Thus an order requiring the sureties should not be of the kunbi class, was held to be unreasonable and improper.[8]

6. **Amendment of notice.**—An order under this section requiring security for good behaviour is in the nature of a *charge* in a warrant case,[1] and since a charge can be amended at any stage of the proceedings, it is permissible also to amend an order under this section and serve it afresh on the person proceeded against.[2] The Sind Judicial Commissioner's Court has, however, in

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(2) (1914) 1914 Cal. 445 (446), *Islam Khan* v. *Emperor*.
(1903) 6 Oudh Cas. 199 (202), *Mangal*, In re.
(1880) 1880 Pun. Re. No. 38, p. 91, *Tara*, In re.
(1922) 1922 All. 489 (489), *Raghunandan* v. *Emperor*.
(1899) 1 Bom. L. R. 520 (521), *Queen-Empress* v. *Yesu*.
(1914) 1914 U. B. 33 (34): 2 U. B. R. 44, *Nga Shwe Myo* v. *Emperor*.
(1874) 22 Suth. W. R. 37 (38), *Narain Sooboddhee*, In re.
(1911) 12 Cri. L. Jour. 472 (472), *Zikri* v. *Emperor*.
[See also (1915) 16 Cri. L. Jour. 422 (423): 1914 U. B. R., Vol. II, p. 44, *Nga Shwe Myo* v. *Emperor*.]
[But see (1924) 1924 Sind 120 (121): 17 Sind L. R. 160, *Allahadad* v. *Crown* (Sureties required to be Zamindars living in the neighbourhood—Order held valid).
(1902) 24 All. 471 (472), *Emperor* v. *Nabbu Khan* (This decision purports to follow 20 All. 206 which is a case under S. 122. It is submitted this decision is not correct inasmuch as a ground for rejecting a surety under S. 122 cannot necessarily be made a condition under S. 112).]
(3) (1914) 1914 Bom. 5 (6), *Emperor* v. *Jivanatha*.
(4) See notes to S. 122 *infra*.
(5) (1903-04) 2 L. B. R. 40 (40, 41), *King-Emperor* v. *Nga Po Saung*.
(1910) 11 Cri. L. Jour. 198 (198): 3 Sind L. R. 168, *Emperor* v. *Din Muhammad* (Respectable sureties required).
(6) (1914) 1914 Bom. 5 (5), *Emperor* v. *Jivanath*.
(1910) 11 Cri. L. Jour. 417 (417): 3 Sind L. R. 239, *Emperor* v. *Jan Mahomed* (Sureties required to be zamindars owning 20 acres of land).
(1914) 1914 Sind 139 (140): 8 Sind L. R. 229, *Jumo* v. *The Crown* (Order requiring sureties who shall be neighbouring zamindars paying a certain assessment, is valid).
(1924) 1924 Sind 120 (121): 17 Sind L. R. 160, *Allahadad* v. *Crown* (Sureties required to be zamindars owning a certain amount of land).
[But see (1915) 16 Cri. L. Jour. 553 (554): 1915 U. B. 13, *Nga Hein* v. *Emperor* (Restriction of sureties to landholders should not be imposed).
(1896) Rat. 876 (876), *Queen-Empress* v. *Jamal* (Do.).]
(7) (1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Muhammad Ibrahim* v. *Emperor*.
[See (1909) 9 Cri. L. Jour. 528 (531), *Shiam Lal* v. *King-Emperor* (Fear that sureties from particular District would be prevented from coming—Sureties from another District were ordered).]
(8) (1899) 1 Bom. L. R. 520 (521), *Queen* v. *Yesu Khandu Takari*.

Note 6.

(1) (1916) 17 Cri. L. Jour. 84 (85): 1916 Lah. 295: 1916 P. R. 1, *Ahmad Baksh* v. *Emperor*.
(1905) 2 Cri. L. Jour. 462 (463): 1905 U. B. R. Cr. P. C. 29, *Emperor* v. *Nga Po Thaung*.
(2) (1933) 1933 Mad. W. N. 550 (551), *Chinnaswamy Nadar* v. *Emperor*.
[See also (1932) 1932 Sind 88 (89): 26 Sind L. R. 200, *Emperor* v. *Nim*.]

the undermentioned case[3] held that an order under this section could not be amended in any matter, after it has once been framed and communicated to the party concerned.

7. **Effect of non-compliance with the section.**—The provisions of this section are only directory and not mandatory[1] and a failure to comply with the requirements thereof, though a grave and substantial irregularity which renders it necessary for the Courts of appeal and revision to scrutinise the proceedings carefully,[2] does not ipso facto *vitiate* the proceedings without proof of prejudice. Thus the failure to pass an order at all under this section is an irregularity which will not vitiate the proceedings unless a failure of justice or prejudice to the accused has been occasioned thereby.[3] The High Court of Madras seems, however, to be of opinion that such failure will invalidate the proceedings.[4]

The omission to set forth in the order the *particulars* specified in the section does not divest the Magistrate of his jurisdiction to deal with the suspect which he assumes when the information is given to him[5] but is only an irregularity which will not vitiate proceedings in the absence of proof of prejudice.[6] Where the party proceeded against is, however, prejudiced by the failure to comply with the section, the proceedings would be set aside.[7] The question whether there is a failure of justice or prejudice is, in each case, one of fact.[8] It has been held, however, in the undermentioned cases[9] that a Magistrate has no jurisdiction to act if he fails to comply with the section and that such non-compliance is not a defect that can be cured under S. 537. It is submitted that

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(3) (1933) 1933 Sind 8 (9), *Nim* v. *Emperor*.

Note 7.

(1) (1908) 7 Cri. L. Jour. 94 (94): 10 Oudh Cas. 365, *Pragi* v. *Emperor*.
(1892) 8 Cal. 724 (725, 726), *Abasu Begum* v. *Umda Khanum*.
(1886) 12 Cal. 520 (521), In the matter of the petition of *Haridar Ali*.
(2) (1926) 1926 Sind 69 (70, 71): 19 Sind L. R. 176, *Thanwor* v. *Emperor*.
(3) (1908) 7 Cri. L. Jour. 94 (94): 10 Oudh Cas. 365, *Pragi* v. *King-Emperor*.
(1891) 1891 All. W. N. 40 (42), *Queen-Empress* v. *Bhagwan Das*.
(4) See (1907) 5 Cri. L. Jour. 397 (398): 30 Mad. 282, *Krishnaswami Thathachari* v. *Vanamamalai Bhashiakar*.
(1902) 2 Weir 55 (56), In re *Abdulrahiman Saheb* (There were other irregularities also—Proceedings held void *ab initio*).
(1907) 6 Cri. L. Jour. 332 (332), In re *Subba Naickan* (There was prejudice in the case occasioned by the failure to pass the order—Proceedings held invalid).
(5) (1926) 1926 Sind 69 (70, 71): 19 Sind L. R. 176, *Thanwor* v. *Emperor*.
(6) (1919) 1919 Mad. 633 (636), *Kripasindu Naiko* v. *Emperor* (Omission to give substance of information).
(1926) 1926 Sind 69 (70, 71): 19 Sind L. R. 176, *Thanwor* v. *Emperor* (Do.).
(1874) 22 Suth. W. R. 37 (38), In re *Narain* (Do.).
(1929) 1929 Cal. 739 (740), *Bhut Nath Ghose* v. *Emperor* (Do.).
(1926) 1926 Lah. 366 (366), *Daya Ram* v. *Emperor* (Do.).
(1930) 1930 Mad. 331 (331): 53 Mad. 173, *Karuthaswami Servai*, In re (Do.).
(1902) 5 Oudh Cas. 313 (315, 316), In re *Swami Dayal* (Do.).
(1927) 1927 Oudh 306 (308): 2 Luck. 157, *Emperor* v. *Ram Ghulam* (Do.).
(1921) 64 Ind. Cas. 666 (668) (Pat.), *Jai Singh* v. *Emperor* (Do.).
(1920) 1920 Mad. 534 (535, 538): 43 Mad. 450, In re *K. Ranga Reddi* (Do., *Per* Moore, J., Seshagiri Iyer, J., *Contra*).
(1882) 8 Cal. 724 (725, 726), *Abasu Begum* v. *Umda Khanum* (Omission to specify the amount of recognizance and surety).
(1925) 1925 Rang. 214 (215): 3 Rang. 74, *Maung Thwe* v. *Emperor* (Omission to state the period for which it was proposed).
[See also (1916) 17 Cri. L. Jour. 301 (301): 1916 All. 276, *Chunni Lal* v. *Emperor*.
(1883) 3 All. W. N. 204 (204), In re *Amir Khan*.]
(7) (1910) 11 Cri. L. Jour. 387 (387), *Natha Singh* v. *Emperor*.
(1910) 11 Cri. L. Jour. 388 (389), *Bahadur Singh* v. *Crown*.
(1909) 6 All. L. J. 37 (N.), *Nand Prasad* v. *King-Emperor*.
(1879) 2 Shome 15, *Chutter* v. *Gopal Singh*.
(8) (1930) 1930 Mad. 859 (861), *Kalia Goundan* v. *Emperor*.
(9) (1925) 1925 Rang. 353 (354), *Mg. Tun U.* v. *Emperor*.
(1926) 1926 All. 759 (760), *Nihal* v. *Emperor*.
[See also (1929) 1929 Lah. 504 (505): 10 Lah. 155, *Ujagar Singh* v. *Emperor* (Order not setting forth substance of the information received about the petitioner is illegal).]

S. 112, Notes 7–10.

this view is an extreme one and is not in accordance with the general trend of judicial opinion.

Where a Magistrate wrote the order under this section on the back of a Police Report (which gave full details of the information) but did not embody such information in the order, and instead of sending a copy of the order with the summons as required by S. 115, he gave the substance of the information in the summons itself, it was held that the irregularity was one which was covered by S. 537.[10]

8. **Joint order against two or more persons.**—It is undesirable that a joint order should be passed against two or more persons. Each person is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are to be made against somebody else.[1] Where, however, in proceedings under S. 110, two persons were alleged to be members of a gang of habitual thieves and *always associated* in the commission of thefts, it was held that the Magistrate was right in issuing one order against both of them.[2]

9. **Security against person in imprisonment.**—Security for keeping the peace or for good behaviour should not be demanded from a person who is already undergoing a sentence of imprisonment for an offence. Proceedings already commenced against such prisoner may, if the circumstances justify it, be resumed after his sentence for the offence has expired.[1]

10. **Order if a public document.**—An order under this section is a public document within the meaning of S. 74 of the Evidence Act, but it cannot be admitted in evidence without proof that the parties mentioned in it are the parties concerned in the question at issue about which it is produced in evidence.[1]

S. 113. Procedure in respect of person present in Court.

113.* If the person in respect of whom such order is made, is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

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*(CODE OF 1882—S. 113.)

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

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(10) (1926) 1926 All. 767 (768): 49 All. 228, *Ram Deo Singh* v. *Emperor.*

[See also (1933) 1933 Oudh 195 (196), *Chheda Lal* v. *Emperor.*]

Note 8.

(1) (1929) 1929 All. 273 (274): 51 All. 663, *Emperor* v. *Ram Lal.*
(1925) 1925 Mad. 189 (191), *Kutti Goundan*, In re.
(1902) 5 Oudh Cas. 243 (245), In re *Pudan.*
(2) (1933) 1933 Oudh 251 (252), *Hubdar Ali* v. *Emperor.*

Note 9.

(1) (1893-1900) L. B. R. 204 (204), *Queen-Empress* v. *Chido Bon.*

Note 10.

(1) (1914) 1914 Cal. 388 (388), *Sheikh Amjad* v. *Lachmi Kant Jha.*

SYNOPSIS.

Note No.
"IS PRESENT IN COURT" 1
"IT SHALL BE READ OVER TO HIM" 2

1. **"Is present in Court".**—It is immaterial *how* the person against whom an order has been passed under S. 112, has come to be present in Court. He may be present for another criminal case[1] or might have been brought under arrest either under a warrant or without warrant.[2] Nor is it material whether the arrest under which he has been brought before the Court is legal or not.[3] A summons was sent to a person under S. 114 *infra* but no order under S. 112 had been drawn up at that time and was consequently not served on him along with the summons as required by him. Where, however, the person appeared in pursuance of the summons, proceedings under S. 112 were drawn up in his presence and the order read out to him, it was held that the fact that the person appeared in pursuance of a summons which was not served as required by S. 115 did not affect the validity of the order under S. 112 and its reading over to the person under this section.[4] Certain persons appeared before a Magistrate in pursuance of an order to show cause why they should not be required to furnish security in the sum of Rs. 2,000. On that day the Magistrate passed entirely fresh order under S. 112 in which the amount of security demanded was Rs. 5,000. This later order was read out to them as required by this section. It was held that the proceedings were not vitiated by the procedure adopted by the Magistrate.[5]

2. **"It shall be read over to him".**—If the person against whom an order under S. 112 is made is *not* present in Court, the Court should issue a summons to him to appear or if he is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court (S. 114). Such summons or warrant should be accompanied by a copy of the order under S. 112 which should be delivered to him (S. 115). If on the other hand, the person *is present* in Court, the order should be read over to him[1] and if he so desires the substance thereof should be explained to him. An omission to do so is likely to cause great prejudice to him.[2]

(CODE OF 1872—S. 492, Explanation.)

492. * * * * * *

Explanation.—When the parties are present in Court no summons is necessary, but the person to whom the summons would have been issued must have an opportunity to show cause why he should not be bound.

(CODE OF 1861—Nil.)

Section 113—Note 1.

(1) (1869) 2 Beng. L. R. 28 (29) (App.), *Queen* v. *Choudhry.*

(2) (1911) 12 Cri. L. Jour. 533 (534) (Bom.), *Emperor* v. *Gulam Hussain* (Presence due to arrest without warrant by the Police).

(1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho Dhobi* (Presence secured under arrest under S. 55, Cr. P. Code).

(1874) 6 N.-W.P.H.C.R. 366 (368) (Do.).

(1914) 1914 All. 466 (467): 36 All. 262, *Rameshwar* v. *Emperor* (Do.).

(3) (1911) 12 Cri. L. Jour. 533 (534) (Bom.), *Emperor* v. *Gulam Husain.*

(1921) 1921 All. 278 (280): 43 All. 186, *Rahu* v. *Emperor.*

[See also (1903) 26 Mad. 124 (125), *Emperor* v. *Ravalu Kesigadu* (Legality of arrest does not affect the guilt or otherwise).

(1911) 12 Cri. L. Jour. 356 (357): 35 Bom. 225, *Emperor* v. *Vinayak Damodar* (Illegality of arrest which brought him within the jurisdiction does not affect the charge of substantial offence).]

(4) (1920) 1920 Mad. 1014 (1014), In re *Kavatham Pulluraju.*

(5) (1927) 1927 Lah. 689 (690), *Mohd. Ishaq* v. *Emperor.*

Note 2.

(1) (1914) 1914 All. 466 (467): 36 All. 262, *Rameshwar.*

(2) (1892) 14 All. 45 (47, 48), Re *Daulat.*

S. 114. **114.** *If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court:

Summons or warrant in case of persons not so present.

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace, cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

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*(CODE OF 1882—S. 144.)

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Summons or warrant in case of persons not so present.

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

(CODE OF 1872—S. 494, Proviso, and S. 515, Para. 1.)

Warrant of arrest. 494. * * * *

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

515. The provisions of sections four hundred and ninety-two and four hundred and ninety-four, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not in custody, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Issue of summons and warrant of arrest.

(CODE OF 1861—Ss. 285 and 306.)

Warrant of arrest. 285. * * * *

Provided that, whenever it shall appear to the Magistrate or other Officer as aforesaid, upon the report of a police-officer or upon other credible information, the substance of which report or information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person.

306. The several provisions of the last preceding Chapter relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, shall apply to proceedings taken under this Chapter against persons required to give security for their good behaviour.

Issue of summons and Warrant of arrest.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"SHALL ISSUE SUMMONS"	2
FORM OF SUMMONS	3
SUFFICIENT TIME TO APPEAR IN COURT TO SHOW CAUSE.	4
"OR WHEN SUCH PERSON IS IN CUSTODY"	5
IMMEDIATE ARREST	6
RECORD OF INFORMATION	7
"MAY *AT ANY TIME*"	8
NOTICE BEFORE ARREST	9
WARRANT OF ARREST AGAINST PERSON OUTSIDE JURISDICTION	10
BAIL	11

Other Topics.

Duty of Magistrate before issuing warrant. See Note 6.
Person outside jurisdiction, process against. See Note 5, Pt. 2, Note 10, Pt. 1.
Proviso, limitations under. See Notes 6, and 8.

1. Legislative Changes.—

Difference between the Codes of 1872 *and* 1882—

Under the proviso to S. 494 of the Code of 1872, the Magistrate could issue a warrant if he had reason to believe that by so doing a breach of the peace *might probably be prevented.* Under the proviso to S. 114 of the Code of 1882 as well as under this Code, a warrant could be issued only if the breach of the peace could *not be prevented otherwise than* by the immediate arrest of such person.

2. "Shall issue summons".—Where a person against whom an order under S. 112 is passed is *not present* in Court, the Magistrate is bound to issue a summons requiring him to appear, or if he is in custody a warrant for his production. No order for security can validly be made against him under S. 118, *infra* in the absence of such summons or warrant.[1] Nor can a summons or a warrant issue against such person unless an order had first been made against him under S. 112.[2]

3. Form of summons.—Form 12 of Sch. V of the Code requires that the *substance of the information* should be set forth in the summons. Where neither the form set forth the substance of the information nor a copy of the order under S. 112, served along with the summons it was held that it was impossible to say that the persons against whom the proceedings were taken were not prejudiced by the non-compliance with the provisions of the section.[1] Where a Magistrate made an order against a person under S. 112 with a view to taking action against him under S. 110, and issued a summons to him, but

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Section 114—Note 2.

(1) (1868) 9 Suth. W. R. Cr. 16, *Kali Pershad Sirdar* v. *Futtechand Dass.*

(2) (1926) 1926 Sind 288 (289): 20 Sind L. R. 122, *Jatoi* v. *Emperor* (Magistrate derives jurisdiction to issue warrant only after order under S. 112).

Note 3.

(1) (1909) 9 Cri. L. Jour. 179 (180) (All.), **In re *Nand Prasad and others.***

S. 114, Notes 3—6.

on his appearance in pursuance of such summons, the Magistrate thought that S. 110 was inapplicable and proceeded to deal with the case as one under S. 107, it was held that the facts necessary to be proved in order to make a person liable under S. 110 were different from those necessary to be proved in order to make him liable under S. 107, and that the party proceeded against should have been served with a fresh notice with reference to the altered view of the circumstances on which the Magistrate proposed to proceed.[2]

4. **Sufficient time to appear in Court to show cause.**—When issuing a summons to any person under this section, sufficient time should be allowed so as to enable him to get ready with his evidence, for the purpose of the inquiry under S. 117 of the Code.[1] Thus where parties, required to show cause on the 9th of July, were served with a summons on the 5th and 7th of July, it was held that the time allowed was not sufficient and the order requiring them to furnish security was accordingly set aside.[2]

5. **"Or where such person is in custody".**—Where the person against whom an order is made under S. 112 is in custody, the Court should issue a *warrant* directing the officer in whose custody he is, to bring him before the Court. Thus a man may under S. 55 of the Code be arrested without warrant by a Police-officer with a view to take proceedings under S. 110 and kept in custody. In such a case if an order is made against such person under S. 112, a warrant as contemplated by this section should issue.[1] It is not necessary that the custody should have been under an arrest, made *within the jurisdiction* of the Magistrate acting under this section. This section will apply even if the arrest has been made *outside* jurisdiction and the person arrested is in custody within jurisdiction.[2]

6. **Immediate arrest.**—A Magistrate may, under the proviso, order the *immediate arrest* of the person against whom an order under S. 112 is made, whether a summons or warrant for his production has issued or not. Before, however, such an exceptional measure is taken, two conditions are necessary to be satisfied:

(1) The Magistrate must have *reason to fear the* commission of a breach of the peace *and*

(2) It must appear to him that such breach of the peace *cannot be prevented otherwise* than by the immediate arrest of such person.[1]

These conditions are obviously directed against any ill considered precipitancy on the part of the Magistrate.[2]

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(2) (1907) 5 Cri. L. Jour. 397: 30 Mad. 282, *Krishnaswami* v. *Vanamamalai.*

Note 4.

(1) (1873) 20 Suth. W. R. Cr. 18 (19), *Queen* v. *Isree Prasad Singh.*
(1914) 1914 Cal. 357 (357): 41 Cal. 806, *Keramuddin Sarkar* v. *Emperor.*
(2) (1874) 22 Suth. W. R. 70 (71), *Queen* v. *Cheyt Singh.*

Note 5.

(1) (1926) 1926 Sind 190 (191), ***Hardayal Singh*** v. *Emperor.*
(2) (1919) 1919 Cal. 702 (706): 46 Cal. 215, *Monindra Mohan* v. *Emperor.*

Note 6.

(1) (1926) 1926 Sind 288 (289): 20 Sind L. R. 122, *Jotoi* v. *Emperor.*
(1883) 6 All. 132 (138), *Empress* v. *Babua*
[See also (1924) 1924 Pat. 320 (320), *Maniruddin* v. *Emperor.*]
(2) (1924) 1924 Pat. 320 (320), ***Maniruddin*** v. *Emperor.*

Persons imprisoned during pendency of security proceedings against them cannot be kept in solitary confinement.[3]

7. **Record of information.**—The Magistrate is bound to *record* the substance of the report or information.[1] It is not enough for him to merely express a belief that such a course is necessary.[2] The provision is intended as a safeguard with a view to the protection of persons whose liberty is affected by such order and who may have resort to a superior Court under S. 498 or any other provision of the Code.[3]

8. **"May at any time".**—The proviso must be taken to relate to the circumstances contemplated by the main portion of the section that is, to a stage before the person proceeded against has appeared in Court in pursuance of a summons or warrant. Where such person *has appeared* and has executed a bond under S. 117, sub-S. (3), the Magistrate has no power to issue a warrant of arrest against him on the ground that there is an imminent danger of the breach of the peace.[1]

9. **Notice before arrest.**—No notice is necessary to be given to the person proceeded against before an arrest can be effected under the proviso.[1] When he is brought before the Court under such arrest, the order against him under S. 112 should, however, be read and explained to him as required by S. 113.

10. **Warrant of arrest against person outside jurisdiction.**—Under S. 110 of the Code, a Magistrate cannot take proceedings against a person unless such person is within the local limits of his jurisdiction. It has been held in the undermentioned case[1] that a Magistrate cannot issue a warrant against a person under this section unless such person is within the local limits of his jurisdiction.

11. **Bail.**—Section 496 *infra* provides that bail may be claimed by "any person other than a person accused of a non-bailable offence" who "is arrested or detained without warrant by an officer in charge of a police station or is brought before a Court". The section should, however, be read along with other provisions of the Code giving a special right of detention to a Court.[1] Thus under S. 107, sub-S. (3), a Court can detain a person brought before it, under the circumstances specified therein, until the enquiry is completed. In such a case it cannot be said that the arrested person has an absolute right to be released on bail.[2] In the absence of any such special provision however, the Court has no power to refuse to release a person arrested under this section on

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(3) (1933) 1933 All. 676 (678), *Sundar Lal* v. *Emperor*.

Note 7.

(1) (1884) 6 All. 132 (138), *Empress* v. *Babua*.
(1924) 1924 Pat. 320 (320), *Maniruddin* v. *Emperor*.
(1914) 1914 All. 466 (467): 36 All. 262, *Rameshwar* v. *Emperor*.
(2) (1884) 6 All. 132 (138), *Empress* v. *Babua*.
(3) (1924) 1924 Pat. 320 (320), *Maniruddin* v. *Emperor*.

Note 8.

(1) (1929) 1929 Pat. 654 (656), *Nathan Gope* v. *Emperor*.
[See also (1904) 1 Cri. L. Jour. 775 (778): 32 Cal. 80, *Raghunandan Pershod* v. *Emperor* (Appearance and release on bail).]

Note 9.

(1) (1930) 1930 All. 274 (274): 52 All. 448, *Chandan and others* v. *Emperor*.

Note 10.

(1) (1912) 13 Cri. L. Jour. 796 (797) (Bom.), In re *Ramjibhai Waghjibhai*.

Note 11.

(1) (1912) 13 Cri. L. Jour. 447 (448) (Mad.), *Narayanaswami Naikan* v. *Emperor*.
(2) (1912) 13 Cri. L. Jour. 447 (448) (Mad.), *Narayanaswami Naikan* v. *Emperor*.

S. 114, Note 11.

bail.[3] Such a refusal is contrary to the very spirit of the provisions of Chap. VIII of the Code, which are not intended except under special circumstances to keep a suspect in custody either during the pendency or after the close of the investigation held under this chapter.[4]

S. 115, Note 1.

115. *Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 112 to accompany summons or warrant.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
"SHALL BE ACCOMPANIED BY A COPY OF THE ORDER".	2
SUMMONS MUST FIX REASONABLE TIME TO SHOW CAUSE.	3
MODE OF SERVING SUMMONS AND EXECUTING WARRANTS.	4
POWER OF THE COURT TO DEMAND SECURITY DIFFERENT FROM THE ONE SPECIFIED IN THE ORDER ..	5
EFFECT OF NON-COMPLIANCE WITH THE REQUIREMENTS OF THE SECTION	6

Other Topics.

Omission to serve copy of the order. See Note 6.

1. Legislative History.—

There was no provision in the Codes of 1861 and 1872, corresponding to this section. But S. 283 of the Code of 1861 and S. 492 of the Code of 1872, corresponding to S. 112 of the present Code required that the summons itself

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*(CODE OF 1882—S. 115.)

115. Every summons or warrant issued under S. 114 shall be accompanied by a copy of the order made under S. 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

(CODES OF 1872 AND 1861—Nil.)

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(3) (1904) 1 Cri. L. Jour. 775 (778): 32 Cal. 80, *Raghunandan Pershad* v. *Emperor.*
(1893) 6 C. P. L. R. Cr. 31, *Empress* v. *Sheolasing.*
(1908) 7 Cri. L. Jour. 360 (361): 31 Mad. 315 (F. B.), In re *Y. O. Chidambaram Pillai.*
(1916) 1916 Sind 93 (94): 9 Sind L. R. 158, *Faiz Mahomed Sabizdil* v. *Crown.*
(4) (1926) 1926 Sind 288 (289): 20 Sind L. R. 122, *Jatoi* v. *Emperor.*

should contain all the particulars necessary for an order under S. 112, *supra*.[1] Section 115 of the Code of 1882 is the same as S. 115 of the present Code. S. 115, Notes 1—6.

2. **"Shall be accompanied by a copy of the order".**—It is necessary that a copy of the order passed under S. 112 should accompany and be delivered to the person against whom a process is issued under S. 114. The intention of the Code is that any man who is called on to meet the exceptional procedure laid down in Chap. VIII of the Code should, at his own house, have the fullest information compatible with the circumstances of the case as to the reasons why his liberty is in danger of being interfered with[1] and in order to enable him, if he is in a position to do so, to bring evidence to rebut the truth of the information against him.[2]

3. **Summons must fix reasonable time to show cause.**—The delivery of the order and the summons must be sufficiently early so as to give the person summoned sufficient time to show cause against the order and to get his witnesses. So, in a case under the Code of 1872, where the summons containing the particulars of the information was served only two days prior to the date when the person was called on to show cause, it was held that there was no sufficient service.[1]

4. **Mode of serving summons and executing warrants.**—*See* Ss. 69 to 71 and Ss. 77 to 86, *supra*.

5. **Power of the Court to demand security different from the one specified in the order.**—Where the Court issued summons specifying the nature and the amount of the security required, it cannot, after the person has appeared in response to the summons, ask for a security different in nature and amount than the one specified in the summons.[1]

But there is nothing illegal in the Court drawing up fresh proceedings in his presence for security for a different sum or for a different period, and reading out the same to him under S. 113, *ante*. *See* Notes to that section.

6. **Effect of non-compliance with the requirements of the section.**—Where the summons referred to in the section has *not at all been served*,[1] or where it has been served so late as to deprive the person concerned of a reason-

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Section 115—Note 1.

(1) (1869) 1 N.-W.P. 304 (305), *Queen* v. *Nijabut Hossain*.
(1871) 3 N.-W.P. 96 (98), *Queen* v. *Powell*.
(1881) 3 All. 545 (553), *Empress* v. *Muhammad Jafir*.
(1881) 1881 All. W. N. 155 (186), *Gholam Haidar* v. *Gholam Kadar*.
(1873) 20 Suth. W. R. Cr. 36 (36), *Queen* v. *Gunga Singh*.

Note 2.

(1) (1892) 14 All. 45 (47), *Dewlat Singh*.
(1877) 1 Cal. L. R. 130 (131), *Kookor Singh*.
(1884) 6 All. 214 (219), *Empress* v. *Nathu* (Held further that he should be given a reasonable interval of time to meet the information).
(1924) 1924 Nag. 166 (167, 168), *Baji Rao*, In re.
(2) (1884) 6 All. 214 (218), *Empress* v. *Nathu*.

Note 3.

(1) (1874) 22 Suth. W. R. 70 (71) (Cr.), *Queen* v. *Cheyat Singh*.

Note 5.

(1) (1872) 18 Suth. W. R. 61 (62) (Cr.), *Queen* v. *Isree Pershad Singh* (Summons demanding personal bond for Rs. 200—Demanded subsequently personal bond for Rs. 4,000 and 2 sureties for Rs. 1,000 each).
(1876) 25 Suth. W. R. Cr. 50 (50), In re *Abdool Bari* (Summons requiring personal bond only subsequent demand for sureties also).
2 Shome L. R. 15, *Chutter Singh* v. *Gopal Singh*.
2 Shome L. R. 2, *Mir Munjud Ali*.

Note 6.

(1) (1868) 9 Suth. W. R. 16 (16), *Kalipershad* v. *Futteh*.

S. 115, Note 6.

able time and opportunity to show cause and produce his witnesses[2] the order requiring security is illegal. But a failure to serve a copy of the *order* passed under S. 112 along with the summons will be only an irregularity which will not vitiate the order in the absence of prejudice.[3]

The object of serving a copy of the preliminary order on a person under this section or of reading that order over to him under S. 113, *ante* is only to acquaint him with the details of the order itself and to enable him to defend himself against the allegations upon which the preliminary order was granted.[4] Where, therefore, the party is made to know what the information against him is, and is given sufficient opportunity to meet it, no prejudice can be caused to him by the mere failure to serve the copy of the order.[5]

S. 116.

116. *The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

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*(CODE OF 1882—S. 116.)

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

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(2) (1874) 22 Suth. W. R. 70 (71), *Queen* v. *Cheyt Singh.*

(3) (1924) 1924 Nag. 166 (167, 168), *Bajirao* v. *Emperor* (The order read out in Court and opportunity given—No prejudice).

(1920) 1920 Pat. 25 (28), *Rameshwar* v. *Emperor* (Order read out in Court—No prejudice S. 537 applies).

(1868) 2 Beng. L. R. App. 28 (29), *Queen* v. *Chowdhry* (Order drawn in the presence of party and read out to him—Opportunity to show cause given—No prejudice—S. 537 applies).

(1920) 1920 Mad. 1014 (1014), In re *Kavatham* (Do.).

(1926) 1926 All. 767 (768), *Ram Deo* v. *Emperor* (Instead of sending a copy of the order, substance thereof written in summons itself—No prejudice, S. 537 applies).

(1909) 9 Cri. L. Jour. 179 (180) (All.), In re *Nand Prasad* (Here the Court set aside the order holding that the accused had been prejudiced).

(1925) 1925 Nag. 33 (34), *Narain* v. *Emperor.*

(1902) 5 Oudh Cas. 313 (314), In re *Swami Dayal.*

(1909) 10 Cri. L. Jour. 375 (377) (Bom.), *Sulaman Adam* v. *Emperor* (Omission to raise the objection at the trial considered on the point of prejudice).

[*See also the following cases under the Codes of* 1861 *and* 1872.

(1871) 15 Suth. W. R. Cr. 43 (44), *Koonj Behari Chowdhary* v. *Eknath Gurain.*

(1882) 8 Cal. 724 (727), *Abasu Begum* v. *Unda Khanum* (Summons did not specify the amount of recognisance the number of sureties and the amount in which they were to be bound).

(1881) 3 All. 545 (553, 554) (F. B.), *Empress* v. *Muhammad Jafar.*]

[See however (1902) 2 Weir 55 (55, 56), *Abdul Rahman Saheb*, In re (In this case there were further irregularities such as non-compliance with S. 112 and a base of powers under S. 114).

(1907) 6 Cri. L. Jour. 332 (332) (Mad.), In re *Subba Naicken* (Further defects in the case: want of sufficiently early notice and want of enquiry under S. 117, Cr. P. Code).

(1897-1901) Upp. Bur. Rul. 16 (16), *Nga Po Kin* v. *Queen-Empress* (But the Court held here that the omission to send order had not prejudiced).

(1909) 6 All. L. J. (N.) 37, *Nand Prasad* v. *King-Emperor.*

(1873) 20 Suth. W. R. 36 (36), *Queen* v. *Gunga* (No discussion).]

[See also (1885) 1885 All. W. N. 30 (30), *Empress* v. *Debi* (Amount of security reduced to that stated in the summons).]

(4) (1924) 1924 Nag. 166 (167), *Baji Rao* v. *Emperor.*

(5) See the cases cited in foot-note (3).

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
THE MAGISTRATE 'MAY'	3

Other Topics.

Appearance by pleader. See Note 3, Pt. 1. peace. See Note 2, Pt. 1.
Section applies only to bonds to keep

1. Legislative Changes:—

(1) Under the Codes of 1861 and 1872, the agent of the person called upon to show cause could not only be permitted to appear but also to *enter into the required security.*[1] Under S. 116 of the Code of 1882 and the present section the pleader of the person called upon to show cause can be allowed only to *appear* for him.

(2) The words "by an agent duly authorised to act on his behalf" which occurred in the prior Codes were substituted by the words" by a pleader" in S. 116 of the Code of 1882.

2. Scope of the Section.—This section empowers the Magistrate to dispense with the personal attendance *of any person called upon to show cause* why he should not be ordered to execute a bond to *keep the peace*. S. 205, *infra* is a similar provision enabling a Magistrate to dispense with the personal attendance of an *accused person*.

The section does not apply to a case where a person is called upon to show cause why he should not be ordered to furnish security for *good behaviour*. The personal attendance of such a person cannot be dispensed with either under this section or under S. 205.[1]

3. The Magistrate 'may'.—The word 'may' shows that the Magistrate has a *discretion* to dispense with or not to dispense with the personal attendance of the person called upon to give security. The discretion is, however a *judicial*

(CODE OF 1872—S. 495.)

495. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against under section four hundred and ninety-one, and may permit him to appear and enter into the required security, or show cause against such requisition, by any agent duly authorized to act in his behalf.

Magistrate may dispense with personal attendance of person informed against.

(CODE OF 1861—S. 286.)

286. The Magistrate or other Officer as aforesaid may, if he see sufficient cause, dispense with the personal attendance of the person informed against and permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorised to act in his behalf.

Magistrate may dispense with personal attendance of party informed against.

Section 116—Note 1.

(1) (1882) 10 Cal. L. R. 430 (432), Re *Charoo Chundra.*

Note 2.

(1) (1903) 2 Weir 54 (55), In re *Jayakat Vasudevan Jirunambu.*

S. 116, Note 3. one to be exercised on a consideration of the circumstances of the case. Where the person called upon to show cause was residing at a long distance and there were no special circumstances making his personal attendance necessary, it was held that it was an unwise exercise of jurisdiction to require him to attend in person.[1]

S. 117.

117.* (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

Inquiry as to truth of information.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) *Pending the completion of the inquiry under sub-section* (1) *the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section* 112 *has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:*

***(CODE OF 1898—S. 117.)**

117. (1) When an order under S. 112 has been read or explained under S. 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under S. 114, the Magistrate shall proceed to inquire into the truth of

Inquiry as to truth of information.

Note 3.

(1) (1885) 12 Cal. 133 (136), *Dinonath Mullick* v. *Girya Prosonno.*

S. 117.

Provided that—

(*a*) *no person against whom proceedings are not being taken under section* 108, *section* 109, *or section* 110, *shall be directed to execute a bond for maintaining good behaviour, and*

(*b*) *the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section* 112;

(4) For the purposes of this section the fact that a person is an habitual offender or *is so desperate and dangerous as to render his being at large without security hazardous to the community* may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

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the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(CODE OF 1882—S. 117.)

Inquiry as to truth of information.

117. When an order under S. 112 has been read or explained under S. 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under S. 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

S. 117.

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(CODE OF 1872—S. 491 Explanation, and S. 515, Para. 3.)

Summons to any person to show cause why he should not give bond to keep peace.	491.	*	*	*	*

Explanation I.—A summons calling on a person to show cause why he should not be bound over to keep the peace, may be issued on any report or other information which appears credible and which the Magistrate believes; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

Explanation II.—A Magistrate may recall a summons issued under this section if he thinks proper.

Manner of taking evidence under Chapter XXXVII or this Chapter.	515. * *	*	*	*	*

Any evidence taken under Chapter XXXVII or this Chapter, shall be taken as in cases usually heard by a Magistrate upon summons.

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(CODE OF 1861—S. 307.)

Manner of taking evidence under Chapter XVIII or this Chapter.	307. Any evidence taken under Chapter XVIII or this Chapter, shall be taken in the manner prescribed by S. 267, subject to the provision contained in S. 268 of this Act.

Other Topics.

Evidence of general repute.
Collective opinion. See Note 7, Pt. 3.
Defence evidence should be weighed. See Note 7, Pts. 30 to 33.
Deposition that a person is a habitual offender. See Note 9, Pt. 4.
Does reputation necessarily comprise of hearsay evidence? See Note 7, Pt. 7: and Pt. 19.
Duty of Court in evaluating evidence of reputation. See Note 7, Pt. 27.
Evidence of immediate persons. See Note 7, Pt. 25.
Evidence of respectable persons. See Note 7, Pt. 22.
General dispositions and particular acts. See Note 7, para. 1.
Individual opinion does not constitute general reputation. See Note 7, Pt. 8.
Police records of character. See Note 7, Pts. 9 to 14, and 23.
Reputation and rumour. See Note 7, Pt. 5 (a).
Suspicion how far substantive evidence of reputation. See Note 7, Pt. 15; Note 9, Pt. 3.
General Rules of evidence must be followed. See Note 9 and Note 7, Pt. 17.
Inquiry is judicial. See Note 2, Pt. 2.
Necessity of proof against each individual. See Note 13.
Onus Probandi. See Note 7, Pt. 28, S. 107, Note 16.
Proof of specific acts is necessary. See S. 107, Note 10, Pt. 2.
Reasonable opportunity should be given to the defence. See Note 2, Pt. 6.
Record of evidence. See Note 4, Pts. 2 & 5.
Scope of the inquiry. See Note 2, Pt. 17.
Take such further evidence as may appear necessary. See Note 2, Pt. 20.
"With or without sureties". See S. 118, Note 5, Pt. 4.

1. Legislative Changes:—

The following changes were introduced by the Amending Act 18 of 1923.

(1) Sub-S. 3 has been newly added.

(2) The words "or is so desperate and dangerous as to render his being at large without security hazardous to the community" in sub-S. (4) have been newly added. Prior to such amendment it was held that evidence of general repute was not admissible to prove a charge under S. 110, Cl. (*f*).[1] In view of the aforementioned change these decisions are now obsolete and no longer law.

2. "Shall proceed to investigate".—The object of this chapter is not to punish persons for an evil reputation but to prevent and guard society from them by placing them under such substantial but not excessive security as will prevent them from resorting to evil courses.[1] The section cannot be interpreted as giving a weapon to the Magistrate in his executive capacity for the suppression of crime. He is bound to hold a *judicial* enquiry and investigate the truth of the information upon which proceedings have been instituted under this chapter[2] and give a *legal finding* before passing the final order for security.[3]

Section 117—Note 1.

(1) (1901) 5 Cal. W. N. 249 (250), *Punchanun Bagis* v. *Queen-Empress.*
(1917) 18 Cri. L. Jour. 119 (120): 1917 Lah. 260, *Nur Muhamad* v. *Crown.*
(1902) 29 Cal. 779 (781), *Kalai Haldav* v. *Emperor.*
(1910) 11 Cri. L. Jour. 663 (664) (Mad.), In re *Muthu Pillai.*
(1920) 1920 Mad. 534 (536): 43 Mad. 450, In re *K. Ranga Reddi.*
(1918) 19 Cri. L. Jour. 871 (872): 1917 Nag. 113, *Ganapathi* v. *Emperor.*
(1906) 3 Cri. L. Jour. 290 (292): 9 Oudh Cas. 69, *Babu Murtaza Hussain* v. *King-Emperor.*
(1920) 1920 Low. Bur. 86 (86), *Emperor* v. *Pyu Sin.*
(1921) 22 Cri. L. Jour. 492 (493) (Rang.), *Emperor* v. *Pyu Zin.*
(1918) 1918 All. 257 (257): 40 All. 372, *Indar* v. *Emperor.*
(1907) 6 Cri. L. Jour. 1 (5) (Cal.), *Wahid Ali Khan* v. *Emperor.*

Note 2.

(1) (1889) 1889 All. W. N. 114 (114), *Empress* v. *Hamid Ullah Khan.*
(2) (1899) 1899 Pun. Re. 10 (29), *Sher Zaman Shah* v. *Empress.*
(1869) 12 Suth. W. R. 54 (55), Re *Kalikant Roy.*
(1868) 10 Suth. W. R. 1 Cr. (2), *Narsingh Narain.*
(1869) 11 Suth. W. R. (Cr.) 50 (50, 51), *Queen* v. *Lal Beharee Singh.*
(1868-69) 4 Mad. H. C. R. App. xxii (xxiii).
(1914) 1914 All. 546 (546): 37 All. 30, *Mulchand* v. *Emperor.*
(1932) 1932 All. 670 (672), *S. Narain* v. *Emperor.*
(3) (1879) 3 Cal. L. R. 280 (281), In the matter of Sheo Surn Lall.

S. 117, Note 2.

He cannot be too careful to place on record evidence of a cogent, convincing and reliable kind and should not make up for the carelessness, incompetence and supineness on the part of the police to bring home a specific crime to a particular person. He should exercise his powers with *sound discretion* after a very full and searching enquiry.[4] Thus he cannot keep proceedings under S. 107 pending and without enquiry on the ground that such pendency tends to preserve the peace.[5] Nor can he proceed to hold the enquiry without giving sufficient opportunity to the person proceeded against to show cause why he should not be bound over.[6] The latter is entitled to appear and be defended by a pleader.[7] The Magistrate cannot order a person to furnish security in the absence of *legal evidence*[8] duly recorded by him in the presence of the person proceeded against.[9] He cannot act on the basis of his own personal and extra

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(1920) 1920 Cal. 412 (412), *Sadat Ali* v. *Emperor*.
(1905) 10 Cal. W. N. xlvii (xlvii), Re *Sheoraj*.
(1884) 6 All. 132 (137, 138), *Empress* v. *Bapua*.
(1887) 9 All. 452 (464), *Queen-Empress* v. *Abdul Kadir*.
(1929) 1929 Lah. 504 (505): 10 Lah. 155, *Ujagar Singh* v. *Emperor*.
(1902) 5 Oudh Cas. 203 (205), *Dunia* v. *Emperor*.

(4) (1889) 1889 All. W. N. 114 (114), *Queen-Empress* v. *Hamid Ullah Khan*.
(1919) 1919 All. 136 (136), *Jabruddin* v. *Emperor*.
(1893) Rat. 639 (641), *Empress* v. *Sher-khan*.
1 Bur. S. R. 546, *Empress* v. *Nga Seik*.
(1872-1892) L. B. R. 546 (547), *Empress* v. *Nga Seik*.
(1925) 1925 Sind 204 (206): 19 Sind L. R. 96, *Khairo* v. *Emperor*.

(5) (1921) 1921 Pat. 440 (444), *Grant* v. *Emperor*.

(6) (1914) 1914 Cal. 357 (357, 358): 41 Cal. 806, *Keramuddin* v. *Emperor*.
(1885) 11 Cal. 13 (14), *Queen-Empress* v. *Ishwar Chandra Sur*.
(1867) 7 Suth. W. R. Cr. 59 (59), *Queen* v. *Mohommed*.
(1874) 22 Suth. W. R. Cr. 70 (71), *Queen* v. *Cheyat Singh*.
(1875) 23 Suth. W. R. Cr. 9 (11), *Chalam Tewari* v. *Sukedad Khan*.
(1875) 24 Suth. W. R. 10 (11), *Gunga Ram Potdar*.
(1920) 1920 All. 268 (269): 42 All. 646, *Raj Bansi* v. *Emperor*.
(1912) 13 Cri. L. Jour. 844 (845) (All.), *Jagadamba* v. *King-Emperor*.
(1885) 1885 All. W. N. 30 (30), *Empress* v. *Raghunath*.
(1871) 3 N.-W. P. 2 (2), *Queen* v. *Hutta* (Under the Code of 1861 in such cases a summons had to be sent to him before proceedings were taken).
(1902) 1902 Pun. Re. No. 3 (9), *Hazari Mal* v. *Kallu*.
(1902) Pun. L. R. 82, *Crown* v. *Kallu*.
(1926) 1926 Sind 288 (289): 20 Sind L. R. 122, *Jatoi* v. *Emperor*.

(7) (1896) 23 Cal. 493 (494), *Jhoja Singh* v. *Queen-Empress*.
(1910) 11 Cri. L. Jour. 501 (502): 4 Sind L. R. 49, *Emperor* v. *Tawakali*.
(1903) 25 All. 375 (377), *Emperor* v. *Girand*.
(1925) 1925 Oudh 228 (229): 20 Oudh Cas. 323, *Bajinath Sah* v. *Emperor* (The Court is bound to hear arguments).

(8) (1870) 2 N.-W. P. 455 (456), *Queen* v. *Budla*.
(1870) 2 N.-W. P. H. C. R. 431 (432), *Queen* v. *Niranjan Singh*.
(1870) 2 N.-W. P. 461 (464), *Queen* v. *Nuseeroodden*.
(1873) 5 N.-W. P. 80 (81), *Queen* v. *Niaz Ali*.
(1875) 7 N.-W. P. 233 (235), *Queen* v. *Kidarnath*.
(1884) 6 All. 132 (136, 137), *Empress* v. *Babua* (Conversations out of Court are not legal or proper materials to base an order for security).
(1881) 1 All. W. N. 155 (156), *Ghoalam Haidar* v. *Gholam Kadir*.
(1868-69) 5 Bom. H. C. R. 105 (107), *Reg.* v. *Dalpatram Penak*.
(1870) Rat. Un. Re. Cr. 44 (44), *Reg.* v. *Budhya*.
(1891) Rat. 585 (586), *Gaiba*.
(1908) 8 Cri. L. Jour. 128 (129): 35 Cal. 674, *Ram Chandra Haldar* v. *Emperor*.
(1878) 1 Cal. L. R. 48 (48), In the matter of *Okhil Chunder Biswas*.
(1879) 3 Cal. L. R. 72 (73), In the matter of *Umda Khanum*.
(1869) 2 Beng. L. R. App. Cr. 7, *Maghan Mirsa* v. *Chunan Teli*.
(1869) 4 Beng. L. R. 46 (53) (F.B.), *Behari Pathak* v. *Mohammad*.
(1868) 10 Suth. W. R. 1 (2), *Nursingh* v. *Narain*.
(1869) 12 Suth. W. R. Cr. 16 (17), *Queen* v. *Deo Nundun Singh*.
(1869) 12 Suth. W. R. Cr. 60 (61, 63), In the case of *Behari Pathak* v. *Mahomed Khan*.
(1872) 17 Suth. W. R. 35 (35), *Dighoo Baloo*, In re.
(1873) 20 Suth. W. R. 18 (19), *Queen* v. *Isree Pershad*.
(1874) 21 Suth. W. R. Cr. 6 (7, 8), *Ram Kishore Acharjee* v. *Arif Khan*.
(1875) 24 Suth. W. R. Cr. 30 (32), *Goshain Luchman Pershad* v. *Pohoop Narain*.
(1882) 1882 Pun. Re. No. 27 (34) Cr., *Khuda Baksh* v. *Empress*.
(1882) 1882 Pun. Re. No. 11 (Cr.), p. 15 (15), *Thana Ram* v. *Empress*.
(1907) 6 Cri. L. Jour. 278 (278): 30 Mad. 330, In re *Prathipathi Venkataswami*.
(1920) 1920 Pat. 550 (551), *Pir Ali Kasabi* v. *Emperor*.
1 Bur. 421, *Nga La Kyi*.

(9) (1870) 2 N.-W. P. 406 (407), *Queen* v. *Shunkur*.
(1869) 6 Bom. H. C. Cr. 1 (5), *Reg.* v. *Jivanji Limji*.
(1871) 16 Suth. W. R. 45 (47), *Coomar Poresh Narain*.
(1872) 18 Suth. W. R. Cr. 2 (3), *Noor*

judicial knowledge obtained as a result of local enquiry,[10] or as a result of a previous case tried by *him*.[11] Nor can he act on the evidence recorded in a previous case,[12] especially where such evidence has been rejected as unreliable in a charge for substantial offence.[13] Nor can he base his finding on evidence recorded by another Magistrate who had no jurisdiction to try the case[14] or upon a police report[15] or on the report of another Magistrate[16] which is not legal evidence. S. 117, Note 2.

But the enquiry is not restricted by the precise terms of the order issued under S. 112. Thus, where the order under that section read that *A* was by general repute a thief and a burglar, but in the enquiry evidence was directed to show that he was by *habit* a thief and a burglar and the cross examination was also directed to refute the same, it was held that the enquiry was not vitiated.[17] Similarly where the Magistrate after issuing summons under S. 107 took proceedings under S. 110 and the proper and appropriate procedure described for the trial of warrant cases was followed and there was no *prejudice* to the opposite party it was held that the irregularity, if any, was cured by the

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Mahomed v. *Nil Ratan Bagchee*.
(1873) 21 Suth. W. R. 12 (13), *Queen* v. *Bebheki*.
(1874) 21 Suth. W. R. 37 (38), *Sahebdi* v. *Kuran*.
(1874) 22 Suth. W. R. 74 (75), *Futteh* v. *Gibbon*.
(1925) 1925 Rang. 112 (112): 2 Rang. 641, *San Dun* v. *Emperor*.
Col. Dig. Cr. 15 of 1874, *Mt. Sathani* v. *Dalchand*.

(10) (1923) 1923 All. 596 (597), *Asiq Ali* v. *Emperor*.
(1924) 1924 All. 451 (453): 45 All. 749, *Darbari Singh* v. *Emperor* (Private knowledge of a Magistrate though not in itself substantive evidence against the accused, is a form of check which the trial Court may legitimately use in order to test the nature of the evidence with which it has to deal, and to negative, for example, a suggestion that the Police investigation has been unfair).
(1916) 17 Cri. L. Jour. 484 (485): 1917 All. 421, *Mathura Sahu* v. *Emperor*.
(1914) 26 Ind. Cas. 638 (639): 1914 All. 268: 37 All. 33, *Brijnandan* v. *Emperor*.
(1902) 29 Cal. 392 (393), *Alimuddin Howladar* v. *Emperor*.
(1875) 22 Suth. W. R. Cr. 79 (80), *Rajah Run Bahadur Pooree* v. *Ranee Tileeshree*.
(1925) 1925 Lah. 166 (167), *Wali Muhammad Khan* v. *Emperor*.
(1904) 1 Cri. L. Jour. 99 (101): 1903 P. R. 27, *Kada* v. *Emperor*.
(1898) 1898 Pun. Re. No. 4, pp. 9 (12), *Sukha* v. *Queen-Empress*.
(1925) 1925 Oudh 441 (442), *Ram Pargat* v. *Emperor* (Where the Magistrate merely uses the result of his local inquiry to confirm the finding it is only an irregularity and does not vitiate the proceedings).
(1925) 1925 Rang. 112 (112): 2 Rang. 641, *San Dun* v. *Emperor*.
[See also 3 I. G. Shome L. R. 27, In re *Sykes and Gopal* (Conversations out of Court with persons, however respectable, are not proper or legal material on which Magistrate should adopt proceedings under S. 107).]

(11) (1925) 1925 All. 443 (444), *Dindayal* v. *Emperor*.
(1914) 26 Ind. Cas. 653 (654): 1914 All. 546: 37 All. 30, *Mulchand* v. *King-Emperor*.

(12) (1875) 24 Suth. W. R. Cr. 4 (5), *Queen* v. *Gour Chunder Das*.
(1874) 22 Suth. W. R. 9 (10), *Dilloo Singh* v. *Ootin Singh*.
(1874) 22 Suth. W. R. Cr. 36 (37), *Queen* v. *Prosono Chunder Gosami*.
(1870) 13 Suth. W. R. Cr. 24 (25), In the matter of *Rojoni Kant Bhoomik*.

(13) (1906) 11 Cal. W. N. 129 (129): 24 Cal. 344, In the matter of *Kismat Akanda* v. *Emperor*.
(1920) 1920 Cal. 301 (302, 303), *Surendranath Manna* v. *Emperor*.
(1906) 4 Cri. L. Jour. 464 (465) (Cal.), In re *Kismat Akanda*.
(1918) 44 Ind. Cas. 463 (464): 1918 All. 257: 40 All. 372, *Inder* v. *Emperor*.
(1919) 17 Cri. L. Jour. 184 (185): 1919 Oudh 360, *Badlu* v. *Emperor*.
(1916) 52 Ind. Cas. 887 (888): 1916 Oudh 122, *Gulab Chand* v. *Emperor*.
S. C. Oudh 70, *Queen-Empress* v. *Ram Pattan*.

(14) (1885) 1885 All. W. N. 30 (30), *Empress* v. *Raghunath*.
(1875) 24 Suth. W. R. 52 (53), *Hurnath Guho* v. *Thakurta*.

(15) (1929) 1929 Lah. 504 (505): 10 Lah. 155, *Ujagar Singh* v. *Emperor*.
(1869) Rat. 23, *Reg.* v. *Sundar*.
(1871) 6 Ben. L. R. App. 148 (148), *Abhaya* v. *Baro*.
(1866) 5 Suth. W. R. 2 (2), *Alum Sheik*.
(1868) 10 Suth. W. R. 55 (55), *Rajendra Kishore Roy*.
(1869) 11 Suth. W. R. 35 (35), *Comul Kishen*.
(1871) 15 Suth. W. R. 42 (43), *Abhaya Chowdhry* v. *Baro*.
(1874) 21 Suth. W. R. Cr. 28 (28), *Queen* v. *Ramchandra Roy* (But a Magistrate may act upon a Police report as a piece of credible *information*).

(16) (1871) 8 Bom. H. C. Cr. 162 (163), *Reg.* v. *Irapa Bin Basapa*.
(1869) 6 Bom. H. C. R. 1 (5), *Reg.* v. *Jivanji*.

(17) (1912) 13 Cri. L. Jour. 784 (784) (Cal.), *Deputy Legal Remembrancer* v. *Kadir Mirza*.

S. 117, Notes 2--3.

provision of S. 537 of the Code.[18] In the case cited below[19] it was held that where, in proceedings under S. 107, the preliminary order did not contain sufficient particulars of the information upon which the Magistrate acted and objection was taken on that ground, that the Magistrate had power to order an amendment of the same by giving full particulars.

The words "such further evidence as may appear necessary" refer to evidence *ejusdem generis* with the evidence described in the words immediately preceding. Hence the "further evidence" which a Magistrate can take under this section must relate to the information on which action has been taken. Evidence as to occurrences after the receipt of information by the Magistrate under S. 110 is therefore inadmissible under this section.[20]

Inquiries under this chapter are governed by ordinary rules of evidence and evidence not admissible under the Evidence Act, cannot be admitted in proceedings under this section.[21]

Inquiries under this section ought not to be long drawn out. Magistrates should be careful to see that unnecessary witnesses are not examined.[22]

3. **Effect of consent to give security—Whether enquiry necessary.**—Where, in response to the notice issued under S. 112, the person sought to be bound over appears before the Magistrate and expresses his willingness to furnish the security as required by the notice, is the Magistrate still bound to hold an enquiry as to the truth or otherwise of the information upon which he has taken action? Upon this point there is a conflict of judicial opinion. The High Courts of Calcutta,[1] Lahore,[2] Madras,[3] the Chief Court of Lower Burma,[4] and Upper Burma[5] and the Judicial Commissioner's Court of Nagpur[6] have held that the mere consent or readiness to furnish security does not amount to a plea of guilty to the charges contained in the preliminary order and the Court is not justified in binding him over on the strength of such consent alone without any inquiry and evidence. The High Court of Allahabad[7] dissenting from the view taken in its earlier decisions[8] has, on the

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(18) (1913) 14 Cri. L. Jour. 65 (66) (Mad.), *Ranganma Naick* v. *Emperor*.

(19) (1902) 29 Cal. 389 (391), *Sarat Chandra Roy* v. *Bepin Chandra Roy*.

(20) (1914) 22 Ind. Cas. 996 (998): 1914 All. 382: 36 All. 239, *Jaggan* v. *Emperor*.

(21) (1914) 1914 All. 280 (282), *Bechai* v. *King-Emperor*.

(22) (1914) 1914 All. 430 (432), *Govind Sahai* v. *Emperor*.

Note 3.

(1) (1908) 8 Cri. L. Jour. 128 (129): 35 Cal. 674, *Ram Chandra Haldar* v. *Emperor*.

(1876) 25 Suth. W. R. 15 (15), *Goloke Chunder* v. *Magte*.

(2) (1925) 1925 Lah. 135 (136), *Joti Malik* v. *Emperor*.

(1917) 18 Cri. L. Jour. 847 (848): 1917 Lah. 304: 1917 P. R. 27, *Ramchandra Haldar* v. *Emperor*.

(1924) 81 Ind. Cas. 198 (198): 1925 Lah. 135, *Joti Malik* v. *Emperor*.

(1922) 23 Cri. L. Jour. 175 (2) (176) (Lah.), *Karam* v. *Emperor*.

(1915) 16 Cri. L. Jour. 784 (784): 1915 Lah. 82: 1915 P. R. 24.

(1929) 1929 Lah. 504 (505): 10 Lah. 155, *Ujagar* v. *Emperor*.

(3) (1910) 11 Cri. L. Jour. 393 (397) (Mad.), *Palaniappa Asary*, In re.

(1907) 6 Cri. L. Jour. 278 (278): 30 Mad. 330, In re *Prathipathe Venkataswami*.

(4) (1900-02) 1 Low. B. R. 79 (80), *Crown* v. *Maung Naing*.

(1893-1900) Low. B. R. 637 (637), *Queen-Empress* v. *Nga Kwm*.

(5) (1902-03) Up. Bur. R. 1 (Cr.) (1), *Emperor* v. *Nga Yan Shin*.

(6) (1918) 1918 Nag. 140 (141), *Emperor* v. *Rai Singh*.

(1920) 1920 Nag. 145 (146), *Prabhudas* v. *Emperor* (A statement of a person that he is not a quarrelsome person but is willing to give security would not justify an order requiring him to furnish security).

(7) (1928) 1928 All. 270 (272): 50 All. 599, *Emperor* v. *Kishan Narain*.

(1924) 1924 All. 269 (270): 46 All. 109, *Emperor* v. *Ghariba*.

(1927) 1927 All. 579 (580), *Nasir Ahmad* v. *King-Emperor*.

(8) (1926) 1926 All. 614 (615), *Ram Charan* v. *Emperor*.

(1920) 1920 All. 29 (30), *Jagdat Tewari* v. *Emperor*.

(1919) 1919 All. 19 (20): 42 All. 142, *Chander Shekar* v. *Emperor*.

1916) 17 Cri. L. Jour. 157 (158): 1916 All. 316, *Emperor* v. *Sukhdeo*.

(1870) 2 N.-W. P. 461 (463, 464), *Queen* v. *Nuseerooddeen*.

other hand, held that where the notice under S. 112 is read over to the person proceeded against and after understanding it he consents to give security his action really amounts to a plea of guilty and no enquiry is necessary. In its latest decision,[9] however, the High Court of Allahabad has held that it depends upon the facts and circumstances of each case as to whether the consent to give security amounts to a plea of guilty. In the above case where the person sought to be bound over after denying the several charges contained in the preliminary order nevertheless consented to give security it was held that the consent could not be construed to be a plea of guilty.

In the undermentioned case[10] the Judicial Commissioner's Court of Sind has held that even where the person sought to be bound over admits the several allegations contained in the notice under S. 112 the Court is not justified in dispensing with an inquiry.

The Judicial Commissioner's Court of Peshawar has held that it is open to the Magistrate to bind over a person on his own admission of the allegations made against him but that such admission must be clear and unambiguous.[11]

3-A. Reference to arbitration.—Proceedings for taking security for keeping the peace or for good behaviour cannot be referred to arbitration.[1]

4. Mode of enquiry.—Sub-S. 2 prescribes the manner in which enquiries under the section are to be made. In proceedings for security for *keeping the peace*, the procedure prescribed by the Code for the trial of *summons cases* ought to be followed. Where the Court tries such a case as a warrant case and orders rigorous imprisonment in default of furnishing security it has been held that the order is *illegal*.[1] The evidence in such proceedings should be recorded as required by S. 355 of the Code.[2] Where the complainant and his witnesses are absent on the date fixed for hearing, the proper course for the Magistrate is to pass an order of discharge under S. 119 holding that it is not proved that the person in respect of whom the inquiry is made should execute a bond. S. 247 of the Code does not apply to such a case as there is no summons issued and there is no *accused* person before the Court.[3]

In proceedings for security for *good behaviour* the procedure prescribed for the trial of *warrant cases* should be followed.[4] The evidence in such a case should be recorded in the manner prescribed by S. 360 of the Code. Otherwise, it has been held, that the trial is vitiated.[5] According to the procedure prescribed for the trial of a warrant case an accused person cannot be

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(9) (1928) 1928 All. 357 (359), *Emperor* v. *Kurwa*.

(10) (1925) 1925 Sind 321 (321): 19 Sind L. R. 101, *Allahdito* v. *Emperor*.

(11) (1935) 1935 Pesh. 116 (118, 119), *Sadhu Singh* v. *Emperor*.

Note 3-A.

(1) (1931) 1931 Pat. 92 (95), *Ramautar Sah* v. *Langat Singh*.

Note 4.

(1) (1924) 1924 All. 695 (696), *Uttam Chand Singh* v. *Emperor*.

(2) (1918) 1918 Pat. 448 (450), *Ramdhari* v. *King-Emperor*.

(1906) 4 Cri. L. Jour. 368 (369): 33 Cal. 1036, *Shaik Babu* v. *Emperor* (Prior to the amendment of S. 362 by Act XVIII of 1923 it was held that a Presidency Magistrate was not bound to record any evidence. The decision is not now good law).

[See also (1870) 13 Suth. W. R. 20 (21), *Queen* v. *Puriag* (Evidence recorded in vernacular contrary to S. 267 of the Code of 1861—Held order not invalid).]

(3) (1927) 1927 Cal. 343 (343), *Asraf Ali Saiyal* v. *Nasur Sarkar*.

(4) (1872-92) 1 Low. Bur. R. 79 (80), *Crown* v. *Maung Naing*.

(1872-92) 1 Low. Bur. R. 421 (422), *Empress* v. *Nga Law Kye*.

(1923) 1923 Bom. 255 (257): 47 Bom. 438, *Emperor* v. *Pitre*.

(5) (1925) 1925 Cal. 816 (816): 52 Cal. 470, *Nawab Ali* v. *Emperor*.

(1925) 1925 Cal. 720 (721): 52 Cal. 632, *Santan Bhattacharya* v. *Emperor*.

(1925) 1925 Cal. 940 (940): 52 Cal. 668, *R.* v. *Jafar*.

(1909) 10 Cri. L. Jour. 122 (123) (Cal.), *Emperor* v. *Nepal Shikary* (Presidency Magistrate not absolved from the duty of taking evidence).

S. 117, Note 4.

called upon to enter upon his defence until the prosecution closes its case, and no further evidence can be admitted unless the Court chooses to act under S. 540 for which valid reasons must be recorded. Where, in proceedings under S. 110 the Court recalls and examines prosecution witnesses after the defence is closed without recording any reasons it has been held that the procedure is erroneous and prejudicial to the person proceeded against.[6]

There is a conflict of judicial opinion as to whether S. 256 of the Code which gives the right to an accused person after the framing of charge to recall the prosecution witnesses for further cross-examination applies to proceedings for security for good behaviour. According to the High Courts of Calcutta,[7] Lahore,[8] Madras[9] and Judicial Commissioner's Court of Sind[10] S. 256 does not apply to such proceedings. The reason for such a view is that the object of the legislature in enacting S. 256 and giving the accused a right to recall and further cross-examine the prosecution witnesses is that it is only after the charge is framed that accused comes to know of the definite case he has to meet, and that inasmuch as in security proceedings the preliminary order under S. 112 itself constitutes the charge and no fresh charge is framed in the inquiry, the maxim "*cessante rationes legis cessat ipsa lex* (the reason for the law ceasing, the law itself ceases to apply) applies to the case and therefore S. 256 does not apply. The High Court of Allahabad,[11] and, the Chief Court of Rangoon[12] have, however, taken a contrary view and held that the provisions of S. 256 do apply to such proceedings.

Whatever doubt and conflict there may be as regards the applicability of S. 256, there is no doubt, that S. 257 applies to proceedings for good behaviour. The Magistrate can under the latter section recall the prosecution witnesses for a further examination at the instance of the defence provided the requirements of that section are fulfilled.[13] Under S. 257 the Court is also bound to issue processes for summoning the defence witnesses cited unless it considers that the application for such summons have been made vexatiously to defeat and delay the ends of justice.[14]

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(6) (1912) 13 Cri. L. Jour. 772 (772) (All.), *Ganga Singh* v. *King-Emperor*.

(7) (1908) 7 Cri. L. Jour. 146 (151, 152): 35 Cal. 243, *Chintaman Singh* v. *King-Emperor*.

(1908) 12 Cal. W. N. 50 (Notes).

(8) (1927) 1927 Lah. 470 (470): 8 Lah. 265, *Bija* v. *Emperor*.

(1916) 17 Cri. L. Jour. 84 (85): 1916 Lah. 295: 1916 P. R. 1, *Crown* v. *Ahmad Baksh*.

(9) (1930) 1930 Mad. 331 (335, 336): 53 Mad. 173, *In re Karuthaswami Servai*.

[But see (1913) 25 Mad. L. J. S. N. 15 (Submitted not good law in view of the later Full Bench decision).

(10) (1933) 1933 Sind 8 (9): 26 Sind L. R. 416, *Emperor* v. *Dharam Das Lilaram*.

(11) (1930) 1930 All. 274 (275): 52 All. 448, *Chandan* v. *Emperor*.

(1927) 1927 All. 660 (661, 662): 50 All. 71, *Tirlok* v. *Emperor*.

(12) (1911) 12 Cri. L. Jour. 89 (89) (Rang.), *Emperor* v. *Lansha*.

(1905) 2 Cri. L. Jour. 462 (463): (1905) 1 U. B. R. 29, *King-Emperor* v. *Nga Po*.

[But see (1933) 1933 Rang. 29 (29, 30), *Zamin* v. *Emperor* (Following 35 Cal. 243 and dissenting from 12 Cri. L. Jour. 89—Decision of a single Judge).]

(13) (1930) 1930 Mad. 331 (335, 336): 53 Mad. 173 (F.B.), *Karuthaswami Servai*, In re.

(14) (1902) 26 Bom. 418 (421), *Emperor* v. *Purshottam Kera*.

(1907) 6 Cri. L. Jour. 1 (6) (Cal.), *Wahid Ali* v. *Emperor*.

(1919) 49 Ind. Cas. 649 (650): 1919 Cal. 69, *Amirulla Pramanik* v. *Emperor* (Held that it is not open to the trying Magistrate to put an arbitrary limit on the witnesses whose evidence the defence desires to adduce).

(1918) 22 Cal. W. N. 91 (91), *Donga* v. *King-Emperor* (Do.).

(1924) 1924 Cal. 196 (197), *Ponthiram* v. *Emperor* (Held, that under the circumstances of the case, the accused should be given further opportunity of examining his witnesses).

(1932) 1932t Lah. 577 (578), *Pahlwan* v. *Emperor*.

(1906) 4 Cri. L. Jour. 363 (365) (Lah.),

S. 117, Notes 4—5.

It has been held that S. 342 of the Code does not apply to proceedings for security for good behaviour for the reason that the person proceeded against in security cases is not *accused of any offence*. Hence it has been held that an omission to question him at the close of the prosecution case does not vitiate the trial and the irregularity even if any, is also cured by S. 537.[15]

5. **Applicability of other provisions of the Code to inquiries under this section.—**

(*i*) *Applicability of S.* 250.—A person against whom proceedings are taken under this chapter is not accused of any *offence*. Hence it has been held that the provisions of S. 250 will not apply to enquiries under this section and Court cannot pass an order for compensation.[1]

(*ii*) *Applicability of S.* 202.—It has been held by the High Court of Madras[2] that in proceedings under this section the Court has power to direct an inquiry or investigation by a subordinate Magistrate or the Police under the provisions of S. 202. But such an inquiry cannot be directed in a pending proceeding. It ought to be done before the commencement of the inquiry.[3]

(*iii*) *Applicability of S.* 350.—The provisions of S. 350 of the Code apply to proceedings under this section and a *de novo* inquiry can be ordered in the case of a change of Magistracy.[4]

(*iii-a*) *Applicability of S.* 443.—Section 443 contemplates cases of an *offence* being inquired into or tried and does not apply to inquiries under this section.[4-a]

(*iv*) *Applicability of S.* 517.—It has been held that a proceeding under this section is an "inquiry" within the meaning of S. 517 and the Court is empowered to pass an order with regard to the property produced before the Court though there is no proof of an offence committed with reference to the property.[5]

M. R. v. *Emperor.*

(1912) 13 Cri. L. Jour. 176 (176) (Lah.), *Balmokand* v. *Manakchand.*

(1901) 1901 Pun. L. R. 129, *Narain Das* v. *Emperor.*

(1914) 1914 All. 430 (431), *Govind Sahai* v. *King-Emperor* (Held, that when a Magistrate is of opinion that expenses for calling witnesses should be charged from the parties, he should realize the expense before issuing the summons).

[See (1931) 1931 Lah. 56 (56), *Emperor* v. *Nand Lal* (In this case S. 257 was wrongly applied to proceedings under S. 107).]

(15) (1924) 1924 Cal. 392 (393): 50 Cal. 985, *Benode Behari Nath* v. *Emperor.*

Note 5.

(1) (1927) 1927 All. 531 (532): 49 All. 750, *Baijnath* v. *Kali Charan.*

(1922) 1922 All. 321 (321), *Mannu Khan* v. *Chandi Prasad.*

(1914) 1914 All. 370 (371): 36 All. 382, *Bindachal Prasad Rai* v. *Lal Behari Rai.*

(1910) 11 Cri. L. Jour. 446 (446) (Cal.), *Ram Sukh* v. *Mahadeo.*

(1893) 15 All. 365 (367), *Lakhpat*, In re.

(1901) 25 Bom. 48 (49), *Govind* v. *Rachaya.*

(1902) 1902 P. R. 33 (86), *Crown* v. *Kaura and Lahori.*

(1896) 1896 Pun. Re. No. 4 (13) (Cr.), *Natha Singh* v. *Pala Singh.*

(1893) 1893 Pun. Re. No. 16 (70) (Cr.), *Hazari Mal* v. *Meman Mal.*

(2) (1926) 1926 Mad. 521 (523, 525): 49 Mad. 315, *Sanjivi Reddi* v. *Koneri Reddi* (Following 2 Weir 51. Coutts-Trotter, C. J. observed that the Legislature should amend S. 202 so as to make it expressly applicable to security proceedings).

(3) (1896) 1896 All. W. N. 140 (141), *Chajju*, In re.

(4) (1925) 1925 Oudh 228 (229): 27 Oudh Cas. 323, *Baijnath Sah* v. *Emperor.*

(1920) 1920 Mad. 337 (342, 344): 43 Mad. 511, *Yelluchuri Venkata Chennaya* v. *Emperor.*

(1879) 4 Cal. L. R. 452 (454), *Baroda Kant Roy* v. *K. Moonshee.*

(4-a) (1933) 1933 Lah. 1019 (1020), *W. G. Christy* v. *Mrs. Doris Christy.*

(5) (1919) 1919 Mad. 20 (21, 22): 42 Mad. 9, *Pydi Ramana*, In re (16 Cri. L. Jour. 811 not followed).

S. 117, Notes 5—6.

(*v*) *Applicability of S.* 545.—Section 545 does not apply to proceedings under this section as no fine can be imposed in security cases. An order therefore directing a person ordered to furnish security to pay costs to the complainant has been held to be *ultra vires*.[6]

(*vi*) *Transfer under S.* 192.—*See* Notes to S. 192, *infra*.

(*vii*) *Transfer under S.* 526.—As to whether proceedings under this section can be transferred under S. 526, *see* Notes to S. 526 and the following cases.[7]

(*viii*) *Applicability of S.* 190 (1) (*c*).—Although S. 190 (1) (*c*), in terms applies only to offences, it has been held that the principle of that section applies to proceedings under this section. Where a Magistrate has been influenced by his preliminary local investigation in coming to a finding as to the guilt of an accused person in proceedings under S. 110, it has been held that the Magistrate should not have tried the case himself.[8]

(*ix*) *Bail and detention in custody.*—Persons against whom security proceedings are taken are entitled to bail as of right except in cases where the Court takes action under sub-S. (3) of this section or under sub-S. (4) of S. 107.[9] Section 167 of the Code does not apply to proceedings under this section and a Second Class Magistrate has no power to *remand* to custody a person against whom proceedings are instituted under S. 110.[10] In the case cited below[11] it was held that to send a person to jail while an inquiry under security proceedings is pending against him is illegal and prejudicial to his interests.

6. Interim Security—Sub-S. (3).—Sub-S. (3) has been newly introduced in the present Code. The object of the provision is to empower the

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(6) (1924) 1924 All. 694 (695), *Sheo Prasad Singh* v. *Mahangoo Nonia*.

(7) (1894) 16 All. 9 (11), In the matter of *Amar Singh* (Held, proceedings under the section cannot be transferred).
(1908) 7 Cri. L. Jour. 214 (215) (All.), *Emperor* v. *Mahendra Singh* (Do.).
(1914) 1914 Lah. 281 (283): 1914 P. R. 5, *Ahmad Baksh* v. *Emperor* (Do.).
(1914) 1914 Lah. 281 (283): 1914 Pun. Re. 5 (Do.).
(1897) 19 All. 291 (293), In the matter of *Gudar Singh* (When a Magistrate has "acted" within the meaning of S. 117 of the Code no order can be made subsequently under S. 526 of the Code, transferring the case from his Court).
(1900) 3 Oudh Cas. 247 (249), *Mathura Pershad* (Held proceedings under the section can be transferred).
(1914) 1914 Cal. 792 (793): 41 Cal. 719, *Wazed Ali Khan Panee* v. *King-Emperor* (Do.).
(1914) 1914 All. 262 (264), *Jafar Husain* v. *Emperor* (Transfer ordered in this case).
(1907) 11 Cal. W. N. ccxxxi, *Tarapati Sarkar* v. *Emperor* (Transfer ordered).
(1912) 13 Cri. L. Jour. 746 (747, 748): 1913 P. R. 1, *Baggu Mal* v. *King-Emperor* (No opportunity given to accused to move for a transfer—Order for security under S. 110 quashed by the High Court).
(1914) 22 Ind. Cas. 996 (998): 1914 All. 382: 36 All. 239, *Emperor* v. *Jaggan* (Grounds for transfer. The Court will have to be satisfied whether the Magistrate may be prejudiced).
(1910) 14 Cal. W. N. clxvii (Stay of proceedings ordered).
(1933) 1933 Pat. 116 (116), *Girdhari Ahir* v. *Emperor* (Stay of 110 proceedings refused to be granted).

(8) (1918) 45 Ind. Cas. 95 (95): 1918 Pat. 98, *Godhan Ahir* v. *Emperor*.

(9) (1933) 1933 Rang. 164 (164), *U Gaudama* v. *Emperor*.
(1933) 1933 Rang. 165 (165), *Maung Saw Hlaing* v. *Emperor*.
(1904) 1 Cri. L. Jour. 775 (778): 32 Cal. 80, *Raghunandan Pershad* v. *Emperor*.
[See also (1911) 12 Cri. L. Jour. 533 (534) (Bom.), *Emperor* v. *Gulam Husain*.]

(10) (1917) 18 Cri. L. Jour. 403 (404): 1918 Mad. 1186: 39 Mad. 928, In re *Subbaraya Chetti*.

(11) (1914) 1914 Bom. 199 (199), *Bhau Savalram Kotasthane* v. *Emperor*.

Magistrate to direct a person against whom an order under S. 112 has been made to execute a bond for keeping the peace or maintaining good behaviour *until the conclusion of the inquiry*. The power so to direct is made to depend upon the Magistrate considering that *immediate measures* are necessary for any of the following purposes:— S. 117, Notes 6—7.

(1) for the prevention of
  (*a*) a breach of the peace,
  (*b*) a disturbance of public tranquillity,
  (*c*) the commission of any offence.
(2) for the public safety.[1]

It is incumbent upon the Court to state in writing that the requirements of the section have been fulfilled. A mere statement that it is passed 'on account of emergency' is not sufficient.[2] Where the Court passes an *interim* order for security the terms of the security should not be more onerous than those specified in the order under S. 112.[3]

The provisions of Chap. XXXIX of the Code relating to bail do not apply to an order passed under this sub-section. The High Court cannot under S. 498 reduce the amount of security ordered to be furnished by the Magistrate under this sub-section, though it can reduce the same under its *inherent powers* where it is too high.[4] The reduction by the High Court of the amount of the *interim* security does not fetter the discretion of the Magistrate as to the amount of the final security that he may order.[4-a] The Court has jurisdiction to pass an order for *interim* security notwithstanding that an application is made under S. 526, Cl. 8.[5]

7. Evidence of General repute—Sub-S. (4).—Where a person is charged under S. 110 as being a habitual offender, or as being a desperate and dangerous person, his character becomes a fact in issue. Under S. 5 read with Explanation 1 to S. 54 of the Evidence Act, evidence as to such character becomes relevant. But under the provisions of the said Act, evidence, in such cases, can be given only of *general* reputation or *general* disposition and not of *particular acts* by which such reputation or disposition is shown, the only exception to the rule being that a *previous conviction*, though a particular act, may be proved as evidence of bad character. (Section 55 of the Evidence Act). This section provides another exception to that rule by enacting that the fact that a person is a habitual offender or is a desperate and dangerous character may be proved, for the purpose of an enquiry under this section, by evidence of general repute or *otherwise*, i.e., by particular acts by which such character is established.[1] The view held in some cases[2] that this sub-section is an exception

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Note 6.

(1) (1926) 1926 Sind 276 (277), *Pir Shah Murad Shah* v. *Emperor*.
  (1916) 17 Cri. L. Jour. 197 (199): 1916 Cal. 263: 43 Cal. 277, *Pardip* v. *Emperor*.
(2) (1927) 1927 Sind 148 (150): 21 Sind L. R. 93, *Sahib Dino* v. *Emperor*.
(3) (1926) 1926 Sind 276 (277): 20 Sind L. R. 358, *Pir Shah Murad* v. *Emperor*.
(4) (1930) 1930 Lah. 529 (529), *Jagir Singh* v. *Emperor*.
(4-a) (1930) 1930 Lah. 529 (530), *Jagir Singh* v. *Emperor*.
(5) (1928) 1928 All. 268 (268), *Haji Baqridi* v. *Emperor*.
  (1927) 1927 Sind 148 (150, 151), *Sahib Dino* v. *Emperor*.

Note 7.

(1) (1920) 1920 Oudh 255 (256, 257): 28 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.
(2) (1920) 1920 Mad. 534 (535): 43 Mad. 450, In re *Kottamiddu Ranga Reddi*.

S. 117, Note 7.

to the general rule that character evidence is inadmissible is not correct, for, as stated above, evidence as to character is always admissible under the Evidence Act where such character is a fact in issue.

Reputation means what is thought of a person by others, and the general reputation of a person is the *collective opinion* of his fellow townsmen in whose midst he lives,[3] though it need not necessarily be the opinion of the *entire community*.[4] Evidence which discloses the existence of such *collective opinion* is evidence in proof of general reputation.[5]

General reputation must be distinguished from *rumour* which is inadmissible in evidence.[5-a] The distinction may be illustrated as follows. *A* and *B* are on bad terms. Theft takes place in the house of *B*. It is suspected that *A* is at the bottom of the theft. A few believe in this and a few do not. This is a *rumour*. Again a theft takes place in the house of *C* with whom *A* is inimical. *A* is again suspected and there is again a rumour. Suppose instances like this become numerous. In course of time people begin to believe and talk about him as a thief and regard him as a thief. This is a stage where *A* begins to have a *reputation* among his neighbours of being a thief. The roots of a bad reputation are thus often planted in rumour, but it cannot be laid down by any hard and fast rule how many instances build up a reputation and how long it takes for rumour to ripen into reputation.[6] In *Rai Ishri Pershad* v. *Empress*.[7] Their Lordships of the Calcutta High Court observed as follows:—

"It is hardly necessary to say that evidence of rumour is mere hearsay evidence, and hearsay evidence of a *particular fact*. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow townsmen whether they happen to know him or not, as a man of good repute, that is strong

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(3) (1920) 1920 Oudh 255 (257): 28 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.
(1923) 1923 Lah. 419 (419, 420), *Abdullah* v. *Emperor*.
(1925) 1925 Lah. 166 (167), *Muhammad Khan* v. *Emperor*.
(1915) 16 Cri. L. Jour. 106 (106, 107): 1914 Lah. 553, *Jhandu Ram* v. *Crown*.
(1903) 4 Pun. L. R. No. 59, p. 241 (242), *Sher Singh*.
(1898) 1898 Pun. Re. No. 2 (4) (Cr.), *Ajmal Shah* v. *Empress*.
(1897) 1897 Pun. Re. 2 (3), *Masti* v. *Queen-Empress*.

(4) (1914) 1914 All. 280 (282), *Bechai* v. *Emperor*.
(1920) 1920 Mad. 534 (536): 45 Mad. 450, In re *Kottamiddu Ranga Reddi*.
(1925) 1925 Oudh 473 (474, 475), *Kewal Kishore* v. *Emperor*.
(1907) 6 Cri. L. Jour. 97 (99): 10 Oudh Cas. 132, *Gokul* v. *Emperor*.

(5) (1914) 1914 All. 280, *Bechai* v. *Emperor*.

(5-a) (1924) 1924 Pat. 500 (501), *Ramlagan* v. *Emperor*.
(1904) 1 Cri. L. Jour. 984 (986) (All.), *Rajendra Prasad Sahi* v. *Emperor*.
(1924) 1924 Oudh 187 (188), *Raghu Detta* v. *Emperor*.
(1918) 47 Ind. Cas. 277 (285): 1919 Mad. 633, *Kripa Sindu Naiko* v. *Emperor*.
(1896) 23 Cal. 621 (628, 629), *Rai Isri Pershad* v. *Queen-Empress*.
(1904) 1 Cri. L. Jour. 984 (986) (All.), *Rajendra Prasad Sahi* v. *King-Emperor*.

(6) (1933) 1933 Pat. 189 (191), *Ferangi Rai* v. *Emperor*.
[See also (1921) 1921 Cal. 625 (627), *Jogendra Kumar* v. *Emperor*.]
[But see (1915) 26 Ind. Cas. 153 (155): 1914 All. 280, *Bechai* v. *Emperor* (So far as it is said that the opinion of a witness as to another's character is relevant the decision is not correct).]
[See also (1927) 1927 All. 394 (395), *Raj Narayan Pande* v. *King-Emperor*.]

(7) (1896) 23 Cal. 621 (628, 629), *Rai Isri Pershad* v. *Queen-Empress*.

See also the following cases holding a similar view:—
(1921) 1921 Cal. 625 (627), *Jagendra Kumar Nag* v. *Emperor*.
(1903) 1903 All. W. N. 181 (181), *Emperor* v. *Jagannath*.
(1928) 1928 Lah. 49 (49): 9 Lah. 133, *Kundan* v. *Emperor*.
(1880) 1880 Pun. Re. No. 6 (13), *Adil* v. *Empress* ("General character" includes general *reputation* as well as general *disposition*).
(1902) 5 Oudh Cas. 203 (210), *Dhunia Singh* v. *King-Emperor*.
(1928) 1928 Notes 55 (*f*), *Rahman* v. *Emperor*.
(1900-02) 1 Low. Bur. R. 90 (91), *Crown* v. *Nga Nyen*.

S. 117, Note 7.

evidence that he is a man of that character. On the other hand if the state of things is that the body of his fellow townsmen who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character; but to say that because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, those rumours are in themselves evidence under this section, is to say what the law does not justify us in saying''.

As has been seen already, it is evidence of the *general reputation* or *collective opinion* of the neighbourhood that is made admissible both by the Evidence Act and by this section. The *individual opinion* of specified individuals as to the character of another person, does not constitute general reputation, and evidence thereof is merely opinion evidence which, under the provisions of the Evidence Act, is inadmissible except in the particular cases specified in that Act.[8] A mere suspicion on the part of the witness as to the complicity of the person sought to be proceeded against in certain isolated offences, is only his individual opinion and is not *per se* admissible as evidence of general repute.[9] The mere fact that the witness is a police-officer will not made his evidence any the weightier or admissible.[10] Similarly police records of suspected cases[11] or

(8) (1920) 1920 Oudh 255 (257): 28 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.
(1929) 1929 All. 273 (276): 51 All. 663, *Emperor* v. *Ram Lal*.
(1922) 66 Ind. Cas. 513 (514) (Cal.), *Ashutosh Das* v. *Emperor*.
(1920) 1920 Mad. 534 (535): 43 Mad. 450, In re *K. Ranga Reddi*.
(1924) 1924 Pat. 500 (501), *Ram Lagan Ahir* v. *Emperor*.
(1929) 1929 All. 650 (652): 51 All. 275, *Emperor* v. *Kumera*.

(9) (1929) 1929 All. 273 (275, 276): 51 All. 663, *Emperor* v. *Ram Lal*.
(1928) 1928 All. 1 (3), *Emperor* v. *Babu Ram*.
(1929) 1929 All. 813 (813), *Ram Rup Bhar* v. *Emperor*.
(1927) 1927 All. 394 (395), *Raj Narain Pandey* v. *Emperor*.
(1927) 1927 All. 146 (147), *Din Dayal* v. *Emperor*.
(1924) 1924 All. 569 (569), *Alim-ud-din* v. *Emperor*.
(1924) 1924 All. 142 (142), *Jandoo Singh* v. *Emperor*.
(1919) 1919 All. 136 (137), *Jabruddin* v. *Emperor*.
(1913) 14 Cri. L. Jour. 407 (408) (All.), *Raham Ali* v. *King-Emperor*.
(1920) 1920 Cal. 301 (303), *Emperor* v. *Bidhyapathi*.
(1912) 13 Cri. L. Jour. 772 (773) (All.), *Ganga Singh* v. *Emperor*.
(1904) 1 Cri. L. Jour. 984 (987) (All.), *Rajendra Prasad Sahi* v. *Emperor*.
(1929) 1929 Notes 10 (*a*), *Gulam Mohammad* v. *Emperor*.
(1926) 1926 Jour. 148 (2), *Sohna* v. *Emperor*.
(1907) 5 Cri. L. Jour. 191 (193) (Cal.), *Alep Pramanik*.
(1902) 29 Cal. 779 (781), *Kalai Haldar* v. *Emperor*.
(1877) 1 Cal. L. R. 130 (131, 132), *Kokoor Singh*, In re.
(1929) 30 Cri. L. Jour. 220 (220) (Lah.), *Ghulam Mahommad* v. *Emperor*.
(1929) 1929 Lah. 41 (41): 9 Lah. 586, *Kehr Singh* v. *Emperor*.
(1928) 1928 Lah. 49 (49): 9 Lah. 133, *Kundan* v. *Emperor*.
(1930) 1930 Lah. 345 (346), *Lalu* v. *Emperor*.
(1926) 1926 Lah. 45 (46), *Sohan Singh* v. *Emperor*.
(1921) 1921 Lah. 179 (179), *Jagat Singh* v. *Emperor*.
(1880) 1880 Pun. Re. No. 32 (79), *Ishar Singh* v. *Empress*.
(1928) 1928 Notes 55 (*f*), *Rahman* v. *Emperor*.
(1919) 1919 Mad. 633 (635), *Kripasindu Naiko* v. *Emperor*.
(1920) 1920 Oudh 226 (227): 23 Oudh Cas. 371, *Raja Ram* v. *Emperor*.
(1924) 1924 Pat. 498 (499), *Shaikh Amjad Ali* v. *King-Emperor*.
(1920) 1920 Low. Bur. 86 (86, 87), *Emperor* v. *Pyu Zin*.
(1872-1892) Low. Bur. R. 422 (423), *Queen-Empress* v. *Nga Tun E*.
(1928) 1928 All. 357 (358), *Emperor* v. *Kurwa*.
(1929) 1929 All. 599 (600), *Dallee Singh* v. *Emperor*.
[See however (1929) 1929 All. 650 (651, 652): 51 All. 275, *Emperor* v. *Kumera* (The statement of a witness that he himself suspected the accused person of having committed a certain offence is admissible in such proceedings).]

(10) (1929) 1929 All. 273 (275): 51 All. 663, *Emperor* v. *Ram Lal*.
(1915) 1915 All. 144 (145), *Abdul Khaliq* v. *Emperor*.
(1905) 2 Cri. L. Jour. 86 (87) (All.), *Emperor* v. *Husain Ahmad Khan*.

(11) (1918) 22 Cal. W. N. 148 (148), *Jharia* v. *King-Emperor*.
(1907) 6 Cri. L. Jour. 256 (257): 10 Oudh Cas. 168, *Dial* v. *Emperor*.
(1912) 13 Cri. L. Jour. 9 (13) (All.), *Babu Pershad* v. *Emperor*.
(1918) 46 Ind. Cas. 841 (841): 1918 Oudh 190: 21 Oudh Cas. 132, *Chandi* v. *Emperor*.
(1933) 1933 Oudh 251 (252, 253), *Huldar Ali* v. *Emperor* (Report regarding commission of burglaries and casting suspicion upon particular person though cannot be used as substantive evidence yet it can be used for corroborating the evidence of prosecution witnesses).

S. 117, Note 7.

history sheets maintained by the police[12] or entries in Thana Village crime note book[13] or police diaries[14] would all be inadmissible as evidence of general repute.

But although suspicion is not substantive evidence of general repute, the facts which would not be admissible at an ordinary trial, is not admissible under over a considerable period may be admissible as corroborative evidence of bad repute under S. 11, sub-S. (2) of the Evidence Act.[15] Conversely, in a doubtful case, the fact that a person has never been suspected of any offence may weaken the evidence of bad repute given against him.[16]

Enquiries under this section are governed by the ordinary rules of evidence, and therefore, evidence, whether of general repute or of particular facts which would not be admissible at an ordinary trial, is not admissible under this section.[17] Where, therefore, evidence of general repute is to be let in under sub-S. (4) it must be *direct* evidence in accordance with the rules of evidence (S. 60 of the Evidence Act.)[17-a] Thus if a witness deposes "I heard the general reputation of *X* in the village to be so and so" it is direct evidence of the reputation by a person who heard the reputation.[18] But if he deposes "I heard *B* say that he heard the general reputation of *X* to be so and so" it is merely hearsay evidence, for, the person who heard the reputation directly was *B* and *A* merely repeats what *B* told him. In the undermentioned cases[19] the view was expressed that evidence of reputation must necessarily comprise hearsay evidence but was admissible by virtue of the provisions of this sub-section. It is submitted that this view is not correct. The existence of a general reputation is as much a question of fact as any other and the evidence of a witness who heard the reputation cannot in any view be considered hearsay evidence. It has also been held by the High Court of Patna that if the deponent does not *know* the person whose reputation is in question, his evidence that he heard the reputation is hearsay and therefore inadmissible.[20] It is submitted that this view also is incorrect. It is difficult to understand how a *knowledge* of the person whose character is in question is a necessary condition for the admissibility of the evidence. It may, however, be said that the evidence of a witness who does not know the person about whose reputation he deposes, would necessarily be very weak and would not ordinarily justify an order for security.[21]

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(12) (1920) 1920 Cal. 556 (556), *Jogendra Kumar Nag* v. *Emperor*.
(1919) 1919 All. 136 (138), *Jabruddin* v. *Emperor*.
(1930) 1930 All. 37 (38), *Emperor* v. *Kunda Bari*.

(13) (1921) 22 Cri. L. Jour. 486 (487) (Cal.), *Pochai Rai* v. *Emperor*.

(14) (1924) 1924 All. 142 (143), *Jhandu Singh* v. *Emperor*.
(1915) 16 Cri. L. Jour. 281 (283): 1915 All. 144, *Abdul Khaliq* v. *Emperor*.

(15) (1924) 1924 Oudh 112 (112), *Sanku* v. *Emperor*.
(1921) 60 Ind. Cas. 673 (673): 1920 Oudh 226: 23 Oudh Cas. 371, *Raja Ram* v. *Emperor*.
(1923) 1923 All. 595 (595), *Gudri Khatik* v. *Emperor*.

(16) (1921) 22 Cri. L. Jour. 273 (273): 1920 Oudh 226: 23 Oudh Cas. 371, *Raja Ram* v. *Emperor*.
(1923) 1923 All. 595 (595), *Gudri Khatik* v. *Emperor*.

(17) (1914) 26 Ind. Cas. 153 (155): 1914 All. 280, *Bechai* v. *Emperor*.
(1929) 1929 All. 273 (275, 276): 51 All. 663, *Emperor* v. *Ram Lall*.
(1920) 1920 Oudh 255 (256): 23 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.

(17-a) (1934) 1934 All. 735 (738), *Raghubar Dayal* v. *Emperor*.

(18) (1928) 1928 All. 1 (3), *Emperor* v. *Babu Ram*.
(1920) 1920 Oudh 255 (257): 23 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.

(19) (1929) 1929 All. 650 (652): 51 All. 275, *Emperor* v. *Kumera*.
(1909) 10 Cri. L. Jour. 355 (358): 5 L. B. R. 72, *Emperor* v. *Nga Po*.

(20) (1933) 1933 Pat. 189 (191), *Firangi Rai* v. *Emperor*.

(21) (1921) 1921 All. 88 (88, 89), *Kallu* v. *Emperor*.
(1923) 1923 All. 35 (37): 45 All. 109, *Anjoo Singh* v. *King-Emperor*.
(1929) 1929 All. 273 (276): 51 All. 663, *Emperor* v. *Ram Lal*.
(1904) 1 Cri. L. Jour. 988 (989, 990) (All.), *Rup Singh* v. *Emperor*.
(1902) 29 Cal. 779 (781), *Kalai Haldar*, In re.

But that is a very different thing from saying that such evidence is not admissible at all. S 117, Note 7.

As a matter of practice evidence of general repute ought to be evidence given by respectable persons who are acquainted with the person sought to be bound over, who live in the same neighbourhood, and are aware of his reputation.[22] It would not ordinarily be sufficient to examine merely officials such as the *Police or zaildars* or *sufedposhes*.[23] The Court ought not to accept the evidence of such witnesses unless they had special means and occasion to know the reputation in the course of their official duties.[24] At the same time it would not be safe to reject the evidence of any witness merely because he is a village *mukhia*, or a police-officer.[24-a] Nor is the vague evidence of witnesses that a man is a habitual thief or that the neighbourhood is of that opinion, of much value without particulars as to his associates, means of subsistence and as to whether increase of thefts synchronises with his presence in the locality.[24-b] But the witnesses need not necessarily be *immediate neighbours*, for it is quite possible for a cunning rogue to conceal his real character from his immediate neighbours. The Court must satisfy itself in each case that the evidence is true and properly appraise the evidence of persons living at a considerable distance.[25] Thus, where, in consequence of a series of dacoities in certain villages, proceedings are instituted against a person for being a robber by habit, the evidence of general reputation given against him by persons from the different villages in which the dacoities took place would be proper and admissible.[26]

The Court should exercise a proper *discretion* in each case and satisfy itself that the evidence of general repute is so general and overwhelming as to leave no doubt that the accused is a habitual thief, robber, etc., as the case may be.[27] The burden of proof, lies, as in any other case, on the prosecution.[28] The

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(1920) 1920 Oudh 255 (257): 23 Oudh Cas. 229, *Asiq Ali* v. *Emperor*.

(22) (1920) 1920 Mad. 534 (539): 43 Mad. 450, *K. Ranga Reddi*, In re.

(1915) 16 Cri. L. Jour. 553 (553): 1915 U. B. 13, *Nga Hein* v. *Emperor*.

[See (1934) 1934 All. 735 (738), *Raghubar Dayal* v. *Emperor* (The witness must be able to disclose the source of his information and it must be seen whether the source is such as to inspire confidence).

(23) (1903-04) 2 Low. B. R. 166 (166), *Emperor* v. *Nga Shwe U*.

(1915) 16 Cri. L. Jour. 553 (553): 1915 U. B. 13, *Nga Hein* v. *Emperor*.

(1925) 1925 Rang. 174 (176): 2 Rang. 686, *Emperor* v. *Po Yin*.

(1928) 1928 All. 1 (2), *Emperor* v. *Babu Ram* (Evidence of Police officer ought to be received with caution).

(1930) 1930 Nag. 148 (149), *Kondia* v. *Emperor*.

(1923) 1923 Lah. 419 (419), *Abdullah* v. *The Crown*.

(1928) 29 Cri. L. Jour. 788 (789) (Lah.), *Rahman* v. *Emperor*.

(1912) 13 Cri. L. Jour. 550 (551) (Lah.), *Samanda* v. *Crown*.

(1920) 1920 Pat. 25 (27), *Rameshwar* v. *Emperor*.

(24) (1933) 1933 All. 674 (675), *Salgur Dayal* v. *Emperor*.

(24-a) (1935) 1935 All. 850 (851), *Emperor* v. *Dipu*.

(24-b) (1924) 1924 Oudh 187 (188), *Raghu Datt* v. *Emperor*.

(1900) 2 Bom. L. R. 57 (58), *Empress* v. *Talakchand*.

(25) (1925) 1925 Rang. 174 (175): 2 Rang. 686, *Nga Sein Po* v. *Emperor*.

(26) (1908) 7 Cri. L. Jour. 146 (155): 35 Cal. 243, *Chintamon Singh* v. *Emperor*.

(27) (1893) Rat. 639 (642), *Empress* v. *Sherkhan*.

(1891) 14 All. 45 (46), In the matter of *Daulat Singh*.

(1903) 1903 All. W. N. 181 (181), *Emperor* v. *Jagannath*.

(1915) 16 Cri. L. Jour. 91 (91): 1914 Bom. 199, *Bhan Savalram Kotasthane* v. *Emperor* (Accused was a Chairman of the Managing Committee of a Municipality. *Held*, there should be evidence of reputation acquired subsequent to the last appointment to the office).

(1907) 5 Cri. L. Jour. 24 (25) (Lah.), *Kasim Shah* v. *Crown*.

(1921) 1921 Lah. 179 (179), *Jagat Singh* v. *Emperor*.

(1898) 1898 Pun. Re. No. 4 (9), *Sukha* v. *Emperor* (The Court ought not to be influenced by outside gossip and vague rumour).

[See also (1926) 30 Cal. W. N. xxxl, In re *Budhan* (Article on evidence of general repute).]

(28) (1898) 1898 Pun. Re. No. 4 (9), *Sukha* v. *Emperor*.

S. 117, Notes 7—8.

Court should however pay particular attention to the evidence of the defence witnesses who speak to good character; such evidence should not be discarded or lightly brushed aside unless there are substantial reasons for discrediting their evidence.[29] The mere fact that the defence witnesses are the caste people of the accused[30] or, that the latter is a very influential man in the locality and therefore is in a position to produce a large number of witnesses on his side,[31] is however no ground for discrediting their evidence. Where the evidence of the prosecution and the defence is equally balanced, and equal, if not greater, number of defence witnesses speak to good character no order demanding security should be passed[32] and this is especially so in a case where the prosecution evidence is meagre and unsatisfactory.[33] The Court must sift and weigh the evidence carefully. It should not, however, be guided by any numerical tests in weighing evidence without paying due regard to the credibility of each witness.[34]

8. **Evidence of repute against person charged under S. 107 if admissible.**—It is only in the case of a person charged under S. 110 as an habitual offender or as a desperate and dangerous character that evidence can be let in of his general reputation. Where a person is called upon to furnish security to *keep the peace* under S. 107, no evidence of general repute can, under

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(29) (1915) 1915 All. 415 (416), *Hakim Singh* v. *Emperor.*
(1923) 1923 All. 35 (37): 45 All. 109, *Angnoo Singh* v. *Emperor.*
(1875) 24 Suth. W. R. Cr. 37 (40), In re *Hamidooddeen Ahmed.*
(1930) 1930 Lah. 1051 (1052), *Ahmad Ali* v. *Emperor.*
(1925) 1925 Oudh 277 (278), *Gurdayal* v. *Emperor.*
(1924) 1924 Pat. 498 (499), *Shaikh Amjad Ali* v. *Emperor.*
(1924) 1924 Pat. 500 (502), *Ram Lajan* v. *Emperor.*
(1933) 1933 Pat. 112 (113), *Dhaju Mandal* v. *Emperor.*
(1919) 1919 Oudh 310 (311): 22 Oudh Cas. 375, *Rameshwar Tewari* v. *Emperor* (Mere fact that some of the witnesses for the defence are fellow caste men of accused is no ground for discrediting their evidence—Insinuations by the Police as to the defence witnesses being related to the accused not to be allowed when there is nothing on the record to support such insinuation, and the witnesses have not been questioned with reference thereto).

(30) (1915) 1915 All. 464 (465), *Mirharban* v. *Emperor.*
(1921) 59 Ind. Cas. 747 (749): 1921 All. 278: 43 All. 186, *Rahu* v. *Emperor.*
(1911) 12 Cri. L. Jour. 542 (544) (Oudh), *Gurbaksh Singh* v. *Emperor.*
(1919) 53 Ind. Cas. 156 (158): 1919 Oudh 310: 22 Oudh Cas. 375, *Rameshwar Tewari* v. *King-Emperor.*
(1919) 1919 Oudh 79 (80), *Rohan* v. *Emperor.*

(31) (1915) 16 Cri. L. Jour. 805 (806): 1915 All. 464, *Miharban Singh* v. *Emperor.*
(1928) 1928 Lah. 49 (49): 9 Lah. 133, *Kundan* v. *Emperor.*
(1919) 52 Ind. Cas. 657 (659): 1919 All. 136, *Jabruddin* v. *Emperor.*

(32) (1913) 14 Cri. L. Jour. 407 (408) (All.), *Raham Ali* v. *Emperor.*
(1919) 1919 All. 399 (400), *Manni Singh* v. *Emperor.*
(1923) 1923 All. 35 (37): 45 All. 109, *Angnoo Singh* v. *Emperor.*
(1904) 1 All. L. J. 611 (614), *Rajendra Prasad* v. *Emperor.*
(1930) 1930 Lah. 1051 (1054), *Ahmad Ali* v. *Emperor.*
(1916) 17 Cri. L. Jour. 142 (142, 143): 1916 Lah. 412, *Muhammad Hussain* v. *Crown.*
(1898) 1898 Pun. Re. No. 2, *Ajmal Shah* v. *Empress.*
(1901) 1901 P. L. R. No. 128, pp. 502 (504), *Bishen Singh* v. *Emperor.*
(1930) 1930 Oudh 357 (360), *Jai Singh* v. *Emperor.*
(1925) 1925 Oudh 277 (278), *Gurdayal* v. *Emperor.*
(1904) 1 Cri. L. Jour. 984 (986) (All.), *Rajendra Prasad Sahi* v. *King-Emperor* (No evidence that body of neighbours of applicant regarded him as a man of dangerous character—Number of respectable witnesses giving evidence in his favour—Security not to be demanded).

(33) (1928) 1928 Lah. 49 (50): 9 Lah. 133, *Kundan* v. *Emperor.*
(1913) 14 Cri. L. Jour. 603 (603, 604) (Lah.), *Lala* v. *Emperor.*
(1925) 1925 Pat. 131 (137), *Deodhary Pandey* v. *Emperor.*
(1923) 1923 All. 596 (596, 597), *Asiq Ali* v. *Emperor.*
(1921) 1921 Jour. 7 (1), *Bhisheswar Dayal* v. *Emperor.*

(34) (1921) 1921 Oudh 115 (115): 24 Oudh Cas. 225, *Gurdin* v. *Emperor.*
(1925) 1925 Oudh 49 (50), *Sital Din* v. *Emperor.*
(1923) 1923 Oudh 44 (45): 24 Oudh Cas. 286, *Rameshwar Baksh Singh* v. *Emperor.*
(1925) 1925 Oudh 501 (501): 27 Oudh Cas. 327, *Bahadur* v. *Emperor.*

this sub-section, be let in against him.[1]

S. 117, Notes 8—10.

9. **"Or otherwise".**—The words "or otherwise" do not permit the transgression of the general rules of evidence as enacted by the Evidence Act.[1] As has been seen already the words are intended to include evidence of *particular* acts and not merely of general repute, which latter alone would be admissible evidence of character under the Evidence Act. Thus the fact that the person proceeded against has committed a number of thefts, or that he associates with proved bad characters can be proved.[2] But a mere suspicion cannot take the place of legal testimony, unless supported by adequate grounds in which case it is the fact on which the suspicion is based and not the suspicion to which weight can be given.[3] It has been held by the High Court of Allahabad where a witness deposes to the fact that a person is a habitual offender, the fact that such person was suspected in various cases may be admissible as being one of the grounds of the opinion of the witness that the person is a habitual offender.[4] Thus it was observed that the evidence of a witness is admissible if he says "I believe *A* to be a habitual thief. The grounds of my opinion are:—

(1) He has no honest means of livelihood.

(2) He associates with persons convicted of theft or burglary.

(3) He is frequently absent from his house at night for reasons which he refuses to disclose.

(4) *X*, *Y* and *Z* have severally and on different occasions told me that they suspected him of having stolen their property."

Statement given to the Police are admissible in evidence in proceedings under S. 110 and cannot be shut out by the use of S. 162 inasmuch as an inquiry under this chapter is not an inquiry into an *offence*.[5] It has been held in the undermentioned case[6] that the words "or otherwise" is intended to give the Magistrate a very large *discretion* as to the nature of the evidence which he may admit. It is submitted that this view is not correct inasmuch as it will enable him to admit even hearsay or opinion or other inadmissible evidence for the purposes of the enquiry.

10. **Admissibility of evidence of previous convictions in S. 110 proceedings.**—Any evidence which would be relevant to the charge under inquiry would be admissible even under the Evidence Act.[1] The existence of a number of previous convictions for offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused (S. 54, Explanation 2 of the Evidence Act). But the existence of such convictions is not by itself sufficient to justify an order for

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Note 8.

(1) (1903) 25 All. 273 (274, 275), *Emperor* v. *Bidhyapathe*.
(1888) 1888 Pun. Re. No. Cr. 16 (30), *Banarsi Das* v. *Empress*.

Note 9.

(1) (1920) 1920 Oudh 255 (256): 20 Oudh Cas. 229, *Ashiq Ali* v. *Emperor*.
(2) (1933) 1933 All. 674 (674), *Ajay Kumar Ghosh* v. *Emperor*.
(1933) 1933 All. 674 (675), *Satgur Dayal* v. *Emperor* (So far as the decision says that it is evidence of reputation it is submitted not correct).
(1934) 1934 Oudh 49 (49), *Likha* v. *Emperor*.
(3) See the cases cited in foot-note (9) to Note 7 above.
(4) (1929) 1929 All. 650 (653): 51 All. 275, *Emperor* v. *Kumera*.
(5) (1933) 1933 Mad. 688 (689): 56 Mad. 987, *Hari Singh* v. *Emperor*.
(6) (1904) 1 Cri. L. Jour. 534 (535) (All.), *Emperor* v. *Kallu Mal*.

Note 10.

(1) (1919) 20 Cri. L. Jour. 206 (207): 1919 All. 220: 41 All. 231, *Sarju* v. *Emperor*.

S. 117, Notes 10—11.

security. Weight and due regard must be given to the period that has elapsed subsequent to the last conviction in order to see whether during that period he has shown a disposition to conduct himself properly or whether there are indications that he has continued the previous course though he may not have actually brought himself within the clutches of Law.[2] The fact that the accused has been *bound over previously under S.* 110 may also be stated and proved as one of the grounds on which witnesses to general repute believe him to be a habitual offender.[3] But the Court cannot order security to be furnished on the strength of the previous order alone unless there is evidence of bad character subsequent to the same. In such cases the evidence should relate to the reputation of the person proceeded against subsequent to his release from the previous order.[4]

11. Admissibility of evidence of the commission of a substantive offence in S. 110 proceedings.—The object of the security proceedings as already seen in S. 110 is *preventive* and not to punish a person for any offence committed by him. Hence positive evidence as to the actual commission of offences is not necessary in proceedings under S. 110.[1] But where evidence is taken as to reputation the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused and if their opinion is based wholly or partly on the belief that he has committed a crime which has not been brought home to him, the Court cannot rule out as inadmissible all evidence on which the belief of the witness is based. Hence instances of specific crimes are admissible in evidence although they are not supported by evidence of such amount and value as would secure a conviction for a substantive offence.[2] Even where a prosecution for a substantive offence had ended in an acquittal, it has been held that evidence relating to the incident which formed the subject-matter of the previous trial cannot be excluded; the fact of acquittal although it may diminish and destroy value of the evidence, has not the effect of rendering such evidence inadmissible.[3]

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(2) (1929) 1929 All. 273 (275): 51 All. 663, *Emperor* v. *Ram Lal.*
(1880) 2 All. 835 (838), In re *Nawab.*
(1925) 1925 Bom. 195 (195), *Moti Ram Hari* v. *Emperor.*
(1886) 10 Bom. 174 (175), *Raja Walad Husen Saheb.*
(1900) 2 Bom. L. R. 57 (58), *Queen-Empress* v. *Talakchand.*
(1886) 12 Cal. 520 (521), *Haidar Ali*, In re.
(1909) 10 Cri. L. Jour. 122 (124) (Cal.), *Emperor* v. *Nepal Shikary* (Previous convictions though not substantive evidence may have an effect in deciding for what length of time the accused was to be bound down).
(1921) 1921 Lah. 179 (180), *Gagat Singh* v. *Emperor.*
Oudh 70, *Rampatton.*
[See also (1867) 7 Suth. W. R. 57 (58), *Kunee Sonar.*]
(3) (1929) 1929 All. 650 (653): 51 All. 275, *Emperor* v. *Kumera.*
(4) (1933) 1933 All. 369 (370): 55 All. 404, *Emperor* v. *Niranjan Singh.*
(1924) 1924 Oudh 84 (84): 26 Oudh Cas. 242, *Shakur* v. *King-Emperor.*
(1915) 16 Cri. L. Jour. 312 (312): 1915 Cal. 643, *Ramdeo Pande* v. *Emperor.*
(1918) 22 Cal. W. N. lx, *Golap Khan* v. *Emperor.*
(1909) 10 Cri. L. Jour. 591 (591): 1910 P. R. 4, *Bahadur Shah* v. *Emperor.*
(1872-1892) Low. Bur. R. 420 (420), In re *Nga Luke.*
(1906) 4 Cri. L. Jour. 486 (487) (Lah.), *Gohar* v. *Emperor.*
(1911) 12 Cri. L. Jour. 359 (359) (Mad.), *Veerabhadradu* v. *Emperor.*

Note 11.

(1) (1933) 1933 Oudh 58 (59), *Emperor* v. *Gajadhar.*
(1904) 1 Cri. L. Jour. 3 (4) (Bom.), *Emperor* v. *Raoji Fulchand.*
(1907) 5 Cri. L. Jour. 178 (179) (Bom.), *Emperor* v. *Shahukha.*
(1881) 3 Mad. 238 (239), Re *Pedda Siva.*
(1872-1892) 1 Bur. S. R. 542, *Empress* v. *Nga Shwe Pyu.*
(2) (1930) 1930 Oudh 357 (358), *Jai Singh* v. *Emperor.*
(1925) 1925 All. 694 (696): 47 All. 733, *Budhan* v. *Emperor.*
(1927) 1927 All. 473 (475), *Lachman* v. *Emperor.*
(1930) 1930 All. 274 (275, 276): 52 All. 448, *Chandan* v. *Emperor.*
(1933) 1933 All. 676 (678), *Sundarlal* v. *Emperor.*
(3) (1925) 1925 All. 694 (697): 47 All. 733, *Budhan* v. *Emperor.*

S. 117, Notes 12--13.

12. Sufficient evidence in S. 109 proceedings.—Where the only evidence against the accused is the statement of a Police constable that he is wandering without means of subsistence or 'does not work', an order for security will not be justified.[1] So also where the only evidence against the accused was, that he was seen coming out of a sugarcane field at 10 P.M., and tried to run away when challenged.[2] Nor can an order under this section be passed on suspicion, but there must be good basis of fact. Thus where three respectable residents of Delhi were met at night by the Police between railway station and the City of Meerut and gave a satisfactory account of themselves, the mere fact that somewhere close to them a burglar's jemmy was found, will not justify an order for security.[3]

13. Joint enquiry—Sub-S. (5).—Sub-S. (5) permits a joint enquiry against two or more persons provided that they have *associated together in the matter under enquiry*.[1] The phrase 'associated together' means that the persons have been acting in concert or that there is something in the nature of a conspiracy among them in respect of the various acts alleged against them.[2] Thus where certain persons are alleged to belong to a gang of swindlers who act in concert and cheat ignorant people[3] or, are alleged to belong to a gang of habitual thieves and robbers who are associating together jointly in the commission of thefts, burglaries and robberies[4] a joint inquiry against them all is perfectly justified. Similarly where the charge is that several persons formed one gang with one purpose, *viz.*, that of harassing and intimidating the complainant and each act spoken to by witnesses is an act prompted by that common object and directed towards accomplishing it, a joint inquiry has been held to be valid.[5] But the mere fact that the several persons sought to be proceeded against belong to the same *tribe and village*[6] or, are close neighbours and have been convicted together on previous occasions[7] or, that they happen to be members of an undivided Hindu family[8] or, in the position of a master and servant[9] is not proof of association in the absence of any evidence to show that they constitute a gang

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Note 12.

(1) (1900-01) 5 Cal. W. N. 28 (29), In re *Pooran.*
(1894) Rat. 723 (724), In re *Kala Teja.*
(2) (1928) 1928 All. 476 (476) (F. B.), *Emperor* v. *Bishambhar.*
(3) (1919) 1919 All. 260 (261), *Ghulam Jailanu* v. *Emperor.*

Note 13.

(1) (1925) 1925 Pat. 131 (137), *Deodhari Panday* v. *Emperor.*
(1919) 1919 All. 376 (376), *Sheo Sahal* v. *Emperor.*
(1904) 1 Cri. L. Jour. 3 (4) (Bom.), *Emperor* v. *Raoji Fulchand.*
(1882) 1882 All. W. N. 92 (92), *Empress* v. *Nakched.*
(1891) Rat. 556 (557), *Bapu* v. *Malya.*
(1909) 10 Cri. L. Jour. 460 (462) (Cal.), *Parasulla* v. *Emperor.*
(1919) 1919 Cal. 359 (360), *Nezamaddi* v. *Emperor.*
(1905) 9 Cal. W. N. cclxx, *Sheikh Atazuddi.*
(1918) 22 Cal. W. N. lx, *Golap Khan* v. *King-Emperor.*
(1914) 1914 Lah. 575 (576): 1914 P. R. 21, *Emperor* v. *Chuni.*
(1896) 1896 Pun. Re. No. 6 (17), *Ahmad Ali* v. *Empress.*
(1919) 53 Ind. Cas. 491 (492): 1920 Mad. 1014 (1014), In re *Kavathan Patturaju.*
(1868-1869) 4 Mad. H. C. R. App. xlvi (xlvii).
(1863) 2 Weir 51 (52).
(2) (1918) 1918 Pat. 98 (98), *Godhan Ahir* v. *Emperor.*
(1923) 1923 Pat. 104 (111), *Jai Sao* v. v. *Emperor.*
(1924) 1924 Nag. 166 (167), In re *Baji Rao.*
(3) (1910) 11 Cri. L. Jour. 23 (24): 37 Cal. 91, *Kaul Mirza* v. *Emperor.*
(4) (1933) 1933 Oudh 251 (252), *Hubdar Ali* v. *Emperor.*
(1934) 1934 Rang. 121 (122): 12 Rang. 169, *Rangoo Mean* v. *Emperor* (Joint enquiry legal even in proceedings under S. 110—Dissenting from 6 Cri. L. Jour. 284).
(5) (1927) 1927 Mad. 542 (543), *Taranagowd* v. *Emperor.*
(6) (1895) 1895 Pun. Re. No. 1, p. (30), In re *Murad.*
(7) (1920) 21 Cri. L. Jour. 700 (701): 1920 Cal. 556, *Jogendra Kumar Nag* v. *Emperor.*
(8) (1919) 1919 Mad. 633 (635), *Kripasindu Naiko* v. *Emperor.*
(9) (1906) 3 Cri. L. Jour. 290 (292): 9 Oudh Cas. 69, *Babu Murtaza Husain* v. *Emperor.*

S. 117, Note 13.

acting in concert in respect of the charges made against them. On the other hand where there is the evidence of *association* the mere fact that the several persons jointly tried belong to different villages is not a circumstance which would affect the legality of the joint trial.[10] So also where there is evidence that there is a gang of persons associated together to commit such acts as the security sections exist to prevent, it is enough that some members of the gang are shown to have committed the various acts alleged against them; it is not necessary to prove that on *every* occasion the whole gang acted together.[11]

The concert or association may be due to mutual agreement between several persons or due to the obedience to the orders of a common master. Thus where the several servants of a Zamindar acted together in the matter of extortion of *Kabuliats* at enhanced rates from the tenants of the master for his benefit and under his directions it was held that the joint enquiry against all the servants was valid.[12]

In order to justify a joint inquiry there should not merely be association but it is essential that such association should be *in the matter under inquiry*. Thus, a Magistrate cannot deal in one and the same inquiry a person called upon to give security under S. 109 with another person called upon to give security under S. 110.[13] Two opposing or contending parties cannot also be tried in a joint inquiry because they are in conflict with one another; there can be nothing in common between them in respect of the matter under inquiry.[14]

Where the charge is such that it is purely personal to one individual alone and does not afford any scope for several persons acting in concert there can be no association and therefore no joint inquiry in such a case. In *Hari Telang* v. *Emperor*[15] it was observed by the High Court of Calcutta that where proceedings are taken against a person as a dangerous character under S. 110. Cl. (*f*), it could not be said that there was a habitual connection between several persons in regard to the character so as to make them desperate and dangerous persons and that in such a case there should be a separate trial against each person. This view was cited with approval in an earlier Madras decision[16] but was dissented from in a later decision[17] by the same Court. Even in Calcutta it was held in a later decision[18] that a joint inquiry in respect of a charge under S. 110, Cl. (*f*) was valid; this later decision

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(10) (1922) 23 Cri. L. Jour. 58 (58) (Cal.), *Rahim Bux Pramanik* v. *Emperor.*
(1904) 1 All. L. J. (n.) (144), *King-Emperor* v. *Ram Chunder.*

(11) (1922) 23 Cri. L. Jour. 741 (742) (Nag.), In re *Bakaram.*

(12) (1905) 2 Cri. L. Jour. 554 (565) (Cal.), *Sri Kanta Nath Shaha* v. *Emperor.*
[See however (1900) 27 Cal. 781 (784), *Hari Telang* v. *Queen-Empress.*]

(13) (1905) 2 Cri. L. Jour. 224 (225): 8 Oudh Cas. 91, *Emperor* v. *Mohan.*
(1910) 11 Cri. L. Jour. 50 (51) (Mad.), *Kakal Reddy and another* v. *Emperor.*

(14) (1908) 8 Cri. L. Jour. 154 (154): 31 Mad. 276, In re *Ganapathi Bhatta.*
(1905) 2 Cal. L. J. 65 (n.), In re *Srish.*
(1916) 17 Cri. L. Jour. 165 (165): 1916 All. 338, *Har Datt* v. *Emperor.*
(1910) 11 Cri. L. Jour. 719 (719) (All.), *Jagat Narain* v. *Emperor.*
(1923) 1923 All. 476 (479), *Ganga Prasad* v. *Emperor* (It is not illegal to hold a joint trial under S. 117, Cr. P. Code, of two persons who were not contending parties, but were on the same side).
(1909) 10 Cri. L. Jour. 375 (378 (Bom.), *Suleman Adam* v. *Emperor.*
(1907) 5 Cri. L. Jour. 197 (199) (Cal.), *Kamal Narain Chowdry* v. *Emperor.*
(1904) 1 Cri. L. Jour. 58 (61, 62) (Cal.), *Ram Krishna Shaha* v. *Emperor.*
(1909) 9 Cri. L. Jour. 560 (561): 5 Nag. L. R. 65, *Ganpat* v. *Emperor.*
(1926) 1926 Pat. 32 (32), *Kishore* v. *Emperor.*

(15) (1900) 27 Cal. 781 (783), *Hari Telang* v. *Queen-Empress.*

(16) (1925) 1925 Mad. 189 (191, 192), *Kutti Goundan*, In re.

(17) (1930) 1930 Mad. 873 (873): 53 Mad. 870, *Appuswami Mudali*, In re.

(18) (1921) 1921 Cal. 625 (626), *Jogendra Kumar Nag* v. *Emperor.*

did not, however, advert to *Hari Telang's* case. The High Court of Allahabad[19] has also held that where members of a certain secret society associated together for spreading terrorist activities all of them can be jointly tried under S. 110, Cl. (*f*). In the undermentioned case[20] it was held that the question as to whether a man is a habitual thief or not is a matter personal to oneself and cannot form the subject of a joint enquiry.

As already seen, *association* is necessary to justify a joint inquiry. The question has arisen as to whether a mere *allegation* on the part of the prosecution that there is association is enough to justify a joint inquiry although it may subsequently transpire at the trial that there is no association. According to the High Court of Calcutta[21] an allegation on the part of the prosecution that there is association is enough to justify a joint inquiry although there is no proof of the same in the inquiry. According to the High Court of Patna[22] on the other hand, there must be allegation as well as proof of association to justify a joint inquiry. It has been held that the preliminary order under S. 112 should itself contain a charge of association where a joint inquiry is contemplated.[23]

Though the section permits a joint inquiry against several persons where there is association, the Court is not absolved from its duty of giving a *separate and distinct finding against each one of them* on the merits of the evidence against him.[24]

14. Effect of joint trial where there is no association.—On the question as to whether a joint inquiry held in the absence of any association is a mere irregularity curable under S. 537 of the Code or amounts to an illegality which vitiates the entire proceedings, there is a difference of opinion one set of cases[1] holding that it is only an irregularity which in the absence of any pre-

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(19) (1933) 1933 All. 676 (677), *Sundar Lal* v. *Emperor.*

(20) (1907) 6 Cri. L. Jour. 284 (284, 285): 4 L. B. R. 46, *Emperor* v. *Po Twe.*

(21) (1921) 1921 Cal. 625 (626), *Jogendra Kumar Nag* v. *Emperor.*

(22) (1923) 1923 Pat. 104 (111), *Jai Sao* v. *Emperor.*

(23) (1902) 5 Oudh Cas. 243 (245), In re *Pudan.*
(1905) 2 Cri. L. Jour. 554 (562, 563) (Cal.), *Srikantanath Shaha* v. *Emperor* (*Per* Geidt, J.).
[See also (1933) 1933 Oudh 251 (252), *Hubdar Ali* v. *Emperor.*]

(24) (1925) 1925 Sind 204 (205): 19 Sind L. R. 96, *Khairo* v. *Emperor.*
(1924) 1924 All. 195 (196), *Mohd. Ismail* v. *Emperor.*
(1923) 1923 All. 35 (35, 36): 45 All. 109, *Angnoo Singh* v. *Emperor.*
(1916) 17 Cri. L. Jour. 400 (400): 1916 All. 100: 38 All. 468, *Shamboo Nath* v. *Emperor.*
(1905) 2 Cri. L. Jour. 88 (89) (All.), *Emperor* v. *Hurmat Khan.*
(1887) 9 All. 452, In re *Abdul Kadir.*
(1884) 6 All. 214 (219), *Queen-Empress* v. *Nathu.*
(1930) 1930 Cal. 294 (295), *Dhando* v. *Emperor.*
(1908) 8 Cri. L. Jour. 207 (208): 35 Cal. 929, *Ajodhya Prosad Singh* v. *Emperor.*
(1907) 6 Cri. L. Jour. 427 (429): 35 Cal. 138, *Jamait Mallik* v. *Emperor.*
(1882) 10 Cal. L. R. 335 (336), In the matter of *Kassim Biswas.*
(1911) 12 Cri. L. Jour. 104 (105) (Mad.), In re *Chinnatambi Rowthan.*
(1925) 1925 Nag. 381 (382), *Sham Suddin* v. *Emperor.*
(1930) 1930 Lah. 345 (346), *Lilu* v. *Emperor.*
(1909) 10 Cri. L. Jour. 591 (591): 1910 P. R. 4, *Bahadur Shah* v. *Emperor.*
(1896) 1896 Pun. Re. No. 6, *Ahmad Ali* v. *Empress.*
(1912) 13 Cri. L. Jour. 760 (761): 15 Oudh Cas. 263, *Jai Govind* v. *Emperor.*

Note 14.

(1) (1887) 9 All. 452 (459), *Empress* v. *Abdul Kadir.*
(1924) 1924 All. 195 (196, 197), *Muhammad Ismail* v. *Emperor.*
(1909) 10 Cri. L. Jour. 375 (378) (Bom.), *Suloman Adam* v. *Emperor.*
(1905) 3 Cri. L. Jour. 290 (292): 9 Oudh Cas. 69, *Babu Murtaza* v. *Emperor.*
(1900) 27 Cal. 781 (783), *Hari Tellang* v. *Queen-Empress.*
(1921) 1921 Cal. 625 (626), *Jogendra Kumar Nag* v. *Emperor.*
(1907) 6 Cri. L. Jour. 1 (3) (Cal.), *Wahid Ali Khan* v. *Emperor.*
(1925) 1925 Mad. 189 (191, 192), *Kutti Goundan,* In re.
(1925) 1925 Nag. 381 (382), *Sham Suddin* v. *Emperor.*

S. 117, Notes 14—16.

judice does not vitiate the trial while a contrary view, *viz.*, that the joint trial is *illegal* has been taken in the following cases.[2] The latter decisions purport to follow the decision of the Judicial Committee in *Subramania Iyer* v. *King Emperor* (I.L.R. 25 Mad. 61, P.C.) where their Lordships observed in dealing with S. 233 of the Code relating to joinder of charges that a violation of the mandatory provisions of the Code amounts to an illegality. It is submitted the former view is correct. Under S. 537 of the Code no finding, sentence or order of a Court of *competent jurisdiction* can be reversed or altered unless there is a failure of justice. It cannot be said that where a Court competent to hold an enquiry under this section holds a joint enquiry without proof of association, it loses its competency. The decision of the Privy Council must be applied to cases where the non-observance of the provisions of law affects the *jurisdiction* of the Court itself.

15. Admissibility of confession of a co-accused in a joint inquiry.—Persons against whom proceedings are being taken jointly under this section cannot be said to be on their joint trial for the same *offence* within the meaning of S. 30 of the Evidence Act. But where once the prosecution has made out a reasonable case for dealing with several persons in the same inquiry, any evidence which would be relevent to the charge of being habitual offenders would be admissible; and on this ground it has been held that a statement made by a co-accused which is in the nature of a confession and contains incriminating matters against the other is admissible in evidence against the other accused.[1] But confessions made by a co-accused in a prior criminal case cannot be used in proceedings under this section against the others.[2]

16. Suit for malicious prosecution.—A person called upon to furnish security under this chapter is not charged with any *offence*.[1] It has accordingly been held by the High Court of Madras,[2] that no action for malicious prosecution lies in respect of action taken under this section on a petition presented by a private individual as there is no prosecution for any offence in such a case. The Chief Court of Oudh[3] has, however, taken a contrary view and held that an action for malicious prosecution lies in such a case.

(1924) 1924 Pat. 498 (498), *Shaikh Amjad Ali* v. *Emperor*.
(1926) 1926 Sind 69 (71): 19 Sind L. R. 176, *Tanowar* v. *Emperor*.
(1909) 10 Cri. L. Jour. 375 (378) (Bom.), *Sulaman Adam* v. *Emperor* (Joint trial of opposing factions not *ipso facto* illegal).
(2) (1917) 39 Ind. Cas. 985 (985): 1917 Lah. 207, *Lugman* v. *Crown*.
(1908) 8 Cri. L. Jour. 154 (154): 31 Mad. 276, In re *Ganapathi Bhatta*.
(1909) 9 Cri. L. Jour. 560 (561): 5 Nag. L. R. 65, *Ganpat* v. *Emperor*.
(1904) 1 Cri. L. Jour. 58 (62) (Cal.), *Pran Krishna Saha* v. *Emperor*.
(1905) 5 Cri. L. Jour. 197 (199) (Cal.), *Kamal Narain Chowdhury* v. *Emperor*.
(1902) 5 Oudh Cas. 243 (245), *Pudan* v. *Emperor*.

Note 15.

(1) (1919) 1919 All. 220 (221): 41 All. 231, *Sarju* v. *Emperor*.

[See also (1934) 1934 All. 927 (929), *Richpal Sing* v. *Emperor* (There is no reason to hold that S. 30 of the Evidence Act may not be applied to a case where there is a proceeding under S. 110, Cr. P. Code).]
(2) (1921) 1921 Cal. 557 (558), *Mafizuddin Khan* v. *King-Emperor* (Following 49 Ind. Cas. 649).

Note 16.

(1) (1885) 7 All. 67 (72), *Empress* v. *Kandhaia*.
(1900) 27 Cal. 662 (663), *Queen-Empress* v. *Iman Mandal*.
(1933) 1933 Mad. 688 (689): 56 Mad. 987, *Hari Singh* v. *Emperor*.
(1930) 1930 Pat. 274 (275): 9 Pat. 131, *Charan Matho* v. *Emperor*.
(1910) 11 Cri. L. Jour. 251 (251) (Mad.), In re *Kora Ayyappa*.
(2) (1903) 13 Mad. L. Jour. 370 (370).
(3) (1906) 9 Oudh Cas. 357 (361), *Khwaja Saiyid Kazim Husain* v. *Munshee*.

118.* (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly: S. 118.

Order to give security.

Provided—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under S. 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

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*(CODE OF 1882—S. 118.)

118. If upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

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Secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

Thirdly—that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(CODE OF 1872—S. 493, Para. 1 and S. 497.)

493. The bond shall be in the form (E) given in the second schedule, or to the like effect; and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

Penalty of bond.

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497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

Non-compliance with order to give bond.

S. 118, Note 1.

SYNOPSIS.

	Note No.
FINAL ORDER FOR SECURITY	1
TERMS OF SECURITY TO CORRESPOND WITH THE ORDER UNDER S. 112—PROVISO 1	2
AMOUNT OF SECURITY—PROVISO 2	3
PERIOD OF SECURITY	4
FORM AND CONTENTS OF BOND FOR SECURITY ..	5
POWER OF COURT TO IMPOSE CONDITIONS ON SURETIES	6
POWER OF COURT TO DIRECT A FRESH BOND TO BE EXECUTED ON FORFEITURE OF THE ORIGINAL SECURITY	7
POWER OF COURT TO REVIEW A FINAL ORDER FOR SECURITY UNDER THE SECTION	8
BOND BY A MINOR—PROVISO 3	9
APPEAL	10
REVISION	11
REFERENCE TO THE HIGH COURT UNDER S. 435	12
LETTERS PATENT APPEAL	13
APPEAL TO PRIVY COUNCIL	14

Other Topics.

Duty of the Court to test the evidence. See S. 117, Note 7.

Evidence of previous conviction. See S. 117, Note 10.

"If it is proved". See S. 117, Note 2.

Power of Magistrate to cancel bond. See S. 125, Note 4.

1. **Final Order for security.**—The Magistrate, as already seen in Note 2 to the last preceding section, is bound to hold a *judicial inquiry* as to the truth or otherwise of the information upon which he has instituted proceedings under this Chapter. Where, as a result of such inquiry, the Magistrate finds that it is necessary that the person in respect of whom the inquiry is made should execute a bond for keeping the peace or for maintaining good behaviour, as the case may be, he should pass an order under this section. The Magistrate is bound to consider in the exercise of his judicial discretion as to whether an order for

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(CODE OF 1861—Ss. 284 and 288.)

Penalty.

284. The penalty of such bond, which shall be in the form (D) given in the Appendix or to the like effect, shall be fixed with a due regard to the circumstances of the case and the means of the party, and the amount in which the sureties shall be bound shall not exceed the said penalty.

Consequence not complying with order of Magistrate to enter into a bond.

288. If the Magistrate or other Officer as aforesaid shall be satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly, and if the person shall fail to comply with the order, it shall be lawful for the Magistrate or other Officer as aforesaid to commit him to jail.

S. 118, Notes 1—2.

security is really necessary[1] and should give valid reasons for his finding.[2] He cannot bind over a person, for instance, on the hypothesis that if certain things happen he may commit a breach of the peace.[3] Nor can he bind over one person in order to prevent a breach of the peace by another.[4] The procedure prescribed by the last preceding section of this chapter should be duly followed before an order can be passed under this section.[5]

The section empowers the Magistrate to direct the person proceeded against to execute a *bond* for keeping the peace or for maintaining good behaviour. It does not authorize him, for instance, to pass an order that the person directed to furnish security should not enter his village and that if he were to do so, the order for security should be enforced against him.[6]

Where the Magistrate passes an order for security under this section, the person ordered to furnish it should be given *sufficient time* to furnish the same.[7]

It is only when he fails to furnish security within such time that he can be ordered to be imprisoned under S. 123, *infra*. The section does not authorise the award of imprisonment in *anticipation* of default in furnishing security.[8]

An order binding over a person under this section is not an order convicting him of any offence[9] and hence it has been held that his name cannot be entered in the surveillance register.[10]

2. Terms of security to correspond with the order under S. 112—Proviso 1.—The final order for security under this section must correspond with the preliminary order and notice issued under S. 112. The Magistrate cannot, in the final order, increase the amount of security[1] or alter the nature thereof[2] or impose fresh conditions[3] or increase the period for which the security should remain in force[4] at variance with the terms as to security contained in the order under S. 112.

Section 118—Note 1.

(1) (1894) Rat. 723 (724), *Kala Teja*.
(2) (1888) 10 Bom. 174 (175), In re *Rajah Valad Hussein Saheb*.
(1900-02) 1 L. B. R. 90 (92), *Crown* v. *Nga Nyein*.
(1903) 7 Cal. W. N. 32 (33), *Sheikh Jinnah* v. *Sheikh Rhusen*.
(3) (1931) Mad. W. N. 402 (403), *Narayana Doss Bairagi* v. *Emperor*.
(4) (1871) 17 Suth. W. R. Cr. 54 (54), *Ram Koomar Banerjee* v. *Raja Gopal Singh*.
(1873) 19 Suth. W. R. 32 (33), *Queen* v. *Omerto*.
(5) (1916) 17 Cri. L. Jour. 528 (528): 1916 All. 237, *Srideo* v. *Emperor*.
(1888) Rat. Un. Re. Cr. C. 421 421, 422), *Empress* v. *Adam*.
(1897-1901) Upp. Bur. Rul. 16 (18, 19), *Nga Po Kin* v. *Empress*.
(1908) 7 Cri. L. Jour. 94 (95): 10 Oudh Cas. 365, *Pragi* v. *King-Emperor* (Held, a failure to record an order, under S. 112 should be treated as a mere irregularity).
(6) (1868) 1868 Pun. Re. No 24, pp. 72 (73), *Crown* v. *Mahomed Hussun*.
(7) (1925) 1925 Rang. 353 (353), *Maung Tun* v. *Emperor*.
(8) (1888) Rat. Un. Re. Cr. C. 395 (395), *Empress* v. *Shivraya*.
(1888) Rat. Un. Re. Cr. C. 408 (408), *Empress* v. *Hirulal*.
(1895) Cr. Rg. 33.
[See also (1871) 3 N.-W. P. 96 (99), *Queen* v. *Powell*.]
(9) (1930) 1930 Pat. 274 (275): 9 Pat. 131, *Charan Mahto* v. *Emperor*.
(1934) 1934 Cal. 808 (808): 61 Cal. 556, *Chandra Benode Das*, In re.
(10) (1921) 1921 Pat. 74 (74).

Note 2.

(1) (1881) 1881 All. W. N. 152 (153), *Muhammad*.
(1885) 1885 All. W. N. 30 (30), *Empress* v. *Debi*.
(1895) 1895 All. W. N. 241 (241), *Empress* v. *Barjore Singh*.
2 Shome L. R. 15, *Chutter Singh* v. *Gopal Singh*.
(1907) 5 Cri. L. Jour. 219 (219) (Lah.), *Kishen Singh* v. *Crown*.
(1872) 9 Ben. L. R. App. 44 (44), *Queen* v. *Ishree Pershad Singh*.
(2) (1906) 4 Cri. L. Jour. 405 (405) (All.), *Jangi Singh*.
(1876) 25 Suth. W. R. Cr. 50 (50), *Abdool Bari*.
(3) (1925) 1925 Sind 57 (58): 18 Sind L. R. 298, *Manu*.
(4) (1903) 26 Mad. 471 (472), *Belagal Royacharlu*.
2 Shome L. R. 2, *Mir Munjud Ali*.
(1872) 18 Suth. W. R. Cr. 61 (62), *Queen* v. *Ishree Pershad Singh*.

S. 118, Notes 3—5.

3. **Amount of security—Proviso 2.**—The object of taking security is not to punish a person and send him to jail or to collect revenue for the Government; the section being preventive in its nature, the amount should be fixed in such a manner as to afford a fair and reasonable chance of compliance so as not to make the alternative of imprisonment unavoidable.[1] The character and reputation of a person and the degree of danger to be apprehended by him to the community are no doubt elements to be considered by the Court in fixing the amount of security, but they are not the sole and guiding factors.[2] The amount should be fixed according to the ability of the person ordered to furnish security, having regard to his means and station in life, and should not go beyond a sum for which there is a fair probability of his being able to find out the security.[3] The Magistrate is bound to exercise a sound and judicial *discretion* in fixing the amount of the security having regard to the circumstances of the case. Where the amount fixed is *excessive* and beyond the means of the person directed to furnish security, the High Court can interfere in revision and reduce the amount of security.[4]

4. **Period of security.**—The period for which security can be demanded is prescribed in the various sections, *viz.*, Ss. 106 to 110. *See also* the undermentioned cases.[1]

5. **Form and contents of Bond for security.**—Forms 10 and 11 of Schedule V of the Code prescribe the forms in which a bond for keeping the peace and for maintaining good behaviour respectively should be executed.[1] The bond contemplated is a bond for an amount which is the one that is ascertained in the final order under this section. There is no authority for requiring the sureties each to execute a separate bond for the same amount as is demanded from the person bound over.[2] The bond is discharged on forfeiture by payment of the amount due either by the principal or the surety.[3]

The form prescribed for the bond merely requires a written *undertaking* by the sureties that in case of default by the person ordered to be bound over they will be liable. Neither the present section nor the forms prescribed

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Note 3.

(1) (1878) 1 Cal. L. R. 95 (96): 2 Cal. 384, In re *Dedar Baksh*.
(1898) 20 All. 206 (207), *Queen-Empress* v. *Rahim Baksh*.
(1885) 7 All. 67 (72), *Queen-Empress* v. *Khandhaia*.
(1932) 1932 Lah. 559 (563), *Secretary, Bar Association* v. *Emperor*.
(1900) 1900 Pun. Re. No. 15, pp. 34 (36), *The Crown* v. *Ida*.
(2) (1890) 1890 Pun. Re. No. 30, pp. 97 (98), *Jawaya* v. *Emperor*.
(1911) 12 Cri. L. Jour. 110 (110): 5 Sind L. R. 10, *Piral* v. *Emperor*.
(3) (1892) 16 Bom. 372 (374), *Rama bin Bhagu*.
(1900) 1900 Pun. Re. No. 7, pp. 39 (40), *Ali* alias *Tota* v. *Empress*.
(1900) 1900 Pun. Re. No. 24, pp. 53 (53), *Barkat* v. *Empress*.
(1868-69) 4 Mad. H. C. R. App. 46 (47), *Anon*.
(1872-1892) 1 L. B. R. 422 (423), *Nga Tue E*.
(4) (1876) 2 Cal. 110 (112, 113), In the matter of *Juggut Chunder Chakrabutty*.
(1877) 2 Cal. 384 (385), In re *Dedar Baksh and Halalchor*.
(1904) 1 Cri. L. Jour. 344 (349): 31 Cal. 350, *Surjya Kanta* v. *Emperor*.
(1872) 19 Suth. W. R. 1 (2), Re *Nimadhub Ghosal*.
(1874) 22 Suth. W. R. 74 (75), *Baboo Futteh Bahadoor* v. *Mr. Gibbon*.
(1901) 23 All. 80 (81), *Empress* v. *Raza Ali*.
(1885) 5 All. W. N. 286 (287), *Dulla*.
(1892) 16 Bom. 372 (373), *Empress* v. *Rama*.
(1883) 1883 Pun. Re. No. Cr. 1 (1, 2), *Ram Singh* v. *Empress*.
(1883) 2 Weir 53 (53), Re *Yerukala*.
(1900-02) 1 L. B. R. 75 (77), *Crown* v. *Nga Nyauk Lon*.

Note 4.

(1) (1884) 6 All. 214 (219), *Empress* v. *Nathu*.
(1916) 1916 Mad. 654, In re *A. Shakoor Sait*.
(1876) Weir 3rd Edn. 725 (726).

Note 5.

(1) [See (1878) 1878 Pun. Re. No. 1 (2) (Cr.), *Crown* v. *Yaram*.]
(2) (1890) 1890 Pun. Re. No. 30, p. 97 (98) (Cr.), *Jawaya* v. *Empress*.
(3) (1894) 1894 Pun. Re. No. 26 (Cr.), p. 87 (88), *Kaku* v. *Empress*.

contemplate the furnishing of a registered hypothecation bond offering as security any *property*.[4] Nor is the Magistrate authorised to direct the security to be deposited in *cash*.[5]

The Code does not authorize the execution of a bond by the sureties alone without there being at the same time a personal recognizance by the person sought to be proceeded against.[6]

6. Power of Court to impose conditions on sureties.—The primary consideration in accepting a surety is to see whether he is likely to fulfil the undertaking given by him.[1] The Magistrate should not act arbitrarily and impose conditions and restrictions on the sureties which are not reasonable and which are not necessary for the object in view.

See Note 5 to S. 112 and Note 5 to S. 122. Also S. 123.

7. Power of Court to direct a fresh bond to be executed on forfeiture of the original security.—A person cannot be required, without fresh proceedings being taken against him, to execute a fresh bond a second time where in consequence of a breach the original security has been forfeited. There is no provision in the Code for the *renewal* of a bond executed under this section.[1]

8. Power of Court to review a final order for security under the section.—A Magistrate has no power to review a final order for security passed under this section. He cannot thus increase the amount of security fixed in the final order by means of a subsequent order on the ground that the preliminary order under S. 112 directed security for a larger amount than that ordered in the final order and that the Magistrate has overlooked that fact.[1]

9. Bond by a minor—Proviso 3.—Proviso 3 enacts that where the person ordered to furnish security is a Minor, no bond need be executed by him personally but that the bond should be executed only by his sureties. The reason for such a provision is the legal incompetence of a minor to enter into a contract.[1] As to whether the principle of this Proviso applies to a bond under S. 562 of the Code see the following cases[2] and also Notes to S. 562.

10. Appeal.—Prior to the amendment of S. 406 of the Code in 1923 a right of appeal was given only in respect of an order for security to maintain *good behaviour* and consequently it was held that an order directing security

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(4) (1932) 1932 All. 122 (123), *Emperor* v. *Harihar Kalwar*.
(1875) 7 N.-W. P. H. C. 249 (250), *Queen* v. *Ganni*.

(5) (1881) 6 Cal. 14 (16), In re *Kalachand Dass*.
(1893) Rat. Un. Re. Cr. Cas. 671 (671), *Queen-Empress* v. *Fata*.
(1867) 7 Suth. W. R. Cr. 30 (30), *Queen* v. *Kistendro Roy*.

(6) (1904) 1 Cri. L. Jour. 897 (898): 27 All. 262, *Emperor* v. *Udmi*.

Note 6.

(1) (1932) 1932 All. 122 (123), *Emperor* v. *Harihar Kalwar*.
[See also (1903-04) 2 L. B. R. 40 (41), *Emperor* v. *Nga Po Saung*.]

Note 7.

(1) (1910) 11 Cri. L. Jour. 244 (244) (Mad.), In re *Muthu Thevan*.
[See also (1874) 23 Suth. W. R. 1 (1), *Bindessuree* v. *Gujadhur*.]

Note 8.

(1) (1919) 1919 All 329 (330), *Rajkumar* v. *Emperor*.

Note 9.

(1) (1907) 6 Cri. L. Jour. 123 (124): 4 L. B. R. 12, *Emperor* v. *Mi Pyu*.
(2) (1907) 6 Cri. L. Jour. 123 (124): 4 L. B. R. 12, *Emperor* v. *Mi Pyu* (Proviso 3 does not apply to a bond under S. 562. 2 L. B. R. 137 and 2 L. B. R. 168 not followed).
(1903-04) 2 Low. Bur. Rul. 168 (168), *Emperor* v. *Nga Chon* (Held, Proviso 3 applies to a bond under S. 562 dissented from in 6 Cri. L. Jour. 123).
[See also (1893) 6 C. P. L. R. Cr. 13 (14), *Empress* v. *Dalbux*.]

S. 118, Notes 10—11.

to keep the peace was not appealable.[1] Under the newly amended S. 406 of the present Code an order for keeping the peace as well as for maintaining good behaviour are both appealable. There was also a doubt prior to the said amendment as to whether an appeal lay to the District Magistrate where there had been a reference to the Sessions Judge under S. 123 of the Code.[2] The doubt has been set at rest by the newly enacted second proviso to S. 406 of the Penal Code which clearly shows that there is no right of appeal in such a case. Further the appeal itself lies now to the Sessions Judge and not to the District Magistrate except where the latter is specially empowered to entertain appeals.[3]

The Code does not provide for a further or second appeal to the High Court against the order of the appellate Court under S. 406. The Local Government has no right of appeal to the High Court under S. 417 of the Code against an order of the Sessions Judge setting aside in appeal an order directing security under this section as the appellate order is not one of *acquittal* within the meaning of S. 417. But the Local Government can move the High Court in revision.[4]

Duties and powers of the appellate Court.—The appellate Court must show by its judgment that it has duly weighed and examined the evidence for and against the appellant.[5] As to the powers of the appellate Court *see* Notes to S. 423 of the Code and the following cases.[6] It has been held in the undermentioned case[7] that it is not competent for the appellate Court to enhance the amount of security demanded by the trial Court.

11. Revision.—An order passed in appeal against an order passed under this section can be revised by the High Court.[1] The High Court is not

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Note 10.

(1) (1916) 17 Cri. L. Jour. 165 (165): 1916 All. 338, *Har Dutt Panda* v. *Emperor.*
(1913) 14 Cri. L. Jour. 63 (63) (Lah.), *Mt. Sardara* v. *Emperor.*
(1905) 2 Cri. L. Jour. 329 (330, 331) (All.), In the matter of the petition of *Chet Ram.*
(1898) 1898 All. W. N. 127 (128), *Empress* v. *Phulbu.*
(1883) 9 Cal. 878 (879), *Chand Khan.*
(1924) 1924 Nag. 60 (61): 19 Nag. L. R. 160, *Sham Rao* v. *Emperor.*
(1918) 1918 Pat. 183 (184), *Khetrabasi Sahu* v. *Emperor.*
(1897-1901) Vol. 1, U. B. R. 227 (227), *Empress* v. *Nga Kyauk Maw.*
(1919) 1919 U. B. 27 (27): 3 U. B. R. 117, *Law Kaw* v. *Emperor* (Order under S. 3 of the Burmah Opium Law Amendment Act is appealable).
(1921) 1921 Cal. 347 (348): 48 Cal. 874, *Mahendra Bhumji* v. *Emperor* (Held, an appeal lay against an order of the Additional District Magistrate passed under S. 110).

(2) (1910) 8 Ind. Cas. 879 (880): 13 Oudh Cas. 354, *Pattu* v. *Emperor.*
(1922) 1922 Lah. 475 (476), *Qumar Din* v. *Emperor.*
(1899) 2 Oudh Cas. 307 (310), *Subba* v. *Crown.*

(3) See (1931) 1931 Notes 16 (*d*), *Emperor* v. *Jahangir Chand.*

(4) (1926) 1926 Oudh 329 (330): 1 Luck. 231, *Emperor* v. *Samai Deen.*
(1928) 1928 All. 1 (2), *Emperor* v. *Babu Ram.*
(1883) 9 Cal. 878 (879), *Chand Khan* v. *Empress* (Order of appellate Court confirming order for security—Held, not appealable to the High Court).

(5) (1917) 18 Cri. L. Jour. 649 (650): 1917 Oudh 113, *Bhansidar* v. *Emperor.*
(1913) 14 Cri. L. Jour. 419 (420): 40 Cal. 376, *Fidol Hosscin* v. *Emperor.*
(1916) 17 Cri. L. Jour. 309 (310): 1916 All. 197: 38 All. 393, *Lal Behari* v. *Emperor.*
(1916) 17 Cri. L. Jour. 167 (167): 1916 All. 180, *Sarwan* v. *Emperor.*
(1921) 1921 Jour. 8 (4), *Sunchari* v. *Emperor.*

(6) (1929) 1929 Lah. 28 (28), *Chandan* v. *Emperor* (Held, appellate Court while setting aside an order directing security cannot remand the case for *a de novo* trial).
(1934) 1934 Mad. 202 (202), *Narappa Reddy.* In re (Appeal against order to give security—*De novo* trial cannot be ordered by appellate Court).
[But see (1926) 1926 All. 403 (404): 48 All. 501, *Bhagwat Singh* v. *Emperor* (Held, re-trial can be ordered).]
[See also (1906) 3 Cri. L. Jour. 243 (243): 33 Cal. 8, *Dayanath Taluqdar* v. *Emperor* (Held, the appellate Court has no power to direct further inquiry and at the same time require increased security).]

(7) (1923) 1923 Oudh 44 (45): 24 Oudh Cas. 286, *Rameshwar Baksh Singh* v. *Emperor.*

Note 11.

(1) (1914) 1914 Lah. 281 (283): 1914 P. R. 5, *Ahmed Baksh* v. *Emperor.*

S. 118, Note 11.

however a Court of appeal and will not ordinarily interfere on the *merits*[2] provided the Court hearing the appeal shows in its judgment that it has really and not nominally considered the evidence on record[3] and has approached the case in a fair way having regard to the interests of the prosecution as well as the defence.[4]

But the High Court will interfere in revision in security proceedings in the following cases:—

(1) Where the lower Court has acted in excess of its powers or by a too summary exercise of its powers.[5]
(2) Where the order of the Lower Court is vitiated by any error of law or is tainted with illegality.[6]
(3) Where the applicant has not had a fair trial in the lower Court.[7]
(4) Where the lower Court has misapplied the rules of evidence and acted on inadmissible evidence.[8]
(5) Where the finding of the lower Court is perverse[8-a] as for instance where it is based on no evidence[9] or upon a misconception of evidence[10] or in disregard of credible evidence for the defence which has been lightly brushed aside.[11]
(6) Where the order of the lower Court has resulted in a miscarriage of justice.[12]
(7) Where the amount of security fixed by the lower Court is excessive.[13]

(1866) 6 Suth. W. R. 18 (18), *Jaswant*, In re.

(2) (1919) 1919 All. 136 (138), *Jabruddin* v. *Emperor*.
(1924) 1924 All. 451 (453): 45 All. 749, *Darbari Singh* v. *Emperor*.
(1899) 1899 P. R. 10 (Cr.), pp. 29 (30), *Sher Zaman Shah* v. *Empress*.
(1932) 1932 Sind 100 (101), *Khairatiram* v. *Emperor*.

(3) (1912) 13 Cri. L. Jour. 9 (9) (All.), *Babu Pershad* v. *Emperor*.
(1909) 9 Cri. L. Jour. 528 (529) (All.), *Shiam Lal* v. *Emperor*.
(1921) 22 Cri. L. Jour. 660 (661, 662), (All.), *Bisheshwar Dayal* v. *Emperor*.

(4) (1915) 16 Cri. L. Jour. 805 (806): 1915 All. 464 (All.), *Micharban Singh* v. *Emperor*.
(1927) 1927 All. 473 (474), *Lachman* v. *Emperor*.
(1923) 1923 All. 35 (37): 45 All. 109, *Angnoo Singh* v. *Emperor*.
(1925) 1925 Oudh 473 (474): 29 Oudh Cas. 44, *Kewal Kishore* v. *Emperor*.
[See (1891) 14 All. 45 (47, 48), In re *Daulat*.]

(5) (1916) 17 Cri. L. Jour. 461 (461): 1916 All. 96, *Gayani* v. *Emperor*.

(6) (1908) 7 Cri. L. Jour. 24 (25) (Bom.), *Emperor* v. *Narayan Shivram Barve*.
(1928) 1928 All. 1 (1), *Emperor* v. *Babu Ram*.
(1929) 1929 All. 273 (275): 51 All. 663, *Emperor* v. *Ram Lal*.
(1930) 1930 All. 23 (24), *Alayar Khan* v. *Emperor*.
(1910) 11 Cri. L. Jour. 388 (389) (Lah.), *Bahadar Singh* v. *Emperor* (Preliminary notice under S. 112 omitting to give substance of the information —Held notice bad in law).

(7) (1918) 1918 Bom. 254 (255), *Mir Hashamali Mir Kasim Ali* v. *Emperor* (Excessive bail demanded and accused obliged to be kept in detention during inquiry—Held no fair trial).
(1915) 16 Cri. L. Jour. 91 (91): 1914 Bom. 199, *Bhan Savalaram Kolasthane* v. *Emperor* (Applicant sent to jail while inquiry in progress).
(1915) 16 Cri. L. Jour. 114 (115): 1915 Cal. 368, *Kedar Mullick* v. *Emperor* (Proceedings taken under S. 193, I. P. C. against some D. W.s consequently other D. W.s refused to give evidence—Held accused prejudiced and had no fair trial).

(8) (1916) 17 Cri. L. Jour. 461 (461): 1916 All. 48, *Gayani* v. *Emperor*.
(1927) 1927 All. 394 (395), *Raj Narayan Pandey* v. *Emperor*.
(1927) 1927 All. 146 (147), *Dindayal* v. *Emperor*.

(8-a) (1922) 1922 All. 86 (87), *Bhola* v. *Emperor*.

(9) (1912) 13 Cri. L. Jour. 720 (720) (Lah.), *Sher Singh* v. *Hari Singh*.

(10) (1929) 1929 Nag. 328 (330), *Kashiram Hazari* v. *Asaram*.
(1924) 1924 All. 569 (569), *Alimuddin* v. *Emperor*.
(1910) 11 Cri. L. Jour. 387 (387) (Lah.), *Natha Singh* v. *Emperor* (The accused has already been twice acquitted on similar facts and evidence and nothing new is urged against him).

(11) (1923) 1923 All. 35 (37): 45 All. 109, *Anjinoo Singh* v. *Emperor*.
(1915) 1915 All. 464, *Miharban Singh* v. *Emperor*.

(12) (1923) 1923 Nag. 53 (54), *Bakaram* v. *Emperor*.
(1889) 1889 Pun. Re. No. 23, pp. 77 (78, 79), *Balmukund* v. *Emperor*.
(1911) 12 Cri. L. Jour. 542 (544) (Lah.), *Gurbux Singh* v. *Emperor*.

(13) [*See cases cited in point 4 to Note 3 of this section.*]

S. 118, Notes 11—14.

The High Court will not interfere in revision in the following cases:—

(1) Where there is other remedy open and available to the applicant[14] or, having had that remedy, he has failed to avail the same.[15]

(2) Where the procedure of the lower Court is merely irregular and the irregularity has not resulted in prejudice and has not occasioned in any failure of justice.[16]

(3) Where the finding of fact of the lower Court is based on the demeanour of a witness.[17]

12. Reference to the High Court under S. 435.—Section 435 of the Code enables a Sessions Judge to call for the record of proceedings under S. 110, taken before an inferior Criminal Court within his jurisdiction and make a reference to the High Court.[1]

13. Letters Patent Appeal.—Proceedings taken for binding over a person under this chapter have been held to be criminal trials within the meaning of Cl. 15 of the Letters Patent and consequently no appeal lies under that clause from the judgment of a single Judge of the High Court dealing with a revision petition arising in such proceedings. The portion of the Letters Patent commencing with Cl. 22 which deals with criminal jurisdiction does not also give a right of appeal against an order of a single Judge acting in revision.[1] (*See* the newly amended Cl. 15 of the Letters Patent which clearly excludes a right of appeal in respect of a sentence or order passed in the exercise of *Criminal Jurisdiction*).

14. Appeal to Privy Council.—An order of the High Court affirming an order directing a person to furnish security under this section has been held to be not appealable to the Privy Council under Cl. 41 of the Letters Patent.[1]

S. 119.

119.* If, on an inquiry under Section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of

Discharge of person informed against.

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*(CODE OF 1882—S. 119.)

119. If, on an enquiry under S. 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate, shall make an entry on the record to that effect, and, if such person is in

Discharge of person informed against.

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(14) (1914) **1914 Sind 139 (140)**: 8 Sind L. R. 229, *Juno* v. *Emperor* (Applicant not having availed remedy of appeal).
(1905) 2 Cri. L. Jour. 335 (335), *Emperor* v. *Abdul Rahim* (Held remedy under S. 125 appropriate and available to applicant—Hence revision rejected).
(1918) 1918 All. 343 (344): 40 All. 140, *Lalji* v. *Emperor* (Do.).
(1927) 1927 Lah. 689 (690) (Do.).
[See also (1918) 1918 Pat. 588 (590), *Bepin Bihary* v. *Emperor* (Do.).]

(15) (1914) 1914 Sind 139 (140): 8 Sind L. R. 229, *Juno* v. *Emperor*.

(16) (1920) 1920 Nag. 138 (139), *Khusal* v. *Emperor* (The omission to mention in the final order the period for which the security bond was demanded, while the period of one year was mentioned in the preliminary order).
(1920) 1920 Mad. 1014 (1014), *Kavathum Pattu Raju*, In re.

(17) (1916) 17 Cri. L. Jour. 461 (461): 1916 All. 48, *Gayani* v. *Emperor*.

Note 12.

(1) (1923) 1923 All. 596 (596), ***Ashiq Ali*** v. *Emperor*.
(1916) 17 Cri. L. Jour. 157 (158): 1916 All. 316, *Emperor* v. *Sukhdeo*.

Note 13.

(1) (1915) 16 Cri. L. Jour. 303 (304): 1915 Mad. 831: 39 Mad. 539, ***Abur Desikachari*** v. *Emperor*.
(1904) 1 Cri. L. Jour. 1087 (1089): 27 Mad. 510, In re *Ramaswami Chetty*.

Note 14.

(1) (1913) 14 Cri. L. Jour. 598 (599) (Cal.), *Chintamon Singh* v. *Emperor*.

whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him. S. 119, Note 1.

SYNOPSIS.

	Note No.
NECESSITY FOR BOND	1
'DISCHARGE'	2
FURTHER INQUIRY	3

Other Topics.

Absence of complainant on the day of hearing. See S. 117, Note 4, Pt. 3.

Fresh proceedings. See Note 3, Pt. 3.

1. Necessity for bond.—Where on an inquiry under S. 117, it is found, that the information, upon which action was taken is not true, or that no evidence is forthcoming to prove the same, the person proceeded against should be discharged.[1] The mere fact that a person lent money to one side of a faction[2] or that he, being a Muhammadan sent for a Pandit and started a school to teach Sanskrit[3] or that he was charged for false imprisonment[4] or that one of his servants had been fined for assault and the police apprehended a breach of the peace[5] or that extra judicial information had been obtained from

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custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

(CODE OF 1872—S. 496.)

Discharge of person informed against.

496. If on the appearance of such person informed against or of his agent, if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

(CODE OF 1861—S. 287.)

Discharge of party informed against.

287. If on the appearance of the person, or of his Agent, if he is permitted to appear by Agent, the Magistrate or other Officer as aforesaid shall not be satisfied that there is occasion to bind such person to keep the peace, he shall direct his discharge.

Section 119—Note 1.

(1) (1927) 1927 Cal. 343 (343), *Assafali Saiyal* v. *Nasur Sarkar.*
(1884) 1884 Pun. Re. No. 37, *Jey Singh* v. *Kanhya.*
(1874) 21 Suth. W. R. Cr. 6 (7), *Ramkishore Acharjee Chowdhury* v. *Aripkhan.*
(1897) 19 All. 291 (293), Re *Gudar Singh.*
(1905) 2 Cri. L. Jour. 88 (All.), *Emperor* v. *Hurmut Khan.*
(2) (1875) 7 N.-W.P. 233 (235), *Queen* v. *Kidarnath.*
(3) (1886) 9 All. 452 (463), *Empress* v. *Abdul Kadir.*
(4) (1866) 6 Suth. W. R. 1 (1), Re *Keshub Chundro.*
(5) (1869) 12 Suth. W. R. 16 (17), *Queen* v. *Deo Nundun.*

S. 119, Notes 1—3.

conversations, with respectable persons out of Court, of the person's bad character[6] is not a ground for ordering him to give security.

2. **'Discharge'.**—The word 'discharge' in this section has been used in a non-technical sense and means merely a 'permission to depart'. It is not used in the technical sense of 'discharge' as opposed to 'acquittal' of an offence.[1]

A discharge under this section is not a "discharge" or "acquittal" within the meaning of S. 250, *infra*, and no compensation can be awarded under it.[2]

3. **Further Inquiry.**—There was a conflict of opinion before the amendments of 1923 as to whether a further inquiry could be ordered under S. 437 (now S. 436) where a person had been discharged under this section.[1] The conflict arose from the fact that that section used the words "accused persons" and the question was whether a person proceeded against under this chapter was an "accused person". The said S. 437 has, after the amendment of 1923 been renumbered as S. 436 and the words "person accused of an offence" have been substituted for the words "accused person" with the result that it is now clear, that the section has no application to persons proceeded against under this chapter inasmuch as they are not charged with any offence. No further inquiry can therefore now be ordered against a person discharged under this section.[2] But a discharge under this section is no bar to a second case being instituted on fresh material.[3]

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(6) (1883) 6 All. 132 (136, 137), *Emperor* v. *Babua.*

Note 2.

(1) (1910) 11 Cri. L. Jour. 162 (164): 33 Mad. 85, *Velu Taye Ammal* v. *Chidambara Velu Pillai.*
(1913) 14 Cri. L. Jour. 559 (561): 36 Mad. 315, Re *Muthia Moopan.*
(2) (1910) 11 Cri. L. Jour. 446 (446) (All.), *Ram Sukh Rai* v. *Mahadeo Rai.*
(1901) 25 Bom. 48 (49), *Govind Hanmant Kulkarni* v. *Rachaya Chanbasya.*
(1902) 1902 Pun. Re. No. 33, p. (87), *Crown* v. *Kaura and Lahori.*

Note 3.

(1) *In the following cases it was held that it could not.*
(1900) 27 Cal. 662 (663), *Empress* v. *Imam Mondal.*
(1911) 12 Cri. L. Jour. 232 (233): 1911 P. R. 6, *Narain Das* v. *Durga Devi.*
(1910) 11 Cri. L. Jour. 162 (164): 33 Mad. 85, *Velu Tayi Ammal* v. *Chidambaravelu Pillai.*
(1924) 1924 All. 592 (592): 46 All. 235, *Roshan Singh* v. *Emperor.*
(1931) 1931 All. 53 (54): 53 All. 140, *Md. Yusuf* v. *Abdul Majid.*
(1901-02) 6 Cal. W. N. 163 (164), *Imam Mandal.*
(1931) 1931 Lah. 185 (186), *Kirparam* v. *Durga Das.*
(1905) 2 Cri. L. Jour. 697 (701): 1905 P. R. 42, *Muhammad Khan* v. *Emperor.*
(1933) 1933 Nag. 78 (79): 29 Nag. L. R. 201, *Kanhaiya Lal* v. *Baijnath.*
(1903) 6 Oudh Cas. 262 (267), *Sheo Din* v. *Emperor.*
(1914) 1914 Upp. Bur. 28 (29): 2 U. B. R. 3, *Ismail* v. *A. H. Nolan.*
(1906) 3 Cri. L. Jour. 243 (243): 33 Cal. 8, *Dayanath Talukdar* v. *Emperor.*
(1900) 1900 All. W. N. 206 (207), *Empress* v. *Ahmed Khan.*
(1929) 1929 All. 181 (181), *Jaswant* v. *Emperor.*
(1922) 1922 All. 429 (430): 44 All. 697, *Mazhar Ali Khan* v. *Mahfuz Hasan.*
(1922) 23 Cri. L. Jour. 62 (63): 1921 All. 181, *Jaswant* v. *Emperor.*
(1900) 27 Cal. 662 (663), *Queen-Empress* v. *Imam Mondol.*
(1905) 1905 Pun. Re. No. 42, p. (102), *Muhammad Khan.*
(1911) 13 Cal. W. N. cclxi (261).
In the following cases it was held that it could be.
(1899) 21 All. 107 (109), *Mutasaddi Lal.*
(1902) 24 All. 148 (151), *Emperor* v. *Fayazuddin.*
(1899) 1899 All. W. N. 203 (203), *Empress* v. *Ratti.*
(1914) 1914 All. 158 (160): 36 All. 147, *Ram Sarup Saha* v. *Karam Ulla Khan.*
(1905) 2 Cri. L. Jour. 716 (717): 1905 P. R. 33, *Gokha Singh* v. *Chetu.*
(1911) 12 Cri. L. Jour. 430 (430): 35 Bom. 401, In re *Baba Yeswant Desai.*
(1903) 1903 Pun. Re. No. 24, Cr., *Manna* v. *Emperor.*
(1903-04) 2 L. B. R. 80 (83), *Ebrahim* v. *Emperor.*
(1891) 11 All. W. N. 106 (106), *Sheodyal*
(1919) 1919 All. 174 (175), *Desraj Singh* v. *Emperor.*
[*See also Article in* (1899) 3 Cal. W. C. clxv.]
(2) (1928) 1928 All. 755 (756): 51 All. 408, *Neur Ahir* v. *Emperor.*
(1924) 1924 Rang. 207 (208): 2 Rang. 30, *Mg. Than* v. *King-Emperor.*
(3) (1923) 1923 All. 332 (333), *Jasua* v. *Emperor.*
(1913) 14 Cri. L. Jour. 189 (189) (Cal.), *Chandan Sahu* v. *Bhadai Rai.*

C.—Proceedings in all cases subsequent to order to furnish security. S. 120.

120*. (1) If any person, in respect of whom an order requiring security is made under Section 106 or Section 118, is, at the time such order is made, sentenced to or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

(2) In other cases, such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

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*(CODE OF 1882—S. 120.)

C.—Proceedings in all cases subsequent to order to furnish security.

120. If any person in respect of whom an order requiring security is made under S. 106 or S. 118 is, at the time such order is made, sentenced to, or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

(CODE OF 1872—S. 489, Paras. 2, 3 and 4 and S. 504, Para. 2.)

CHAPTER XXXVII.

Of Security for keeping the peace.

Personal recognizance to keep the peace in cases of conviction.

489. * * * *

and the Court or Magistrate by which or by whom such person is convicted, or the Court or Magistrate by which or by whom the final sentence or order in the case is passed, is of opinion that it is just necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

504. * * * * * *

Binding of sentenced person.

If in any case under this or the two following sections, the person to be bound is under sentence for an offence, he must be brought up on or after the expiration of his sentence for the purpose of being bound.

* * * * * *

(CODE OF 1861—Nil.)

S. 120, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
COMMENCEMENT OF THE PERIOD OF SECURITY ..	2
"UNLESS THE MAGISTRATE, FOR SUFFICIENT REASON FIXES A LATER DATE"	3
SECOND ORDER FOR SECURITY DURING THE SUBSISTENCE OF A PREVIOUS ONE	4
"SHALL COMMENCE ON THE DATE OF SUCH ORDER"—SUB-S. (2)	5

1. Legislative Changes.—

(1) *Difference between the Code of* 1861 and that of 1872—

There was no provision corresponding to this section in the Code of 1861. It was first introduced in the Code of 1872.

(2) *Difference between the Codes of* 1872 *and* 1882—

There was no express provision of law in the Code of 1872, corresponding to the second paragraph of this section. It was introduced in the Code of 1882.

(3) *Difference between the Code of* 1882 *and that of* 1898.—

The words "unless the Magistrate, for sufficient reason, fixes a later date" were newly added in para. 2 of the section by the Code of 1898.

2. Commencement of the period of security.—Section 106 provides for an order being passed for security for keeping the peace *on conviction* for certain offences. Section 118 provides for an order being passed for security for keeping the peace, *in other cases* and for security for good behaviour. This section deals with the *commencement of the period* for which security has been ordered to be given under Ss. 106 or 118. If at the time of passing the order the person concerned is sentenced to or is undergoing a sentence of imprisonment, the period will commence on the *expiration of the sentence* (sub-S. 1).[1] If before the expiry he is convicted of another offence and sentenced to a fresh term of imprisonment the period will not commence until the expiry of both imprisonments.[2] In other cases it will commence *on the date of the order* unless a later date is fixed for sufficient reasons (sub-S. 2). The suspect has time to furnish the required security up to the date on which the period of security would commence and therefore the Magistrate cannot pass an order under S. 123 for his detention in default of security before that date.[3] Where

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Section 120—Note 2.

(1) (1871) 1871 Pun. Re. No. Cr. 9, page (11), *Crown* v. *Buldeo.*
(1909) 10 Cri. L. Jour. 69 (71): 5 L. B. R. 24, *Kyawwa* v. *Emperor* (Magistrate sentencing a person to imprisonment under S. 106 cannot fix a time for furnishing security before the expiry of the sentence).
(1866) 6 Suth. W. R. Cr. 71 (71), *Queen* v. *W. Don Dolloi* (Case under 1861 Code).

(2) (1895) Rat. 774 (775), *Empress* v. *Pandu Khandu.*

(3) (1916) 17 Cri. L. Jour. 88 (89): 1916 Low. B. 1: 8 L. B. R. 353, *Emperor* v. *Nga Saing.*
(1902) 4 Bom. L. R. 934 (935), *Emperor* v. *Rangayya Bin Hanmapa.*
(1916) 1916 Mad. 534 (534), In re *Chinnaswami.*
(1895) Rat. 765 (765, 766), *Empress* v. *Appa Valad Gami.*
[See however (1908) 7 Cri. L. Jour. 472 (473, 475): 4 L.B.R. 205, *Emperor* v. *The Hlaing* (Such an order is

A was sentenced to imprisonment by a Magistrate but was on bail pending appeal against such conviction, and in proceedings instituted in the meanwhile against him under S. 110 security was ordered to be furnished, it was held that the security did not commence till after the disposal of the appeal and after the expiry of any sentence that might be passed by the appellate Court and that consequently an order for imprisonment in default of such security before that date was illegal.[4] S. 120, Notes 2—5.

3. **"Unless the Magistrate, for sufficient reason fixes a later date".** —If at the time of the order for security the suspect is not sentenced to or is not undergoing any sentence of imprisonment, the Magistrate may in the exercise of his discretion, grant time for furnishing the security if there are *sufficient reasons* for doing so.[1] It has been held by the Judicial Commissioners Court of Sind that "sufficient reasons" must mean sufficient reasons existing on the *date of the order for security*. Consequently according to that Court, when time is granted to the suspect to furnish security, but before the expiry of such time, he is convicted of a substantive offence and sentenced to imprisonment, the Court has no power either under Cl. (1) or Cl. (2) of this section to *extend* the time for security till the expiry of the sentence. An order for detention must be made under S. 123 immediately on the expiry of the time allowed for security and such detention will run *concurrently* with the imprisonment he is undergoing for the substantive sentence.[2]

4. **Second order for security during the subsistence of a previous one.**—A security bond once given, is sufficient for that purpose as long as it is in force in respect of every act of the person bound over breaking any of its conditions. A second order to give further security during the continuance of the first one is not contemplated by law. But if upon expiry of the first order the dispute still exists, a further security may be demanded on fresh proceedings properly taken.[1]

5. **"Shall commence on the date of such order"—Sub-S. (2).**—The period of security is to be calculated from the date of the order under S. 118 *i.e.*, the *final* order and not from the date of the preliminary order.[1] Where at the time of the final order for security, the suspect is not sentenced to or is undergoing a sentence of imprisonment the period for which such security is required will commence *on the date of the order*. A *subsequent* sentence of imprisonment passed on the suspect will not enable a Magistrate to order that the unexpired portion of the imprisonment in default of security should be reserved after the expiry of the subsequent sentence.[2] Similarly where the Magistrate fixes a later date for the furnishing of the security under sub-S. (2), and before such date the suspect is sentenced to imprisonment for an offence committed by him before the date of such order, it is not competent for the

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not illegal).]

(4) (1920) 1920 All. 286 (287), *Emperor* v. *Jhabdey*.

Note 3.

(1) (1926) 1926 All. 297 (297), *Mustaqim Uddin* v. *Emperor*.

(2) (1927) 1927 Sind 166 (167), *Emperor* v. *Saidu*.

Note 4.

(1) (1899) 4 Cal. W. N. 121, *Mahomed Abdul* v. *Emperor*.

Note 5.

(1) (1927) 1927 Mad. 542 (543), *Tarana Gowd* v. *Emperor*.

(2) (1900-1902) 1 Low. Bur. Rul. 14 (15), *Empress* v. *Nga Kyon*.

S. 120, Note 5. Magistrate to direct that the period of security shall commence on the date of the expiry of the subsequent sentence.[3]

S. 121. **121***. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

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WHAT CONSTITUTES A BREACH OF THE BOND FOR GOOD BEHAVIOUR	2
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BREACH OF BOND EXECUTED BY SURETIES	4
AMOUNT OF SURETY'S BOND	4-A

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*(CODE OF 1882—S. 121.)

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

(CODE OF 1872—S. 502, Para. 6.)

502. * * * * *

Recovery of Penalty from Principal.

The commission, or attempt to commit or abetment, of any offence whatever, and wherever it may be committed, is a breach of the bond.

* * * * * *

(CODE OF 1861—S. 293.)

293. Whenever it may be proved before the Magistrate or other Officer as aforesaid that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by the bond to pay the penalty thereof or to show cause why it should not be paid; and if sufficient cause be not shown and the penalty be not paid, the Magistrate or other Officer as aforesaid shall proceed to recover the same by the attachment and sale of any of the moveable property belonging to the person bound thereby which shall be found within the jurisdiction of the Magistrate of the District, and if the penalty be not paid and cannot be recovered by such attachment and sale, the party shall be liable to imprisonment by order of the Magistrate or other Officer as aforesaid in the Civil Jail for a period not exceeding six months.

Enforcement of penalty against the principal party.

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(3) (1926) 1926 Sind 273 (274-275): 20 S. L. R. 163, *Emperor* v. *Ahmed.*

CONSTRUCTION OF BOND .. .. 5 S. 121, Note 1.
FRESH SECURITY IF CAN BE DEMANDED ON FORFEITURE OF BOND 6
COURT-FEE ON BOND 7

Other Topics.

Proof of commission of offence. See Note 2, Pt. 6.

1. What constitutes breach of the bond to keep the peace.—Form No. 10 of Sch. V, *infra* shows that the person ordered to give security to keep the peace should bind himself not to commit a breach of the peace or do any act that may *probably occasion* a breach of the peace.[1] The word "probably" limits the forfeiture of the bond to cases in which a breach of the peace is the *probable* and not a *possible* result of the act of the person bound.[2] In each case it is for the Court to judge of the character of the act which is alleged to be likely to cause a breach of the peace.[2-a] The mere fact that an *offence* has been committed by the person bound will not be a breach of the bond to keep the peace unless such offence causes or will probably occasion a breach of the peace. Thus a conviction for theft[3] or wrongful confinement and extortion[4] unattended with any breach of the peace; or a secret attempt to poison a person[5] or the abduction of a woman[6] will not be a breach of the bond to keep the peace. On the other hand, it is not necessary that any *offence* should have been committed at all in order to entail a breach of the bond.[7] But the mere filing of a civil suit will not entail a forfeiture of the bond. Where some Hindus who were bound over to keep the peace under S. 107, owing to a dispute between them and certain Muhammadans regarding the location of a slaughter house, brought a civil suit for an injunction, it was held that the institution of the suit, though provocative would not justify a forfeiture of the bond inasmuch as the institution of such suit was not a wrongful act and it is not the intention of the legislature to prevent persons from seeking to enforce their rights in civil Courts.[8] It is immaterial, in order to constitute a breach of the bond, whether the person bound over, did the act, involving such breach himself, or instigated others to do it[9] or whether he committed the breach in respect of the person at whose instance the bond was taken, or in respect of any other person.[10] But the mere fact, that the person bound over, acted as a 'Muktear' of one of two parties for whose benefit the breach of peace took place, will not constitute a breach of the bond.[11]

Section 121—Note 1.

(1) (1881) 2 Mad. 169 (172), *Ananthachari* v. *Ananthachari.*
(1869) 11 Suth. W. R. 52 (52), *Queen* v. *Kally.*
(2) (1914) 1914 Lah. 393 (393, 394): 1914 Pun. Re. No. 22, *Ahmed Gul* v. *Emperor.*
(2-a) (1869) 4 Mad. H. C. App. 38 (39) H. C. Proceedings, 8th March, 1869.
(3) (1872) 18 Suth. W. R. 63 (63), *Haran Chunder* v. *Baloo Anund.*
(4) (1873) 19 Suth. W. R. (Cr.) 48 (49), *Zearuddin* v. *Baloo Durga.*
(5) (1914) 1914 Lah. 393 (394): 1914 Pun. Re. No. 22, *Ahmad Gul* v. *Emperor.*
(6) (1906) 4 Cri. L. Jour. 278 (278): 1906 Pun. Re. No. 7, *Muhammad*, In re.
(7) (1881) 2 Mad. 169 (173), *Ananthachari* v. *Ananthachari.*
(8) (1920) 1920 Lah. 440 (443): 1 Lah. 310, *Sital* v. *Crown.*
(9) (1881) 2 Mad. 169 (173), *Ananthachari* v. *Ananthachari.*
(10) (1871) 15 Suth. W. R. 14 (14), *Jaha Box.*
(11) (1869) 11 Suth. W. R. 52 (52), *Queen* v. *Kally Bhyrali.*
(1910) 11 Cri. L. Jour. 252 (252): 1910 P. R. 5, *Emperor* v. *Jalal.*

S. 121, Notes 2—3.

2. What constitutes a breach of the bond for good behaviour.—In the case of a bond executed by a person binding himself *to be of good behaviour*, there will be a breach of the bond only if he commits, or attempts to commit, or abets the commission of any offence *punishable with imprisonment*. Thus the commission of an offence of hurt or grievous hurt[1] or of assault[2] or of criminal trespass[3] or of an offence under the Gambling Act[4] would amount to a breach of the bond. It has been held by the Allahabad High Court that the offence need not be *ejusdem generis* with (*i.e.*, of the same kind as) that for which the person was bound over.[5] But a contrary view has been taken by the Lahore High Court.[5-a] Nor need he have been *convicted* of such offence. The reason is that the word "commission" in this section does not necessarily imply a conviction. If evidence is produced to show the commission of the offence, there will be a breach of the bond.[6]

There will be no breach of the bond where *no offence* has been committed. Thus a bond cannot be forfeited in the following cases:—

(1) Where the person bound over was found in possession of costly clothes for which he could not satisfactorily account for, but there was no proof that he had actually stolen them.[7]

(2) Where he was found in joint possession of counterfeit jewellery with his companions.[8]

(3) Where he was found concealing himself under suspicious circumstances in a lonely and abandoned watermill and was unable to give a satisfactory explanation of himself.[9]

(4) Where there was only a *suspicion* of his having committed some offence for which he was ordered to furnish security a second time.[10]

There can be no breach of the bond where the offence complained of was committed *prior* to the date on which the bond was executed.[11]

3. "Wherever it may be committed".—The commission of an offence punishable with imprisonment wherever it may be committed entails a forfeiture of the bond, and is not confined to the District in which the person was bound over. It is not necessary that the offence which constitutes a breach of the bond should have been committed within the District in which the person was bound over. It may have been committed *anywhere*. Thus where the bond

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Note 2.

(1) (1924) 1924 Lah. 262 (263): 4 Lah. 462, *Crown* v. *Abdul*.
(1914) 1914 Lah. 563 (564): 1915 P. R. 10, *Emperor* v. *Sher Singh* (Conviction under S. 325, I. P. C.).
(2) (1889) 1889 Pun. Re. No. Cr. 11 (55), *Nathu* v. *Empress*.
(3) **(1906) 8 Cri. L. Jour. 456 (456, 457):** 28 All. 629, *Jagdeo Singh* v. *Emperor*.
(1930) 1930 Lah. 227 (227), *Indar Singh* v. *Emperor* (Conviction under I. P. C., S. 452).
(4) (1906) 3 Cri. L. Jour. 91 (92) (All.), *Emperor* v. *Abdul Hai*.
(5) (1928) 1928 All. 232 (233): 50 All. 666, *Sheo Jangal Prasad* v. *Emperor*.
(5-a) **(1914)** 1914 Lah. 563 (564): 1915 P. R. 10, *Emperor* v. *Sher Singh*.
(1913) 14 Cri. L. Jour. 575 (576): 1913 P. R. 15, *Udham Singh* v. *Emperor*.
(6) (1923) 73 Ind. Cas. 332 (333) (Pesh.), *Mansur* v. *Emperor*.
(1928) 1928 All. 232 (233): 50 All. 666, *Sheo Jangal Prasad* v. *Emperor*.
(7) (1902) 2 Weir 57 (57), In re *Venkataratnam*.
(8) (1910) 11 Cri. L. Jour. 252 (252): 1910 Pun. Re. No. 5, *Emperor* v. *Jalal Shah*.
(9) (1932) 1932 All. 58 (58): 54 All. 335, *Emperor* v. *Bahadur Singh*.
(10) (1892-96) 1 U. B. R., page (20), *Empress* v. *Nga Yo*.
(11) (1914) 1914 Lah. 393 (393): 1914 Pun. Re. No. 22, *Ahmad Gul* v. *Emperor*.
(1923) 73 Ind. Cas. 332 (333) (Pesh.), *Mansur* v. *Emperor*.

is executed in one district and the accused is subsequently convicted of assault in another district there is a breach of the bond, and the Magistrate of the former district can proceed against him under S. 514.[1] The default in the undertaking to be of good behaviour should however be in respect of *His Majesty or His Majesty's subjects*. Form No. 11 of Sch. V shows that the person ordered to give security should enter into a bond binding himself to be of good behaviour to "Her Majesty and to all her subjects during the said term". Thus a conviction in the State of Kapurthala under S. 457 of the Penal Code in respect of a subject of that Native state was held not to amount to a breach of the bond.[2] But if the offence is committed in a Native State against a British Subject it would amount to a breach of the bond.[3]

S. 121, Notes 3—7.

4. Breach of Bond executed by sureties.—A breach of the surety bond for good behaviour is committed when the person bound commits or attempts to commit or abets the commission of any offence punishable with imprisonment.[1] As to the circumstances in which the bond can be forfeited and the surety made liable *see* S. 514, *infra*.

4-A. Amount of surety's bond.—A surety cannot be required to execute a bond for an amount greater than that for which the *principal* is required to execute a bond.[1]

5. **Construction of bond.**—The terms of a penal bond such as a bond to keep the peace or for good behaviour must be construed literally and strictly.[1] Hence where by mistake a bond for good behaviour was taken, instead of one for keeping the peace, from a person, who was ordered to furnish security to keep the peace, it was held the bond was invalid and could not be forfeited, as the two bonds are different in their nature and scope.[2] A similar rule was applied where a *bond* for keeping the peace was taken instead of one for good behaviour.[3]

6. **Fresh security if can be demanded on forfeiture of bond.**—*See* S. 514-A, *infra*.

7. **Court-fee on bond.**—See S. 19, Cl. 15 of the Court-Fees Act 1870 and the undermentioned cases.[1]

122.* A Magistrate may refuse to accept any surety offered under this

Power to reject sureties.

122. (1) *A Magistrate may refuse to accept any surety offered, or may*

Power to reject sureties.

S. 122.

*(CODE OF 1882—S. 122.)

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Power to reject sureties.

Note 3.

(1) (1869) 2 Beng. L. R. App. (Cr.) 11 (12).
(2) (1918) 1918 Lah. 13 (13): 1918 Pun. Re. 26, *Bahadur Singh* v. *Emperor*.
(3) (1910) 11 Cri. L. Jour. 635 (636): 1910 Pun. Re. 28, *Emperor* v. *Dewa Singh*.

Note 4.

(1) (1932) 1932 All. 58 (58): 54 All. 335, *Emperor* v. *Bahadur Singh*.

Note 4-A.

(1) (1893-1900) 1893-1900 Low. Bur. Rul. 187 (187), *Queen-Empress* v. *Pyin Nya*.

Note 5.

(1) (1918) 1918 Lah. 13 (13): 1918 Pun. Re. 26, *Bahadur Singh* v. *Emperor*.
(2) (1875) 23 Suth. W. R. 1 (1), *Bindessuree* v. *Gujadhur*.
(3) (1903) 1903 Pun. Re. No. 32, p. 78 (81), *Wadhawa Singh* v. *Emperor*.

Note 7.

(1) (1877) Rat. Un. Re. Cr. Cas. 126 (127).

S. 122. Chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him:

(2) *Such Magistrate shall before holding inquiry, give reasonable notice to the surety, and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.*

(3) *If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section* (1), *and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case*

Sureties may be rejected on the ground of character.

(CODE OF 1872—S. 516.)

516. A Magistrate may refuse to accept any surety offered under this chapter, on the ground that such surety is unfit person.

(CODE OF 1861—Nil.)

may be, such surety and recording his reasons for so doing: S. 122.

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

SYNOPSIS.

	Note No.
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(3) ENQUIRY ON OATH	6
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Previous conviction not a disqualification. See Note 5, Pts. 4 & 5.
Proceedings whether judicial. See Note 6.
Relation of the suspect. See Note 5, Pt. 23.

S. 122, Notes 1—3.

Test as to fitness. See Note 5, Pts. 2-22. Witness not disqualified. See Note 5, F.N. 25. What are not disqualifications. See Note 5, Pts. 23-29.

1. Legislative Changes.—

(1) There was no section corresponding to this in the Code of 1861.

(2) *Difference between the Codes of* 1872 *and* 1882—

The wards 'for reasons to be recorded by the Magistrate' did not occur in the Code of 1872.

(3) *Difference between the Codes of* 1882 *and* 1898—

The words "for good behaviour" which occurred after the word "surety" in S. 122 of the Code of 1882 was omitted in S. 122 of this Code as it stood before 1923.

(4) *Amendment of* 1923—

The present section was substituted for the old section, by S. 20 of the Code of Criminal Procedure (amendment) Act XVIII of 1923.

2. "Magistrate".—The power to accept or reject sureties is vested in the *Magistrate*. A *Sessions* Judge exercising jurisdiction under S. 123, *infra* has no power to accept or reject sureties.[1]

The word 'Magistrate' means the Magistrate, who passed the order under Ss. 112 and 118, *supra*, and includes his successor in office.[2] *See* S. 559, sub-S. (1).

3. Discretion of Court in refusing or rejecting sureties as unfit.— The word "may" shows that the Magistrate has a discretion in the matter of refusing to accept or of rejecting a surety.[1] The discretion, is, however, not arbitrary or absolute but a *judicial* one[2] as is made clear by the section which requires the Magistrate to hold an independent *inquiry* into the matter[3] to record the substance of the *evidence* adduced in such inquiry, to *consider* such evidence and then to refuse or reject the surety *recording his reasons* for doing so. In the exercise of such discretion the Magistrate should not demand impossible conditions to be satisfied.[4]

Section 122—Note 2.

(1) (1934) 1934 Cal. 482 (487): 61 Cal. 588, *Prabati Charan Baisya* v. *Emperor.*

(2) (1911) 12 Cri. L. Jour. 410 (410, 411): 5 Sind L. R. 87, *Imperator* v. *Allahdino.*

Note 3.

(1) (1909) 10 Cri. L. Jour. 225 (226): 2 Sind L. R. 11, *Imperator* v. *Mahro.*

(1923) 1923 Oudh 165 (166), *Emperor* v. *Rameshwar Tewari.*

(2) (1909) 10 Cri. L. Jour. 225 (226): 2 Sind L. R. 11, *Imperator* v. *Mahro.*

(1909) 9 Cri. L. Jour. 247 (248): 1 Sind L. R. 3, *Emperor* v. *Miro.*

(1914) 1914 All. 489 (489), *Bhawani Singh* v. *Emperor.*

(1914) 1914 Cal. 626 (627): 41 Cal. 764, *Asiraddi Mandal* v. *Emperor.*

(1914) 1914 Lah. 492 (493): 6 P. R. 1914, *Mahala* v. *Emperor.*

(1906) 4 Cri. L. Jour. 169 (170), In re *Abdul Khan.*

(1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *Emperor* v. *Parmeshur.*

[See also (1910) 11 Cri. L. Jour. 23 (25): 37 Cal. 91, *Kalu Mirza* v. *Emperor.*]

(3) (1914) 1914 All. 489 (489), *Bhawani Singh* v. *Emperor.*

(1935) 1935 All. 517 (518), *Sukhai* v. *Emperor.*

(4) (1908) 8 Cri. L. Jour. 166 (167): 1 Sind L. R. 46, *Imperator* v. *Mahommad Pahor.*

(1914) 1914 Bom. 5 (6), *Jivanatha* v. *Emperor.*

(1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomed Ibrahim* v. *Crown.*

(1920) 1920 Bom. 292 (293): 44 Bom. 385, In re *Jesa Bhatha* (Object of asking security is prevention of crime and not imprisonment).

(1925) 1925 Sind 57 (58): 18 Sind L. R. 298, *King-Emperor* v. *Manu Ismail* (If a person generally satisfied the qualification passed in the order under Ss. 112 and 118 he should be accepted).

S. 122. Notes 4—5.

4. **"Reject sureties previously accepted".**—Prior to the framing of the new section in 1923, it was held that a Magistrate could not reject a surety who had been accepted.[1] The present new section expressly permits such rejection.

5. **Grounds of rejection of surety.**—It has been seen in Note 5 to S. 112, *ante* that an order under Ss. 112 or 118 cannot set forth any further condition than what may be comprised in the words "character and class" of the sureties required. But where a surety is offered in pursuance of the order made under Ss. 112 or 118 the Court can reject him on the ground that he is *unfit* for the purposes of the bond.[1] A surety offered may be unfit for any of the following reasons—

(1) that he is not of the character or class specified in the order. Thus a surety who is himself a suspect or a man of bad character,[2] or is an inhabitant of a village notorious for its bad characters,[3] may be rejected on the ground of unfitness. But the mere fact that the surety was once challaned for theft[4] or even the fact that he was once convicted for an offence under the Penal Code[5] cannot be regarded as rendering him unfit for ever to be surety.

(2) that he is not solvent enough to be able to pay the penalty in case there is a breach of the bond.[6] The solvency must be considered with reference to his properties both moveable *and immovable*.[6-a] The mere fact that he has not got sufficient *moveable* property, (though he has got sufficient immovable property) and that in case there is a breach of the bond, the amount can, under S. 514, *infra* be recovered only from his moveable properties, is not a valid ground for rejecting a surety.[7]

(3) that he is not in a position to influence and control the actions of the persons for whom he is standing as surety. There is however a difference of opinion on the point, one set of decisions holding that it is a valid ground for rejecting a surety as unfit[8]

Note 4.

(1) (1897) 1 Cal. W. N. 394 (395), *Empress* v. *Ram Lal Acharjia*.
(1905) 2 Cri. L. Jour. 278 (278, 279): 16 P. R. 1905, *Emperor* v. *Pirya Lal*.

Note 5.

(1) (1908) 8 Cri. L. Jour. 166 (168): 1 Sind L. R. 46, *Imperator* v. *Manu*.
(1874) 22 Suth. W. R. 37 (39), *Narain Scoboddhee, Petitioner*.
(2) (1910) 11 Cri. L. Jour. 392 (392): 37 Cal. 446, *Jafar Ali Howladar* v. *Emperor* (One gang of thieves cannot be accepted as sureties for another).
(1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
(3) (1910) 11 Cri. L. Jour. 198 (199): 3 Sind L. R. 168, *Emperor* v. *Din Muhammad*.
(4) (1920) 1920 All. 170 (170), *Munshi Singh* v. *Emperor*.
(5) (1921) 1921 Cal. 356 (356), *Budhu Ahir* v. *Emperor* (Conviction for assault does not necessarily make a person unfit for ever to be a surety).
(1904) 1 Cri. L. Jour. 359 (360): 26 All. 189, *Emperor* v. *Raghunath Singa*.
(1904) 1 Cri. L. Jour. 190 (191): 26 All. 371, *Emperor* v. *Ghulam Mustafa*.
(6) (1910) 11 Cri. L. Jour. 392 (392): 37 Cal. 446, *Jafar Ali Howldar* v. *Emperor*.
(6-a) (1916) 1916 Cal. 348 (348), *Purna Chandra* v. *Emperor*.
(7) (1916) 17 Cri. L. Jour. 97 (97): 1916 Cal. 908, *Nasuruddi Karikar* v. *Emperor*.
(1918) 1918 All. 182 (182), *Nanha* v. *Emperor*.
(1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
(8) (1908) 8 Cri. L. Jour. 166 (168): 1 Sind L. R. 46, *Imperator* v. *Manu*.
(1906) 3 All. L. J. (N.) 129 (129), *Muneshwar* v. *King-Emperor*.
(1914) 1914 Cal. 626 (627): 41 Cal. 764, *Asiraddi Mandal* v. *Emperor* (Following 22 Suth. W. R. 37 Cr. and 4 Ind. Cas. 560 and 6 Ind. Cas. 668; dissenting from 7 Cri. L. Jour. 439; and 6 Cal. W. N. 593).
(1917) 18 Cri. L. Jour. 453 (454): 1917 Cal. 209: 44 Cal. 737, *Abdul Karim* v. *King-Emperor*.
[See also (1914) 1914 All. 487 (488), *Bairagi* v. *Emperor*.]

S. 122, Note 5.

and another set of cases holding that it is not.[9] The object of requiring security in these cases is not to fill the jails with bad characters[10] or to obtain money for the Crown by the forfeiture of recognisance,[11] but to bring reasonable pressure on the suspects to respect the law[12] and to ensure that they shall be of good-behaviour.[13] A surety executing a bond in terms of Form 11, Sch. V, in fact undertakes thereby to guarantee the good conduct of his principal, and his fitness to stand as surety must accordingly be judged from this stand point also[14] and not merely from the standpoint of his *pecuniary* fitness alone.[15] But the control which a surety is expected to exercise over his principal is *moral* control and is not a *physical* control.[16]

The fact that the surety offered is living in a distant place may be taken into consideration in coming to a conclusion as to whether he will be able to have any control or influence over the accused. If he is living at such a distance that he will not be able to do so, he may be rejected as unfit.[17] But the mere fact that he is living at a distance is not by itself sufficient to conclude that he will not be able to have any control or influence over the accused and cannot render the surety offered unfit.[18] The Court has to look into all the circumstances of each case on its own merits and come to a *judicial conclusion* as to whether the distance *under the circumstances of the case*, is such that the surety cannot have any influence or control over the accused.[19] Thus where the sureties, though living at a distance, were prepared to take the suspects as their tenants

(9) (1908) 7 Cri. L. Jour. 439 (440): 35 Cal. 400, *Adam Sheikh* v. *Emperor* [Dissented from in 1914 Cal. 626 (627)].
(1910) 11 Cri. L. Jour. 392 (392): 37 Cal. 446, *Jafal Ali* v. *Emperor* (Dissented from in 1914 Cal. 626).
(1909) 9 Cri. L. Jour. 256 (256): 1 Sind L. R. 14, *Crown* v. *Ahmed*.
(1900) 4 Cal. W. N. 797 (798), *Abinash Malakar* v. *Empress* (Dissented from in 8 Cri. L. Jour. 388).
(1917) 18 Cri. L. Jour. 408 (409): 1917 Cal. 378: 43 Cal. 1024, *Rayan Khan* v. *Emperor*.
(1913) 17 Cal. W. N. 120 (120), *Emperor* v. *Muhammad Sheikh* (Residence within the limits of another Police Station—No disqualification).
(10) (1914) 1914 Lah. 492 (493): 6 P. R. 1914, *Mahala* v. *Emperor*.
(11) (1895) 1895 All. W. N. 143 (143, 144), *Queen-Empress* v. *Chanda*.
(12) (1914) 1914 Lah. 492 (493): 1914 Pun. Re. No. 6, *Mahala* v. *Emperor*.
(13) (1898) 20 All. 206 (207), *Queen-Empress* v. *Rahim Baksh*.
(14) (1908) 8 Cri. L. Jour. 166 (168): 1 Sind L. R. 46, *Imperator* v. *Manu*.
(1925) 1925 Rang. 353 (353), *Maung Tun* v. *Emperor*.
(15) (1910) 11 Cri. L. Jour. 392 (392): 37 Cal. 446, *Jafar Ali Howldar* v. *Emperor*.
(1908) 8 Cri. L. Jour. 388 (389, 390), In the matter of *Jalil* v. *Emperor*.
[But see (1908) 12 Cal. W. N. (N.) xcix (c), *Poshi* v. *Emperor*.]
(16) (1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomed* v. *Crown*.
(17) (1898) 20 All. 206 (207), *Queen-Empress* v. *Rahim*.
(1924) 1924 Oudh 80 (80): 20 Oudh Cas. 284, *Emperor* v. *Mahammed Baksh*.
(1895) 1895 All. W. N. 143 (143, 144), *Empress* v. *Chanda*.
(1898) 1898 All. W. N. 199 (199), *Empress* v. *Babu*.
(18) (1913) 14 Cri. L. Jour. 214 (214), *Mashuk Ali* v. *Emperor*.
(1924) 1924 Oudh 80 (80): 20 Oudh Cas. 284, *Emperor* v. *Mohd. Baksh*.
(1912) 13 Cri. L. Jour. 831 (831), *Hasinuddin* v. *Emperor*.
(1917) 18 Cri. L. Jour. 1039 (1039): 1917 All. 215, *Manna* v. *Emperor*.
(1910) 11 Cri. L. Jour. 536 (537), *Bhagwan Sahai* v. *Emperor*.
(1918) 1918 All. 108 (108), *Gobardhan* v. *Emperor* (Non-residence in the same Police District).
(1921) 61 Ind. Cas. 523 (524), *Rahamat Ullah* v. *Emperor*.
(1921) 1921 Oudh 229 (229): 24 Oudh Cas. 292, *Sheoamber Khan* v. *Kalipal Singh*.
(1898) 1898 All. W. N. 199 (199), *Emperor* v. *Babu* (Sureties living 13 or 14 miles away unfit for want of control).
(1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
[See also (1916) 17 Cri. L. Jour. 95 (95): 1916 Cal. 360, *Ramesh Chandra Dutta* v. *Emperor* (When three sureties are required for a case under S. 109, Criminal Procedure Code, it is not necessary that each one of them should live in the immediate neighbourhood of the accused).]
(19) See (1920) 1920 Bom. 292 (293): 44 Bom. 385, In re *Jesa Bhatha*.
(1910) 14 Cal. W. N. clix (clix), *Anwar* v. *King-Emperor*.

and would therefore have an opportunity of preventing them from getting into mischief, it was held that the sureties should be accepted.[20] S. 122, Notes 5—6.

Similarly where the surety undertook to live with the accused in their village and to keep them within his observation it was held that he might be accepted.[21]

Where the sureties offered are solvent and respectable and no other ground of unfitness is shown, they should be accepted.[22] The following grounds are not valid grounds for rejecting a surety as unfit:—

(1) that he is a relation of the suspect[23] or belongs to his caste;[24]
(2) that he is a friend of the suspect and rendered him help in his defence in the proceedings against him;[25]
(3) that he belongs to a particular political party;[26]
(4) that he was already a surety for another person;[27]
(5) that he looks young[28] or is an old man.[29]

6. **Enquiry on oath.**—Under the section as it stood before the amendment of 1923, the Magistrate was bound, before rejecting a surety as unfit, to *record his reasons* for doing so. There was no express provision that the Magistrate was bound to hold an enquiry into the fitness of the surety, but it was held by the Courts that he should hold such an enquiry and should base his decision on evidence.[1] It was also held that such enquiry was a *judicial* one[2] and that

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(20) (1920) 1920 Bom. 292 (293): 44 Bom. 385, In re *Jesa Bhatha*.
(1928) 1928 Pat. 374 (375), *Jugal Singh* v. *Emperor*.

(21) (1923) 1923 Oudh 165 (166), *King-Emperor* v. *Rameshar Tewari*.
[See also (1928) 1928 Pat. 374 (375), *Jugal Singh* v. *Emperor*.

(22) (1928) 29 Cri. L. Jour. 842 (843), *Satindra Nath Sen* v. *Emperor*.
(1910) 11 Cri. L. Jour. 392 (392): 37 Cal. 446, *Jafar Ali Howldar* v. *Emperor*.

(23) (1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
(1903) 25 All. 131 (132), *Emperor* v. *Shib Singh*.
(1914) 1914 Lah. 492 (493), *Mahala* v. *Crown* (Relationship is in fact a recommendation).
(1909) 9 Cri. L. Jour. 247 (248): 1 Sind L. R. 3, *Emperor* v. *Miro*.
(1906) 4 Cri. L. Jour. 169 (169), *Abdul Khan*, In re.
(1916) 14 All. L. Jour. (N.) 25 (25).
(1912) 16 C. W. N. ccliv (cclv), *Bishendoyal* v. *Emperor*.
(1920) 1920 All. 309 (309), *Muhammed Wasi* v. *Emperor*.
[But see (1916) 17 Cri. L. Jour. 97 (97): 1916 Cal. 908, *Nasuruddikankar* v. *Emperor* (In a bad livelihood case, the question of relationship of the surety has some relevancy in considering fitness).]

(24) (1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomad Ibrahim Muhammad Hayat* v. *Emperor*.
(1910) 11 Cri. L. Jour. 23 (25): 37 Cal. 91, *Kaul Mirza* v. *Emperor*.

(25) (1918) 1918 All. 108 (108), *Gobardhan* v. *Emperor*.
(1921) 59 Ind. Cas. 134 (134): 1920 All. 309, *Md. Wasi* v. *Emperor* (Friend also acting as a witness for suspect).
(1914) 1914 All. 487 (488), *Bairagi* v. *Emperor*.
(1918) 1918 All. 108 (108), *Gobardhun* v. *Emperor*.
(1910) 11 Cri. L. Jour. 536 (536), *Bhagwan Sahai* v. *Emperor*.

(26) (1925) 1925 Rang. 353 (353), *Maung Tun U* v. *King-Emperor*.

(27) (1924) 1924 Oudh 132 (133), *Ghisa* v. *Emperor*.

(28) (1921) 1921 Oudh 229 (229): 24 Oudh Cas. 292, *King-Emperor* v. *Pancha*.

(29) (1908) 8 Cri. L. Jour. 166 (169): 1 Sind L. R. 38, *Imperator* v. *Manu*.

Note 6.

(1) (1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *Emperor* v. *Parmeshur*.
(1898) 1898 All. W. N. 154 (154), *Empress* v. *Prithi Pal Singh*.
(1914) 1914 All. 487 (488), *Bairagi* v. *Emperor*.
(1914) 1914 All. 489 (489), *Bhaguan Singh* v. *Emperor*.
(1915) 1915 All. 177 (177), *Zorawar* v. *Emperor*.
(1920) 1920 All. 170 (170), *Munshi Singh* v. *Emperor*.
(1904) 1 Cri. L. Jour. 912 (912): 27 All. 293, *Emperor* v. *Balwant*.
(1903) 25 All. 272 (273), *Emperor* v. *Tota*.
(1922) 1922 All. 541 (541), *Gopi Khatick* v. *Emperor*.
(1920) 1920 Bom. 292 (293): 44 Bom. 385, In re *Jesa Bhatha*.
(1915) 16 Cri. L. Jour. 327 (327): 42 Cal. 706: 1915 Cal. 744, *Hiram* alias *Akbar Ali Mahomed* v. *Emperor*.
(1910) 11 Cri. L. Jour. 23: 37 Cal. 91, *Kalu Mirza* v. *Emperor* (Report by subordinate Magistrate).
(1904-05) 9 Cal. W. N. xxiii (xxiii).
(1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
(1917) 18 Cri. L. Jour. 408 (408): 1917 Cal. 378: 43 Cal. 1024, *Rayan Khan* v. *Emperor*.

S. 122, Notes 6—9.

the Magistrate was empowered to record evidence on oath in such enquiry.[3] The amendment of 1923 has given legislative effect to the said decisions.

7. **"Either himself or by a Magistrate subordinate to him".**—Prior to the amendment of 1923 it was uniformally held that a Magistrate who is deciding into the fitness or otherwise of a surety should *himself* hold the enquiry because the law gave no power to the Magistrate to call upon other persons to exercise the functions which are entrusted to the Magistrate only, and that he had no power to delegate his functions to a Tahsildar or to the Police.[1] The amendment of 1923 makes provision for delegating the power to enquire but *only to a Magistrate subordinate to* the Magistrate that passed the order. In a case, before the amendment of 1923,[2] it was held that a Magistrate had no authority to delegate his power to a Magistrate in *another district* to make an enquiry into the sufficiency of the surety. This decision holds good even under the new section since the Magistrate in a District different from that of a Magistrate making the order is not subordinate to the latter.

8. **Several sureties—Enquiry as to fitness.**—Where there are number of sureties for different accused persons the fitness of each surety should be *separately* determined. A general order without investigation of the circumstances of each of the sureties is not contemplated by law.[1]

9. **Procedure in enquiry.**—The section as it stood before the amendment of 1923, did not provide any particular procedure to be adopted before

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(1921) 1921 Oudh 193 (193): 24 Oudh Cas. 303, *Emperor* v. *Lachman*.
(1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomad* v. *Crown*.
(1914) 1914 Sind 108 (108): 7 Sind L. R. 94, *Piru Abdulla* v. *Emperor*.
(1909) 10 Cri. L. Jour. 225 (226): 2 Sind L. R. 11, *Imperator* v. *Mahro*.
[See however (1910) 11 Cri. L. Jour. 198 (198): 3 Sind L. R. 168, *Din Mahomed* v. *Emperor* (Magistrate held justified in using and applying his knowledge of his division when acting under S. 122, and if he knows that the inhabitants generally of a village bear a bad character, he was justified in rejecting as a surety, provided that he records his reasons for so doing).]

(2) (1910) 11 Cri. L. Jour. 497 (497-498): 4 Sind L. R. 18, *Emperor* v. *Haji Usman*.
(1911) 12 Cri. L. Jour. 410 (410): 5 Sind L. R. 97, *Imperator* v. *Allah Dino*.

(3) (1904) 1 Cri. L. Jour. 190 (192): 26 All. 371, *Emperor* v. *Ghulam Mustafa*.

Note 7.

(1) (1898) 1898 All. W. N. 154 (154), *Emperor* v. *Prithi Pal*.
(1904) 1 Cri. L. Jour. 912 (912): 27 All. 293, *Emperor* v. *Balwant*.
(1914) 16 Cri. L. Jour. 54 (55): 1914 All. 489, *Bhawani Singh* v. *Emperor*.
(1915) 1915 All. 177 (177), *Zorawar* v. *Emperor*.
(1922) 1922 All. 541 (541), *Gopi Khatik* v. *Emperor*.
(1920) 1920 Bom. 292 (293): 44 Bom. 385, In re *Jesa Bhatha*.
(1910) 11 Cri. L. Jour. 23 (26): 37 Cal. 91, *Kalu Mirza* v. *Emperor*.
(1917) 18 Cri. L. Jour. 408 (408): 1917 Cal. 378: 43 Cal. 1024, *Rayan Khan* v. *Emperor*.
(1915) 16 Cri. L. Jour. 327 (327): 1915 Cal. 744: 42 Cal. 706, *Hiran* alias *Akbar Ali Mahomed* v. *Emperor*.
(1907) 5 Cri. L. Jour. 181 (181, 182), *Mithoo* v. *Crown*.
(1914) 1914 Lah. 492 (493): 6 P. R. 1914, *Mahala* v. *Emperor*.
(1924) 1924 Lah. 672 (673), *Kanwal Nabh* v. *Emperor*.
(1908) 11 Oudh Cas. 113.
(1908) 8 Cri. L. Jour. 344 (346): 11 Oudh Cas. 267, *Ramnand Singh* v. *Emperor*.
(1930) 1930 Pat. 217 (218): 9 Pat. 741, *Emperor* v. *Beraik Narendranath Singh*.
(1909) 10 Cri. L. Jour. 225 (227): 2 Sind L. R. 11, *Imperator* v. *Mahro*.
(1909) 10 Cri. L. Jour. 230 (231): 2 Sind L. R. 15, *Emperor* v. *Kamal*.
(1914) 1914 Sind 13 (14): 8 Sind L. R. 173, *Mahomed* v. *Crown*.
(1921) 1921 Oudh 193 (193): 24 Oudh Cas. 303, *Emperor* v. *Lachman*.
(1912) 13 Cri. L. Jour. 760 (762): 15 Oudh Cas. 263, *Jai Govind* v. *Emperor*.
(1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *Emperor* v. *Parmesher*.
(1907) 5 Cri. L. Jour. 179 (180), *Jawahira* v. *Emperor*.
(1907) 5 Cri. L. Jour. 148 (151): 18 P. R. 1906 (Cr.), *Emperor* v. *Kaim Khan*.
(1906) 4 Cri. L. Jour. 169 (169), *Abdul Khan, Petitioner*.

(2) (1917) 18 Cri. L. Jour. 130 (130): 1917 Lah. 305, *Khuda Bux* v. *Crown*.

Note 8.

(1) (1917) 18 Cri. L. Jour. 408 (408): 1917 Cal. 378: 43 Cal. 1024, *Rayan Khan* v. *Emperor*.

S. 122, Notes 9—12.

rejecting a surety beyond stating that the reasons for the rejection should be recorded in writing. It was held in the undermentioned case[1] that the Magistrate need not formally record any evidence. The present section as amended sets out clearly the procedure to be adopted in an enquiry into the fitness of a surety.

10. **Notice to parties.**—Since the enquiry into the fitness of a surety is a judicial proceeding it is necessary that the surety and the person bound over should be given reasonable notice thereof in order to give them a reasonable opportunity of controverting the reasons alleged for rejecting the surety.[1]

11. **Appearance by pleader at the enquiry.**—Under S. 340 of the Code as it stood before 1923, a person *accused* before any Criminal Court might, as of right be defended by a pleader. It was held that that section did not apply to security proceedings as the person proceeded against was not an *accused* person and that, consequently he could not *as of right* be defended by a pleader though he may in the *discretion* of the Court, be allowed to be so defended.[1] Under that section as now amended, every person against whom *any* proceedings are instituted under the Code in any Criminal Court may, *of right* be defended by a pleader.

12. **"After considering the evidence so adduced".**—As seen in Note 6 *ante* the enquiry which a Magistrate holds into the fitness of a surety is a *judicial* one and the Magistrate should base his conclusions on *legal evidence* adduced before him.[1] A report by the Police as to the sufficiency or otherwise of a surety is not legal evidence on which the Court could come to a conclusion, as to the fitness of a surety.[2] It can only be treated as an objection by a party to the proceedings which should be supported by evidence. So if the Magistrate wants to consider the information contained in the report, he should examine the Officer that made the report as a witness before him allowing the sureties and the person offering the security to cross examine him as to the contents of the report.[3] Since the sureties are not themselves accused under S. 110, *supra*, evidence of general repute should not be allowed as against the sureties in an enquiry as to their fitness.[4]

The *onus* of showing that a surety is a fit person to be accepted is on the person called upon to give security[5] and ordinarily it is discharged by the

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Note 9.

(1) (1910) 11 Cri. L. Jour. 497 (498): 4 Sind L. R. 18, *Emperor* v. *Haji Usman.*

(2) (1910) 11 Cri. L. Jour. 497 (498): 4 Sind L. R. 18, *Imperator* v. *Haji Usman.*
(1908) 10 Cri. L. Jour. 225 (227): 2 Sind L. R. 11, *Imperator* v. *Mahro.*
(1915) 1915 All. 177 (177), *Jorawar* v. *Emperor.*
(1914) 1914 All. 489 (489), *Bhawani Singh* v. *Emperor.*
(1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *Emperor* v. *Parmesher.*

(3) (1908) 8 Cri. L. Jour. 344 (346): 11 Oudh Cas. 267, *Ramnand* v. *King-Emperor.*
(1907) 5 Cri. L. Jour. 148 (152): 1906 Pun. Re. No. 18, *Emperor* v. *Kaim Khan.*

(4) (1922) 1922 Oudh 227 (227), *Sheopal* v. *Emperor.*

(5) (1911) 12 Cri. L. Jour. 410 (410): 5 Sind L. R. 87, *Imperator* v. *Allah Dino.*

Note 10.

(1) (1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *King-Emperor* v. *Parmeshur.*
(1910) 11 Cri. L. Jour. 243, *Ela Buksh Mandal* v. *Emperor.*
(1912) 13 Cri. L. Jour. 760 (762): 15 Oudh Cas. 263, *Jai Govind* v. *Emperor.*

Note 11.

(1) (1910) 11 Cri. L. Jour. 501 (502): 4 Sind L. R. 49, *Emperor* v. *Tawakali.*

Note 12.

(1) (1917) 1917 Cal. 378 (379): 43 Cal. 1024, *Rayan Khan* v. *Emperor.*
(1909) 10 Cri. L. Jour. 225 (227): 2

S. 122, Notes 12—17.

evidence of the surety himself; but if the Magistrate is not satisfied with the evidence of the surety, he must not reject the surety but call for further evidence because the reasons given by him for rejecting must be a *positive* reason for believing the surety to be unfit.[6] Since the proceedings are judicial proceedings the Magistrate cannot decide without taking evidence, on the ground that no evidence but that of a particular class of witnesses will satisfy him.[7] For the same reason a Magistrate cannot impose his personal knowledge into the proceeding and reject the sureties merely on his personal knowledge.[8] Similarly, Criminal Courts should not act merely on the certificate of a pleader as to the fitness of a surety.[9]

13. Recording his reasons.—The Magistrate refusing to accept or rejecting a surety, under this section should record his reasons in writing.[1] The intention of the legislature in insisting that a Magistrate should record his reasons in refusing to accept a surety is that the Magistrate should exercise his independent judgment in the matter.[2]

14. Shall make an order refusing to accept, etc.—An order rejecting or refusing to accept a surety should be passed within a reasonable time so as to give the persons proceeded against an opportunity to furnish fresh sureties.[1]

15. Opportunity to furnish fresh security on rejection of surety offered.—Where upon enquiry, a Magistrate refuses to accept or reject already accepted sureties he should afford to the person called on to furnish security a reasonable opportunity to furnish other suitable sureties.[1]

16. Proviso to sub-S. 3.—Referring to the amendment of the section the Select Committee say "We have adopted the suggestion that the provisions of the new S. 122 should be elaborated so as to enable a Magistrate to reject a surety previously accepted by him or by his predecessor. This involves a few consequential amendments in the section which we have made. . . ." This proviso is one of such consequential amendments referred to in the Report of the Select Committee. This proviso read with S. 126-A would show that the object of securing the attendance of the person for whom the surety was given under this proviso is to order him, to furnish fresh security under S. 126-A for the unexpired period of the prior bond.

17. Power of the District Magistrate to reject sureties accepted by subordinate Magistrates.—When a subordinate Magistrate passes an order calling for security and accepts the sureties offered the District Magistrate cannot reject them and cancel their bonds. If he wants to pass orders himself,

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(6) (1914) 1914 Sind 15 (16): 8 Sind L. R. 322, *Mahomed Ibrahim* v. *Emperor.*
(7) (1911) 12 Cri. L. Jour. 410 (410): 5 Sind L. R. 87, *Imperator* v. *Allah Dino.*
(8) (1914) 1914 Sind 108 (108): 7 Sind L. R. 94, *Piru Abdulla* v. *Emperor.*
(9) (1934) 1934 Sind 142 (143): 28 Sind L. R. 293, In the matter of *P., a pleader.*

Note 13.

(1) (1914) 1914 All. 487 (488), *Bairagi* v. *Emperor.*
(1920) 1920 Bom. 292 (293, 294): 44 Bom. 385, In re *Jesa Bhatha.*
(1910) 11 Cri. L. Jour. 23 (25): 37 Cal. 91, *Kali Mirza* v. *Emperor.*
(1910) 11 Cri. L. Jour. 243 (243), *Mundal* v. *Emperor.*
(2) (1906) 4 Cri. L. Jour. 169 (169), *Abdul Khan,* In re.

Note 14.

(1) (1925) 1925 Rang. 353 (353), *Maung Tun* v. *Emperor.*

Note 15.

(1) (1917) 18 Cri. L. Jour. 1039 (1039): 1917 All. 215, *Manna* v. *Emperor.*
(1925) 1925 Rang. 353 (353), *Maung Tun* v. *Emperor.*

he should regularly transfer the case to his own Court and then proceed under this section.[1] S. 122, Notes 17—20.

18. **Revision.**—The discretion given to a Magistrate under this section to refuse a surety is a wide one, and the High Court will not interfere lightly with any reasonable exercise of the same.[1] But where the Magistrate has based his discretion not on any independent enquiry by him or on any legal evidence but on some Police Report, the High Court will set aside the order on the ground the Court failed to exercise the discretion judicially.[2] Similarly where the Magistrate has refused to accept sureties on invalid and unreasonable grounds,[3] or where he has not given any reason at all[4] the orders will be set aside in revision.

19. **Appeal.**—A right of appeal against an order *refusing to accept or rejecting* a surety under this section is provided for in S. 406-A, *infra*, in favour of a person who is aggrieved by such order. There is, however, no right of appeal against an order *accepting* a surety.

20. **Contract by person ordered to find security to indemnify the surety—Legality.**—*See* the undermentioned cases.[1]

123*. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security **S. 123.**

Imprisonment in default of security.

*(CODE OF 1882—S. 123.)

123. If any person ordered to give security under S. 106 or S. 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be commit-

Imprisonment in default of security.

Note 17.

(1) (1895) 1895 All. W. N. 143 (143), *Queen* v. *Toni*.
(1911) 12 Cri. L. Jour. 480 (481), *Achambit Das* v. *Sarada*.

Note 18.

(1) (1914) 1914 All. 487 (488), *Bairagi* v. *Emperor*.
(2) (1914) 1914 All. 489 (489), *Bhawani Singh* v. *King-Emperor* (Sureties rejected on Police report).
(1915) 1915 All. 177 (177), *Zorawar* v. *Emperor*.
(1908) 8 Cri. L. Jour. 344 (346): 11 Oudh Cas. 267, *Ramnand Singh* v. *King-Emperor*.
(1904) 1 Cri. L. Jour. 459 (461): 7 Oudh Cas. 113, *Emperor* v. *Parmeshur*.
(1909) 10 Cri. L. Jour. 230 (231): 2 Sind L. R. 15, *Emperor* v. *Kamal*.
(1909) 10 Cri. L. Jour. 225 (227): 2 Sind L. R. 11, *Imperator* v. *Mahro*.
(1907) 5 Cri. L. Jour. 181 (181), *Mithu* v. *Emperor*.
(1907) 5 Cri. L. Jour. 179 (180), *Jawahira* v. *Emperor*.
(1912) 13 Cri. L. Jour. 760 (762): 13 Oudh Cas. 263, *Govind* v. *Emperor*.
(1921) 1921 Oudh 193 (193): 24 Oudh Cas. 303, *Emperor* v. *Lachman*.
(1909) 10 Cri. L. Jour. 230 (231): 2 Sind L. R. 15, *Emperor* v. *Kamal*.
(3) (1906) 3 Cri. L. Jour. 468 (468), *Suresh Chandra Basu* v. *Emperor*.
(1912) 13 Cri. L. Jour. 831 (831), *Jhandu* v. *Emperor*.
(1910) 11 Cri. L. Jour. 497 (498): 4 Sind L. R. 18, *Emperor* v. *Haji Usman*.
(1924) 1924 Oudh 132 (133), *Ghisa* v. *Emperor*.
(1928) 48 Cal. L. Jour. 143 (146) Notes, *Sahindra Nath*.
(1916) 14 All. L. J. (N.) 25 (25).
(1921) 1921 Cal. 356 (356), *Budhu Ahir* v. *Emperor* (Refusal of a surety because he had been convicted of assault was held unreasonable exercise of discretion).
(1917) 18 Cri. L. Jour. 453 (454): 1917 Cal. 209: 44 Cal. 737, *Abdul Karim* v. *Emperor*.
(1916) 17 Cri. L. Jour. 95 (95): 1916 Cal. 360, *Romesh Chandra Dutta* v. *Emperor*.
(1910) 11 Cri. L. Jour. 243 (243), *Ela Buksh* v. *Emperor*.
(1908) 8 Cri. L. Jour. 388 (389), In the matter of *Jalil* v. *Emperor*.
(1906) 4 Cri. L. Jour. 169 (169), In re *Abdul Khan*.
(4) (1909) 13 Cal. W. N. xxvii, *Hor Ali*.

Note 20.

(1) (1935) 1935 Pat. 195 (197), In the matter of *Babu Surja Narain* (Such contract is illegal and if surety is a legal practitioner he is guilty of professional misconduct).
(1876-78) 1 All. 751 (753), *Fateh Singh* v. *Sanwal Singh* (Sum deposited by person bound over, with surety—Period of security expiring without forfeiture being incurred—Suit for recovering the deposit not maintainable as contract was illegal).

S. 123. is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

Proceedings when to be laid before High Court or Court of Session.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court: and the proceedings shall be laid, as soon as conveniently may be, before such Court.

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ed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

(CODE OF 1872—S. 489, Para. 3, Ss. 490, 497, 498, 499, Para. 3, and Ss. 507, 508 and 510.)

CHAPTER XXXVII.

Of security for keeping the peace.

Personal recognisance to keep the peace in cases of conviction.

489.	*	*	*	*

such Court or Magistrate, may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that, if the same be not given, the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

* * * * * * *

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: S. 123.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3-A) *If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section* (2), *such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections* (2) *and* (3) *shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.*

Security to keep the peace.

490. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a Division of a District, or by a First Class Magistrate or three years if the order be passed by the High Court or by Court of Session.

Non-compliance with order to give bond.

497. If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

Time for which person may be bound to keep peace.

498. The period for which the Magistrate may bind a person to keep the peace, with or without security, shall not exceed one year.

Limit of imprisonment under S. 497.

When a person is imprisoned under section four hundred and ninety-seven, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever, within that term, he complies with the order.

* * * * * *

499.

If such person fails to give a bond with security if required, for his keeping the peace for such further period as the Magistrate, under the orders of the Court of Session, directs, he may be kept in simple imprisonment for such further period, or until, within that period, he gives such bond.

S. 123. *(3-B). A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section* (2) *or sub-section* (3-A) *to an Additional Sessions Judge or Assistant Sessions Judge, and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this Section in respect of such proceedings.*

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

Proceedings to be laid before Court of Session.

507. If a person required to furnish security under the provisions of the last preceding section does not furnish the same, or offers sureties whom the Magistrate sees fit to reject, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying or annulling the orders of such Magistrate, as it thinks proper.

Court of Session may require security for period not exceeding three years.

508. If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Imprisonment in default of security.

510. In the event of any person required to give security under the provisions of this chapter failing to furnish the security so required, he shall be committed to prison until he furnish the same.

Term of imprisonment.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Imprisonment under this section may be rigorous or simple as the Court or Magistrate in each case directs.

(CODE OF 1861—Ss. 281, 288, 289, 290, 298, 299, and 301.)

Security to keep the peace.

281. In cases in which it may appear necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, it shall also be lawful to the Court or Magistrate or other officer as aforesaid, empowered to require a penal recognizance under the last preceding section, to require security in addition thereto and to fix the amount of the security bond to be executed by the surety or sureties; with a provision, that, if the same be not given, the party required to find the security shall be kept in custody for any time not exceeding one year if the order be passed by the Magistrate of the District or other officer exercising the powers of a Magistrate, or three years if the order be passed by the Sudder Court or by a Court of Session.

(6) Imprisonment for failure to give security for good behaviour *shall, where the proceedings have been taken under Section* 108, *be simple, and, where the proceedings have been taken under Section* 109 *or, Section* 110 be rigorous or simple as the Court or Magistrate in each case directs. S. 123.

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288. If the Magistrate or other officer as aforesaid shall be satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if the person shall fail to comply with the order, it shall be lawful for the Magistrate or other officer as aforesaid to commit him to jail.

Consequence of not complying with order of Magistrate to enter into a bond.

289. The period for which the Magistrate or other officer as aforesaid may bind a person to keep the peace with or without security, shall not exceed one year. When a person shall be committed to jail under the last preceding section, he shall not be detained by authority of the Magistrate or other officer as aforesaid beyond the term of one year, and shall be released whenever he shall comply with the order within that term.

Limit for confinement.

290. Whenever it shall appear to the Magistrate or other officer as aforesaid that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session, and such Court, after examining the proceedings of the Magistrate or other officer as aforesaid and making such further enquiry as such Court may think necessary, may, if it shall see cause, authorize the Magistrate or other officer as aforesaid to extend the term for a further period not exceeding one year, and if the party shall fail to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate or other officer as aforesaid shall direct under the orders of the Court of Session, he may be kept in confinement for such further period or until he shall give such bond within that period.

Extension of period of confinement.

298. If the person required to furnish security, as provided in the last preceding section, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session, which, after examining them and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate or other officer as aforesaid as it may judge proper.

Case to be laid before the Court of Session.

299. If the Court of Session shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

Court of Session may require security not exceeding three years.

S. 123.

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In default of security, party to be committed to prison.

Proviso.

301. In the event of any person required to give security under the provisions of the foregoing sections, failing to furnish the security so required, he shall be committed to prison until he furnishes the same:

Provided that no party shall be kept in prison for a longer period than that for which the security has been required from him.

S. 123, Notes 1—2.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872—

In cases falling under what corresponds to S. 106 of the present Code, where only a personal recognisance was taken from the accused without sureties no imprisonment was provided for, in default of giving such recognisance.[1] This omission was supplied in S. 489 of the Code of 1872.

Difference between the Codes of 1872 *and* 1882—

Under the Codes of 1861 and 1872 where a default was made in furnishing security for *good behaviour*, no imprisonment could be awarded on the defaulter except on a reference to the Sessions Court, whether the period of security *did or did not exceed one year*. Under the Code of 1882 a reference to the Sessions Court was necessary only when the period of security whether for keeping the peace or for good behaviour, *exceeded one year*.

Difference between the Codes of 1882 *and* 1898—

(1) The required security could under the Code of 1882 be given to the Court or the Magistrate who made the order or to the *officer in charge of the jail* in which the person ordered to furnish security is detained. Under the present sub-S. (4) of the section if the security is tendered to the officer in charge of the jail he can only *refer* the matter to the Court or Magistrate who made the order.

Amendment of 1923—

(1) Sub-S. 3-a and 3-b were newly added.

(2) Imprisonment in default of security for good behaviour in proceedings under *Ss.* 108 *or* 109 had to be *simple*.

Amendment by Act 10 *of* 1926—

Power to award *rigorous* imprisonment in default of security in proceedings under S. 109, also was provided for.

2. Scope of section.—The purpose of the security sections is not that the persons proceeded against should be sent to or kept in jail.[1-a] Nor is it the intention of the Legislature in prescribing imprisonment in default of security that a person called upon to furnish security should be punished for not being able to do so. The object is that the safeguard which the security was intended to provide for should be provided for by his detention in custody,[1] any attempt therefore to use the section for punishment of past offences is wrong and is not sanctioned by law.[2] A person imprisoned under this section is not imprisoned for any *offence* and escape from custody while under such imprisonment will therefore fall only under S. 225-B not under S. 224 or S: 225 of the Penal Code.[3] Imprisonment under this section not being for an offence cannot be taken into account for purpose of S. 75 of the Penal Code,[4] and for the same reason a youth ordered to be imprisoned under S. 123 cannot be sent under S. 399 to a Refor-

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Section 123—Note 1.

(1) (1870-71) 6 Mad. H. C. 25 (26), *Sellam.*

Note 2.

(1-a) (1928) 1928 Lah. 64 (65), *Emperor* v. *Muhammad Akbar.*

(1) (1893) 6 C. P. L. R. Cr. 18 (14), *Empress* v. *Dalbux.*

(2) (1885) 7 All. 67 (72), *Empress* v. *Kandhaia.*

(3) (1921) 1921 All. 281 (281): 43 All. 185, *Mooli* v. *Emperor.*
[See also (1866-67) 3 Mad. H. C. App. 23 (23).
(1871-74) 7 Mad. H. C. App. 41 (42).]

(4) (1889) 1 Bur. S. R. 490.

S. 123, Notes 2—5.

matory school, the order of imprisonment not being a *sentence* within the meaning of that section.[5] Where a person is ordered to give security under S. 106 the imprisonment in default does not form part of the *substantive sentence* so as to give the accused a right of appeal where none existed.[6]

The section does not apply to persons ordered to give security under S. 562, *infra*.[7]

3. "**Does not give such security**".—Imprisonment under this section cannot be awarded in *anticipation* of default being made in the furnishing of the required security.[1] It can only *follow* a failure to furnish security, and not *precede* a finding that the security is inadequate. Thus it will be illegal to send a person to jail pending the receipt of the report called for as regards the adequacy of the security furnished.[2] Similarly an order directing that the accused should in default of giving security suffer simple imprisonment for one year cannot be upheld.[3] The section contemplates that the accused shall be separately brought up for receiving the order of imprisonment if security is not furnished, that the Court shall, in its judgment, fix a date for furnishing security without any order for imprisonment in the alternative, and that then, if by that date security has not been furnished, the accused shall appear and receive the order of imprisonment.[3-a]

Imprisonment under this section being only preventive and not punitive and being conditional on default of furnishing security, it is only reasonable and just that the accused should be afforded a fair chance at least of complying with the required condition of security.[4] Where after furnishing security the person bound down commits an offence rendering his bond liable to forfeiture, the Magistrate has no authority to order the offender to be imprisoned for the remainder of the term of the security.[5]

4. **On or before the date . . . commences.**—The security must be given on or before the date on which the period for such security commences.[1] As to when the period of security commences, *see* S. 120, *ante*.

5. "**Shall be.....committed to prison**".—Imprisonment under this section commences from the date fixed for giving security.[1] A warrant for the detention in prison of the person ordered to give security can only be issued before, where the security is not furnished, the commencement of the period of such security.[2] A committal to prison for default in furnishing security should be made on the date on which the period of security commences and not *later*.

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(5) (1893) 6 C. P. L. R. 13 (14), *Dalbux*.
(1900-02) 1 L. B. R. 42 (42), *Mahomad Kasim* v. *Empress*.
(1897-1901) 1 U. B. R. 375 (376), *Queen-Empress* v. *Nga Po Su*.
(6) (1904) 1 Cri. L. Jour. 1054 (1055): 7 Oudh Cas. 338, *Meghu* v. *Emperor*.
(7) (1925) 1925 Rang. 42 (43): 2 Rang. 360, *Nasu Meah* v. *Emperor*.

Note 3.

(1) (1888) Rat. 395 (395), *Shivraya*.
(1888) Rat. 408 (408), *Lalu*.
Bom. Cr. Rul. 30th July, 1890.
(2) (1907) 5 Cri. L. Jour. 148 (151): 1906 P. R. 18, *Emperor* v. *Kaim Khan*.
(3) (1927) 1927 Mad. 976 (976), *Ibraya Rowthan* v. *Emperor*.
[See also (1899) 2 Oudh Cas. 307 (310), *Subba* v. *The Crown*.
(1893-1900) Low. Bur. Rul. 245 (246), *Empress* v. *Nga Saing Gyi*.]
(3-a) (1927) 1927 Mad. 976 (976), *Ibraya Rowthar* v. *Emperor*.
(4) (1895) Rat. 774 (775), *Pandu*.
(1872) 16 Bom. 372 (373), *Queen-Empress* v. *Rama*.
(1868-69) 4 Mad. H. C. App. 46 (47).
(1903-04) 2 L. B. R. 76 (79), *Nga Po*.
(5) (1897-1901) 1 U. B. R. 26 (26).

Note 4.

(1) (1900) 4 Cal. W. N. 121 (122), *Mahomed Abdul*.

Note 5.

(1) (1903) 5 Bom. L. R. 26, *Emperor* v. *Kanjr Singh*.
(2) (1889) Rat. 432 (432), *Hiralal Chunilal and Lau Valad Pema*.

S. 123, Notes 5—7.

So where a Magistrate passed an order for security in 1907 and the period commenced on the same date as the order, an order for inprisonment awarded in 1909 for failure to furnish the said security was held to be illegal.[3]

An order for imprisonment under this section is a *sentence* of imprisonment within the meaning of S. 8 of the Madras Borstal School Act of 1926.[3-a]

6. **"Or if he is already in prison".**—Where an order for security is contemporaneous with a conviction and sentence of imprisonment, the sentence for the substantive offence is to be carried out first and the person to be bound then brought up for the purpose of being bound.[1] It would be illegal for the Magistrate to pass an order of imprisonment for default in furnishing security to run concurrently with some other sentence that the accused is *already* undergoing.[2]

The reason is that a convict undergoing a sentence of imprisonment cannot be obliged to give security till the term of that imprisonment ends [S. 120, sub-S. (1)] and that under this section no order of imprisonment can be made till there has been a *failure to give the required security*.[3] Sub-S. (1), however, directs that if any person does not give security on or before the date on which the period of security commences he shall, if in prison, be *detained there* till such period expires, or until within such period, he gives security. Therefore strictly speaking no further orders are required except on the point whether the imprisonment should be simple or rigorous or on any question that may arise as to the sureties tendered. The procedure to be followed by a Magistrate who orders a person already undergoing imprisonment to furnish security would be to adjourn the case for further orders till after the expiration of the sentence he is undergoing. At the same time he should communicate his order to the jail authorities and ask them to detain the prisoner in jail upon the expiration of the sentence in accordance with sub-S. (1) of the section. The accused should be given all facilities for furnishing security, but he need not be produced before the Magistrate if he informs the jail authorities that he is unable to furnish the required security.[4]

7. **Subsequent sentence of imprisonment—Commencement of.**—*See also* Notes to S. 397, *infra*.

It has been seen in the Notes to S. 120, *ante* that where *before the commencement* of the period of security, the person ordered to give security is convicted for a substantive offence and is sentenced to imprisonment, the

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(3) (1909) 10 Cri. L. Jour. 481 (481), In re *Muthu Gounden*.
(1923) 1923 Oudh 44 (45), *Rameshwar Baksh Singh* v. *Emperor*.
(3-a) (1934) 1934 Mad. 457 (457, 458): 57 Mad. 928, *Mala Changadu*, In re [Detention in Borstal School under Madras Borstal School Act (1926) of person defaulting can be ordered].

Note 6.

(1) (1875) 24 Suth. W. R. 13 (14), *Shona Dagee*.
[But see (1871) 3 N.-W.P. 126 (127), *Queen* v. *Toral Gujar* (Which is not in conformity with S. 120 (1) read with 123 (1)).]
(2) (1915) 16 Cri. L. Jour. 272 (272): 1916 Mad. 534, In re *Chinnaswamy*.
(3) (1895) Rat. 765 (766), *Appa Ganuu*.
(1895) Rat. 774, *Empress* v. *Pandu Khandu*.
(1902) 4 Bom. L. R. 934 (935) (Cr.), *Emperor* v. *Rangyalinhanmappa*.
(1926) 1926 Bom. 545 (545), *Nana Ramji Shinde*.
(1916) 17 Cri. L. Jour. 88 (90): 1916 Low. B. 1: 8 L. B. R. 353, *Emperor* v. *Nga Saing*.
[But see (1908) 7 Cri. L. Jour. 472 (473): 4 L. B. R. 205, *Emperor* v. *Tha Hlaing*.
(1909) 10 Cri. L. Jour. 69 (72 and 76): 5 L. B. R. 34, *Kyaw Wa* v. *Emperor*.]
(4) (1926) 1926 Bom. 545 (546), *Emperor* v. *Nana Ramiji*.
(1927) 1927 Sind 166 (167), *Emperor* v. *Saidu*.
(1890) Rat. 511 (511).

S. 123, Notes 7—8.

imprisonment under this section in default of furnishing security, cannot be postponed after the expiration of the substantive sentence but would run *concurrently* with it. Suppose now that a person is sentenced to imprisonment under this section in default of furnishing security and is *thereafter* convicted for a substantive offence and sentenced to imprisonment. Is the latter sentence to run *concurrently* with the former or is it to be postponed till after the expirations of the former sentence? The answer to this question depends on whether the substantive offence was committed *prior* to the order of imprisonment under this section or whether it was subsequent thereto. In the former case, both the sentences will, by virtue of second proviso to S. 397, run *concurrently*. As to the latter case, *see* Notes to S. 397.

A term of imprisonment under S. 123 once commenced cannot be interrupted by any subsequent sentence.[1]

8. **Term of Imprisonment.**—The term of imprisonment should be the same as that for which security is demanded, neither more nor less.[1] If the Magistrate thinks that the term ought to be shortened the proper course is for him to report the matter to the District Magistrate for action under S. 124.[2]

Imprisonment commences from the date on which security is to be given and lasts until such period expires or until, within such period, the required security is given.[3] A Magistrate has no power to keep a man in prison after the date on which the period for which the security ordered had expired.[4] Where a bond is executed after the date on which the period for security commences it should plainly state the date on which the period expires.[5]

The order for imprisonment should run thus: "for one year or until such date within that period as the required security may be furnished". An order directing a person to be imprisoned "until he gives security"[5-a] or "for one year" without any thing more is bad.[6] It was doubted in the undermentioned case[7] whether an order directing that on accused's failure to produce securities to be detained in prison for a period to be specified hereafter, was a legal order.

The term of imprisonment which a Magistrate may order in default of security is not limited by the term of substantive imprisonment for which he is competent to sentence an offender.[8] In other words the liability to be detained in prison in default of giving security is something independent of the powers of the Magistrate in the matter of passing a substantive sentence of imprisonment.

Note 7.

(1) (1900-1902) Low. Bur. R. 14 (15), *Emperor* v. *Nga Kyon.*

Note 8.

(1) (1901) 23 All. 422 (423), *Karimuddin Beg.*
(1891) Rat. 584 (584), *Queen-Empress* v. *Ganoo.*
(1908) 7 Cri. L. Jour. 412 (414): 4 L. B. R. 135, *Emperor* v. *Mayat Aung.*
(1866) 6 Suth. W. R. 18 (19), *Jaswant Singh.*
(1930) 1930 Lah. 49 (49), *Emperor* v. *Khushi Muhammad.*
(1892-1896) 1892-1896 Upp. Bur. R. 21 (22), *Empress* v. *Nga Po Chin.*
(2) (1893) Rat. 668 (668), *Empress* v. *Moti.*
(3) (1869-70) 5 Beng. L. R. 26 (27), *Emperor* v. *Kanji Jaysingh.*
(4) (1912) 13 Cri. L. Jour. 62 (62) (Rang.), *Emperor* v. *Nga Po Sin.*
(5) (1912) 13 Cri. L. Jour. 62 (62) (Rang.), *Emperor* v. *Nga Po Sin.*
(5-a) (1882) 8 Cal. 644 (645), *Mailamdi Fakir* v. *Taripulla Pramanik.*
(6) (1927) 1927 Mad. 976 (976), *Ibraya Rowther* v. *Emperor.*
(1868-69) 4 Mad. H. C. App. 46 (47).
(1933) 1933 Mad. W. N. 548 (549), *Dt. Magistrate of Coimbatore* v. *Dasappa Naik.*
(1874) Weir 3rd ed. 727 (727).
(7) (1925) 1925 Sind 321 (321): 19 Sind. L. R. 101, *Allah Dito* v. *Emperor.*
(8) (1886) 1886 All. W. N. 181 (181), *Empress* v. *Lachman.*

S. 123, Notes 8—9.

Thus a Second Class Magistrate who is also a sub-divisional Magistrate can bind over a person under S. 106 for a period exceeding 6 months and imprison him for that period in default of giving security although the maximum substantive sentence that he can award is 6 months.[8-a] Similarly, summary Courts are not incompetent to award more than 3 months imprisonment under this section.[9] In computing the period of imprisonment under this section, the period during which the person is released on bail should be deducted.[10]

9. **Sub-S. (2). Detention pending orders of Session Court, etc.**—Where a Magistrate demands security for a term exceeding one year he cannot sentence the accused to imprisonment in default of giving such security; he is empowered only to issue a warrant directing the said person to be detained in prison pending the orders of the Sessions Judge or of the High Court as the case may be and to submit his proceedings to such Court as soon as possible for orders.[1-a] The order fixing the term of imprisonment which the accused is to undergo on default of furnishing security is to be fixed by such Court and not by the Magistrate.[1] The section is imperative in this respect and an order for imprisonment by the Magistrate himself in such cases is bad on the face of it and cannot be cured by the District Magistrate by reducing the term of security and imprisonment to one year.[2] In the undermentioned cases,[3] however, where an order by a Magistrate for imprisonment for more than one year under this section was confirmed by the Sessions Judge, it was held that the order might, under the circumstances, be taken to be the order of the Sessions Judge himself. Where a Magistrate passed an order for imprisonment under this section for two years, but on appeal to the District Magistrate the latter set aside this order and directed the proceedings to be laid before the Sessions Judge, it was held that the latter could pass orders as to the term for which the accused should be imprisoned for failing to give security.[4]

A Magistrate cannot legally amalgamate Ss. 109 and 110 and require the execution of two bonds for an aggregate period of 18 months and in default of the same being furnished commit the accused to 18 months imprisonment. When such a procedure had been adopted it was held that it was wrong and that, at any rate, the provisions of sub-S. (2) to S. 123 should have been followed.[5]

(8-a) (1915) 1915 All. 15 (16): 37 All. 230, *Raja Singh* v. *Emperor.*

(9) (1927) 1927 Mad. 976 (976), *Ibraya Rowthan* v. *Emperor.*

(10) (1934) 1934 All. 845 (845), *Darsu* v. *Emperor.*

Note 9.

(1-a) (1935) 1935 Pesh. 55 (55), *Fazal Mahmud* v. *Emperor.*

(1935) 1935 Pesh. 80 (81), *Abdul Karim* v. *Emperor.*

(1) (1908) 7 Cri. L. Jour. 427 (432): 30 All. 334, *Emperor* v. *Tula Khan.*

(1906) 3 Cri. L. Jour. 456 (457): 28 All. 629, *Jagdeo Singh* v. *Emperor.*

(1899) 1899 All. W. N. 151 (151), *Empress* v. *Jafar.*

(1920) 1920 Lah. 283 (284), *Sunder* v. *Emperor.*

(1928) 1928 Lah. 189 (190), *Mangal Singh* v. *Crown.*

(1910) 11 Cri. L. Jour. 637 (637): 1910 P. R. 29, *Nanku* v. *Emperor.*

(1908) 7 Cri. L. Jour. 412 (413): 4 L. B. R. 135, *Emperor* v. *Myat Aung.*

(1903-04) 2 Low. Bur. R. 16 (17), *Emperor* v. *Nga Ba Le.*

(1893-1900) 1893-1900 L. B. R. 381 (382), *Queen-Empress* v. *Shwe Gyaw Aung.*

(1893-1900) 1893-1900 L. B. R. 245 (246), *Emperor* v. *Nga Saing Gyi.*

(1897-1901) 1 Upp. Bur. R. 28 (28), *Empress* v. *Nga Paw.*

(1893) 6 C. P. L. R. 27 (27), *Rew Ahir, In re.*

(2) (1914) 1914 Lah. 492 (493): 1914 P. R. 6, *Mahala* v. *Emperor.*

(1903) 2 Weir 57 (58), *Syed Ahmed Saheb, In re.*

(3) (1903) 1903 All. W. N. 28 (28), *Jawahir.*

(1892) 6 C. P. L. R. 27 (28), *Empress* v. *Rewa Ahir.*

(4) (1872-1892) 1872-1892 L. B. R. 279 (279), *Empress* v. *Nga Kyank Khi.*

(5) (1897) Rat. 946 (947), *Empress* v. *Balaya Bin Bhimappa.*

S. 123, Notes 9—10.

Where a person ordered to give security for more than one year is at the time of such order undergoing sentence of imprisonment it is premature according to the High Court of Bombay to refer the matter to the Sessions Judge before expiry of the sentence of imprisonment he is undergoing.[6] A contrary view has been taken by a Full Bench of the Chief Court of Lower Burmah according to which, the proceedings should in such a case be referred *at once* to the Sessions Judge who is not required by law to wait till the expiry of the sentence which the accused may be undergoing.[7]

Where the proceedings are laid before the Sessions Judge under sub-S. (2), and pending orders thereon, the person proceeded against is sent to prison, it has been held that he is really undergoing a sentence of imprisonment and is not merely in detention as an under-trial prisoner.[8]

Until a case is referred for final orders, proceedings in the Magistrates Court are not terminated so as to end the liability of the sureties who had undertaken to be responsible for the attendance of an accused person in the Court of the Magistrate.[9] The whole of the section has reference to the case where *default* is made in the furnishing of security. If a person ordered to find the security for a period over one year *does* furnish such security the section does not apply and no reference to the Court of Sessions could be made.[10] In such a case it is the High Court alone that has powers of revision under S. 439, Cr. P. Code.[11]

10. Nature of the proceedings on reference.—It has been held by the Judicial Commissioner's Court of Sind that the functions of the Sessions Judge before whom proceedings are laid under this section are more of an administrative than of a judicial character.[1] It has also been held that the proceedings are not in the nature of an *appeal*, and that it is not necessary to deal with the matter as if it were an appeal or write a judgment as if it were an appeal.[2] The whole case is intended to be dealt with by the Sessions Judge as a Court of *first instance*,[3] and the order passed by him is the separate and substantive order of the Court of Session and not a mere confirmation of the Magistrate's order.[4] The reason is that the Magistrate cannot pass an order of imprisonment in cases which he has to refer and consequently cannot submit any order so passed by him for confirmation. The warrant following the order of the Sessions Judge should proceed from the Sessions Court itself and the Sessions

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(6) (1895) Rat. 765 (766), *Empress* v. *Appa Garu.*
(7) (1909) 10 Cri. L. Jour. 69 (75): 5 L. B. R. 34, *Kyaw Wa* v. *King-Emperor.*
(8) (1908) 7 Cri. L. Jour. 427 (431): 30 All. 334, *Emperor* v. *Tula Khan.*
(9) (1926) 1926 All. 297 (297), *Mustaqimuddin* v. *Emperor.*
(10) (1896) 23 Cal. 621 (626-627), *Rai Ishri Pershad* v. *Queen-Empress.*
(1891) 11 All. W. N. 219 (219), *Haridas*, In re.
(1918) 1918 All. 215 (216): 40 All. 39, *Ram Kishan* v. *Emperor.*
(1872-1892) 1872-1892 L. B. R. 279 (279), *Nga Kyank Khe.*
(11) (1896) 23 Cal. 621 (626-627), *Rai Isri Pershad* v. *Empress.*

Note 10.

(1) (1924) 1924 Sind 120 (120): 17 Sind L. R. 160, *Allahdad* v. *Crown.*
(2) (1924) 1924 Sind 120 (120): 17 Sind L. R. 160, *Allahdad* v. *Crown.*
(3) (1932) 1932 Sind 88 (89): 26 Sind L. R. 200, *Emperor* v. *Nim.*
(4) (1893) 1893 All. W. N. 183 (184), *Empress* v. *Chottia.*
(1908) 7 Cri. L. Jour. 412 (414): 4 L. B. R. 135, *Emperor* v. *Inyat Aung.*
(1903-04) 2 L. B. R. 16 (17), *Nga Ba Le.*
(1899) 1899 All. W. N. 151 (151), *Jafar.*
(1925) 1925 Oudh 517 (518), *Bahadur* v. *Emperor.*
(1893-1900) 1893-1900 L. B. R. 245 (246), *Empress* v. *Nga Saing Gyi.*
(1892) 6 C. P. L. R. Cr. 27 (28), *Empress* v. *Rewa Ahir.*

Judge cannot ask the Magistrate to issue his warrant of imprisonment.[5] It has however been held that the power to accept or reject sureties is vested in the *Magistrate* and that the Sessions Judge exercising jurisdiction under this section has no power to do so.[6]

S. 123, Notes 10—13.

11. Notice to person proceeded against.—The section itself does not direct the issue of notice of the proceedings to the person against whom they are taken. It has however been held that it is necessary in the ends of justice to give such notice before any order prejudicial to him is passed.[1]

12. Appearance of pleader in proceedings on reference.—A person against whom proceedings are taken under this section may, of right, be defended by a pleader.[1] *See also* Note 11 to S. 122.

13. Discretion of Court on reference.—Where reference is made under the section to the Sessions Judge, he cannot decline to entertain it on the ground that it is belated,[1] but should deal with the case on the merits.[2] He has a wide discretion to pass such orders as the circumstances of the case require[3] and the Legislature has vested in him all such subsidiary powers as may be necessary for finally disposing of the case.[4] Thus he may, if he considers the Magistrate's order to be proper, pass an order for imprisonment in default of furnishing the required security[5] or he may find that there is no necessity for any security at all[6] or he may impose reasonable conditions regarding the character of the sureties who may be accepted[7] or he may alter the amount or the period of security.[8] The Judge is however bound to hear *both* sides,[9] consider the evidence, if any adduced by them[10] and then pass orders on the merits. He should examine the proceedings as a Judge, that is to say, with a view to see whether they are according to law and correct procedure, whether the order for security is justified and if so for what period and in what sum security should be demanded.[11] If he con-

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(5) (1893-1900) 1893-1900 L. B. R. 245 (246), *Empress* v. *Nga Saing Gyi.*
(6) (1934) 1934 Cal. 482 (487): 61 Cal. 588; *Parbaticharan Baisya* v. *Emperor.*

Note 11.

(1) (1903) 25 All. 375 (377), *Emperor* v. *Girand.*
(1933) 1933 Pat. 276 (276), *Sitaram Ahir* v. *Emperor.*
(1928) 1928 Lah. 189 (190), *Mangal Singh* v. *Emperor.*
(1911) 12 Cri. L. Jour. 257 (258): 35 Bom. 271, *Emperor* v. *Amir Bala.*
(1900) 4 Cal. W. N. 797 (798), *Abinash Malakar* v. *Empress.*
(1909) 10 Cri. L. Jour. 69 (72): 5 L. B. R. 34, *Kyaw Wa* v. *Emperor.*
(1905) 2 Cri. L. Jour. 736 (738): 3 L. B. R. 43, *Nga Hnaung* v. *King-Emperor.*
(1905-06) 3 Low. Bur. R. 43 (44), *Nga Hnaung* v. *Emperor.*

Note 12.

(1) (1903) 25 All. 375 (377), *Emperor* v. *Girand.*
(1900) 27 Cal. 656 (658), *Nakhi Lal Jha* v. *Empress.*
(1896) 23 Cal. 493 (494), *Jhoja Singa* v. *Empress.*
(1900) 1900 Pun. L. R. 59, *Ida.*
(1900) 4 Cal. W. N. 130 (Notes).

Note 13.

(1) (1920) 1920 Lah. 283 (284), *Sundar* v. *Emperor.*
(2) (1911) 12 Cri. L. Jour. 257 (258): 35 Bom. 271, *Emperor* v. *Amir Bala.*
(3) (1911) 12 Cri. L. Jour. 257 (258): 35 Bom. 271, *Emperor* v. *Amir Bala.*
(4) (1932) 1932 Sind 88 (89): 26 Sind L. R. 200, *Emperor* v. *Nim.*
(5) (1908) 7 Cri. L. Jour. 412 (413): 4 L. B. R. 135, *Emperor* v. *Mayat Aung.*
(1893) 6 C. P. L. R. (Cr.) 27 (28), *Empress* v. *Rewa Ahir.*
(6) (1908) 7 Cri. L. Jour. 412 (413): 4 L. B. R. 135, *Emperor* v. *Mayat Aung.*
(7) (1903-04) 2 Low. Bur. R. 76 (77), *Nga Po Nyun.*
(8) (1908) 7 Cri. L. Jour. 412 (413): 4 L. B. R. 135, *Emperor* v. *Mayat Aung.*
(9) (1924) 1924 Sind 120 (120): 17 Sind L. R. 160, *Allahadad* v. *Crown.*
(10) (1910) 11 Cri. L. Jour. 637 (638): 1910 Pun. Re. 29, *Nanku* v. *Emperor* (He should not, just as a matter of course, and without regard to the evidence, send to prison the person who has failed to give the security ordered).
(11) (1872-1892) L. B. R. 279 (279), *Nga Kyank.*
(1928) 1928 Lah. 189 (190), *Mangal Singh* v. *Crown.*
(1924) 1924 Sind 120 (120): 17 Sind L. R. 160, *Allahadad* v. *Crown* (He should see at any rate whether there are substantial grounds for demanding security).

S. 123, Notes 13—16.

firms the order as to security he should find some *ground* for doing so. An order *merely* confirming that of the Magistrate is bad.[12] Nor is it sufficient if he merely finds in general terms that it is in the interests of the community at large that the person proceeded against should be bound over to be of good behaviour.[13]

The Sessions Judge cannot pass an order for imprisonment for a period *less than* that for which security is called for.[14] Nor can he pass an order that the person proceeded against should merely furnish sureties without himself giving a recognisance.[15]

14. **Power to order retrial and remand.**—The Sessions Judge has no jurisdiction to treat the reference as an appeal or exercise the powers vested in him as a Court of appeal.[1] He cannot therefore remand the case for further inquiry[2] or order a retrial though he may, under S. 438, *infra*, refer the case to the High Court for quashing proceedings or for ordering a retrial.[3] He may also require the Magistrate to furnish him with any further information or evidence, but in that case he should make a definite order stating the information or the nature of the evidence required.[4]

15. **Order, contents of.**—It is open to doubt whether Ss. 367 and 424 dealing with judgments in trials and appeals respectively, apply to orders passed in proceedings under this section, and whether therefore, such orders should contain all the details required by those sections in respect of judgments.[1] Where there are several persons proceeded against, each of them has a right to have his case considered on its own merits and the order should show that this has not been lost sight of.[2]

16. **Jurisdiction of Magistrate after reference to accept security.**—Where a case has been referred to the Sessions Judge under this section, the seisin of the case is thenceforward with the Sessions Judge and the Magistrate is not competent thereafter to release the accused on bail.[1] The Sessions Judge has however wide powers under S. 498, *infra*, and can grant bail in such cases.[2] It has, however, been held that where pending a reference under this section to the Sessions Judge security is offered by the accused, it may be accepted by the Magistrate and on such acceptance, the reference automatically ceases.[3] There is a conflict of opinion as to whether when sureties are offered *after* an order is passed by the Sessions Judge on reference, the Magistrate has power to determine whether the sureties are fit to be accepted. The Judicial Commissioner's Court of Sind and the Chief Court of Lower Burma have held

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(1900-1902) 1900-1902 Low. Bur. R. 75 (78), *Crown* v. *Nga Kyank Lon.*

(12) *See the cases cited in foot-note* (11).

(13) (1900) 27 Cal. 656 (658), *Nakhi Lal Jha* v. *Queen-Empress.*

(14) (1901) 23 All. 422 (423), *Emperor* v. *Karim-ud-din Beg.*

(15) (1904) 1 Cri. L. Jour. 897 (898): 27 All. 262, *Emperor* v. *Udmi.*

Note 14.

(1) (1932) 1932 Sind 88 (89): 26 Sind L. R. 200, *Emperor* v. *Nim.*

(2) (1897) 24 Cal. 155 (156), *Jhojha Singh* v. *Queen-Empress.*

(3) (1932) 1932 Sind 88 (89): 26 Sind L. R. 200, *Emperor* v. *Nim.*

(4) (1925) 1925 Cal. 191 (192), *Narayan Singh* v. *Emperor.*

Note 15.

(1) (1910) 11 Cri. L. Jour. 23 (24): 37 Cal. 91, *Kaul Mirza* v. *Emperor.*

(2) (1910) 11 Cri. L. Jour. 23 (24): 37 Cal. 91, *Kalu Mirza* v. *Emperor.*

Note 16.

(1) (1928) 1928 Lah. 189 (190), *Mangal Singh* v. *Emperor.*

(2) (1923) 1923 Cal. 723 (723): 50 Cal. 969, *Ahmed Ali Sardar* v. *Emperor.*

(3) (1928) 1928 Lah. 64 (65), *Emperor* v. *Muhammad Akbar.*

that he cannot do so.[4] The High Courts of Calcutta and Patna have, on the other hand, held that he can, and that the Sessions Judge has neither the duty nor the power to test the surety so offered.[5] S. 123. Notes 16—19.

17. Right of appeal from order for security, how affected by reference. —Before the second Proviso was added to S. 406, *infra*, by the Amending Act of 1923, it was held that the fact that proceedings had been laid before the Sessions Judge under this section did not bar an appeal to the District Magistrate against the order for security under S. 118, but that the right of appeal terminated as soon as the Sessions Judge passed orders in the case under sub-S. (3) of this section.[1] It was further held that the Sessions Judge before proceeding to deal with the reference should satisfy himself whether an appeal had been filed or was about to be filed, and to stay his hands till the disposal of such appeal.[2] Under the new proviso to S. 406 an appeal is barred where there has been a reference under this section to the Sessions Judge. But the right of appeal is, however, revived, if pending disposal of the reference, security is offered and accepted, inasmuch as the acceptance of the security has the effect of automatically terminating the reference.[3] As to the power of the District Magistrate on appeal from an order for security to grant bail pending disposal of the appeal, *see* S. 406, *infra*, and notes thereto.

18. Order for imprisonment on reference—Commencement of.—Where a person is ordered by the Magistrate to be *detained* in prison pending the orders of the Sessions Judge on reference and the latter orders him to imprisonment for failure to give security, the period of imprisonment runs not from the date of the order of the Sessions Court but from the date of the Magistrate's order for detention.[1] *See* Note 19, *infra*.

19. "Shall not exceed three years".—The proviso to sub-S. (3) of this section enacts that the period for which any person may be imprisoned for failure to give security shall not exceed three years. When a Magistrate detains a person in prison under sub-S. (2) pending the orders of the Sessions Judge such person is thereby not merely detained in custody as an under-trial prisoner but is undergoing a sentence of imprisonment, the imprisonment having effect from the date on which the warrant was executed by the Magistrate. Hence where the Sessions Judge orders imprisonment for 3 years

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(4) (1911) 12 Cri. L. Jour. 410 (410): 5 Sind L. R. 87, *Imperator* v. *Alladin*.
(1903-4) 2 L. B. R. 76 (78), *Nga Po Nyun* v. *Emperor*.
(5) (1908) 7 Cri. L. Jour. 323 (324) (Cal.), *Gagan Chandra Das* v. *Emperor*.
(1930) 1930 Pat. 217 (219): 9 Pat. 741, *Emperor* v. *Narendranath Singh*.

Note 17.

(1) (1910) 11 Cri. L. Jour. 725 (726): 13 Oudh Cas. 354, *Pultu* alias *Ghulam Hussain* v. *Emperor*.
(1911) 12 Cri. L. Jour. 257 (258): 35 Bom. 271, *Emperor* v. *Amir Bala*.
(1893) 1893 All. W. N. 183 (184), *Empress* v. *Chottia*.
(1900) 1900 Pun. Re. No. 15, pp. 35-36, *Crown* v. *Ida*.
(1886) 1886 Pun. Re. No. 23, p. 55 (56), *Kanhaya* v. *Empress*.
(1897) 1897 Low. Bur. R. 381 (382), *Empress* v. *Shwe Gyaw Aung*.
[See also (1922) 1922 Lah. 475 (476), *Qamar Din* v. *Emperor*.]
(2) (1924) 1924 Sind 120 (120): 17 Sind L. L. R. 160, *Allahdad* v. *Crown*.
(1910) 11 Cri. L. Jour. 725 (726): 13 Oudh Cas. 354, *Pultu* alias *Ghulam Hussain* v. *Emperor*.
(1899) 2 Oudh Cas. 307 (310), *Subba*, In re.
(3) (1928) 1928 Lah. 64 (65), *Emperor* v. *Muhammad Akbar*.

Note 18.

(1) (1931) 1931 Oudh 387 (388), *Emperor* v. *Balak*.
(1924) 1924 Sind 120 (121): 17 Sind L. R. 160, *Allahdad* v. *Emperor*,

S. 123, Notes 19—22.

such order should have effect not from the date of his own order but from that of the Magistrate. Otherwise the proviso will be infringed.[1]

20. **Appeal and Revision.**—No appeal lies from an order of the Sessions Court under this section.[1] But such order is open to revision by the High Court.[2] A Magistrate is however not competent under S. 438, *infra*, to refer to the High Court a case in which a Sessions Judge has refused to confirm an order for security. His proper course would be to ask the public prosecutor to move the High Court for revision.[3]

21. **Sub-S. 3-B—Transfer of proceedings.**—A reference under the section is not a case committed for trial. The jurisdiction conferred by the section is rather the exercise of a power for the prevention of an offence than the trial of a case committed for trial. A joint Sessions Judge appointed to try all cases which may be *committed for trial* has no jurisdiction to pass orders on a reference under this section.[1] The Code of 1882 used the words "Court of Session". These were substituted by the words "Sessions Judge" by this Code. The change was construed as indicating that it was the intention of the Legislature to limit the power of dealing with references under this section, to Sessions Judges.[2] But it was held by the Calcutta High Court that sub-S. (2) of S. 193 should be liberally interpreted and that additional Sessions Judges are competent to hear references which are transferred to them by Sessions Judges.[3] This is now made clear by the introduction of sub-S. 3-B, which specifically provides for such transfer of proceedings.

22. **Kind of imprisonment.**—S. 110 being preventive rather than punitive it would appear that in ordinary cases the imprisonment should be *simple*. The Magistrate has to exercise his discretion and decide on the facts of each case whether the imprisonment should be simple or rigorous.[1] The discretion should be exercised reasonably.[2] In the case of a person who has never been convicted of any offence, an order for rigorous imprisonment would be unreasonable especially when there are no reasons given why with a view to the prisoner's future good behaviour it is desirable that imprisonment should be of the severe kind.[3] A Magistrate has no power to order that a portion of the imprisonment that he orders under S. 123 be spent in solitary confinement.[4]

So far as imprisonment for failure to give security for *keeping the peace* is concerned, sub-S. (5) provides most clearly that imprisonment shall be

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Note 19.

(1) (1908) 7 Cri. L. Jour. 427 (436): 30 All. 334, *Emperor* v. *Tula Khan*.
(1931) 1931 Oudh 387 (388), *Emperor* v. *Balak*.

Note 20.

(1) (1883) 9 Cal. 878 (879), *Chand Khan* v. *Empress*.
(1875) 24 Suth. W. R. 12 (12), *Queen Raghoo Dome*.
(2) (1866) 6 Suth. W. R. Cr. 18 (18), *Jaswant Singh*.
(1904) 1 Cri. L. Jour. 710 (712): 27 All. 92, *Emperor* v. *Kallu*.
(3) (1896) 23 Cal. 249 (250), *Empress* v. *Jahandi*.

Note 21.

(1) (1895) Rat. 830 (831), *Dayaram Ranchhod*.
(2) (1903-1904) 2 Low. Bur. R. 16 (17), *Emperor* v. *Nga Ba Le*.
(3) (1923) 1923 Cal. 649 (649): 50 Cal. 229, *Binode Beharinath* v. *Emperor*.

Note 22.

(1) (1920) 1920 All. 205 (205): 42 All. 563, *Gandharp Singh* v. *Emperor*.
(2) (1886) 1886 Pun. Re. No. 23, p. 56, *Kanhya*, In re.
(3) (1878) 1 Cal. L. R. 268 (272), In re *Umbika*.
(4) (1924) 1924 All. 472 (473), *Emperor* v. *Phakkar*.
(1914) 1914 All. 422 (423): 36 All. 495, *Kundan* v. *Emperor*.
(1933) 1933 All. 676 (678), *Sundar Lal* v. *Emperor*.

simple.[5]

S. 123, Notes 22—24.

23. Tender of security to Jail Officer—Sub-S. (4).—When the Sessions Court has passed an order under sub-S. 3, and a warrant from the Court has reached the Officer in charge of the Jail, that Officer should, if a person comes to him and offers himself as surety, refer the matter to the Sessions Court, for if the warrant proceeded from the Sessions Court it is that Court which is naturally the authority to which the officer in charge of the jail can make a reference.[1] When security is offered when the person is in jail such security has to be taken by the Magistrate (or Court); it cannot be given at the jail.[2]

24. Detention in Borstal School.—An order of imprisonment under this section is a *sentence* of imprisonment within the meaning of S. 8 of the Madras Borstal Schools Act of 1926, and it is legal to pass an order of detention in a Borstal School under that Act instead of ordering the imprisonment of the defaulter under this section.[1] The period for which detention in a Borstal School can be ordered, is governed by the provisions of the Borstal Schools Act and may exceed the period for which *imprisonment* may be ordered under this section.[2]

***124.** (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, whether by the order of such Magistrate or that of his predecessor in office, or of

Power to release persons imprisoned for failing to give security.

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter. * * * may be released without hazard to the community or to any other person, he may

S. 124.

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*(CODE OF 1882—S. 124.)

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Power to release persons imprisoned for failing to give security.

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(5) (1924) 1924 All. 695 (696), *Uttam Chand* v. *King-Emperor*.
(1893-1900) 1893-1900 L. B. R. 630 (630), *Empress* v. *Nga Tha Ein*.
(1903-1904) 2 L. B. R. 53 (54), *Nga Shwe*.

Note 23.

(1) (1930) 1930 Pat. 217 (219): 9 Pat. 741, *Emperor* v. *Narendranath Singh*.
(2) (1908) 7 Cri. L. Jour. 472 (478) (Rang.), *Emperor* v. *Tha Hlaing*.

Note 24.

(1) (1934) 1934 Mad. 457 (457, 458): 57 Mad. 928, *Mala Changadu*, In re
(2) (1934) 1934 Mad. 457 (457, 458): 57 Mad. 928, *Mala Chengadu*, In re.

S 124.

some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter as ordered by the Court of Session or High

order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) *An order under sub-section* (1) *may direct the discharge of such person either without conditions or upon any conditions which such person accepts*:

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

(CODE OF 1872—Ss. 500, 511 and 512.)

Discharge of recognizances.

500. The Magistrate of the District may, if he sees sufficient cause, discharge any recognizance and surety for keeping the peace taken by him or by any Magistrate subordinate to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

Court may be released without hazard to the community, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

S. 124.

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) *The Local Government may prescribe the conditions upon which a conditional discharge may be made.*

(5) *If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.*

(6) *When a conditional order of discharge has been cancelled under sub-section* (5), *such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.*

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511. The Magistrate of the District may at any time, exercise his discretion in releasing, without reference to any other authority any prisoner confined under requisition of security for good behaviour, whether by his own order, or that of his predecessor in office, or by the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

Release of Prisoners under requisition of security.

512. Whenever the Magistrate of the District is of opinion that any person confined under requisition of security for good behaviour, by order of a Court of Session, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

Report in case of prisoner under requisition of security by order of Court of Session.

S. 124.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of S. 122, *be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made or to its or his successor.*

(CODE OF 1861—Ss. 291, 302 and 303.)

Discharge of recognizances.

291. The Magistrate or other officer as aforesaid may, if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

When Magistrate may release persons under requisition of security.

302. The Magistrate of the District or other officer exercising the powers of a Magistrate is empowered, at any time, to exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order or by the order of any officer subordinate to him, provided he shall

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"MAY BE RELEASED"	4
REVISION	5

Other Topics.

Form of discharge. See Sch. V, No. 15.
Of some subordinate Magistrate. See Note 3, Pt. 2.
Order by different Magistrate. See Note 4, Pt. 2.
Proceedings of Magistrates not empowered. See S. 530.
Without hazard—Grounds of release. See Note 2, Pt. 1.

1. Legislative History.—

(1) Sub-Ss. 1 and 3 of this section as they stood before they were amended in 1923 correspond to the provisions of S. 124 of the Code of 1882 and to the provisions of Ss. 500, 511 and 512 of the Code of 1872.

(2) Sub-S. 2 was first introduced in the Code of 1898.

(3) By the Amendment Act 18 of 1923, the words "whether by the order ..... subordinate Magistrate" after the word "chapter" in sub-S. (1) have been omitted.

(4) Sub-S. 3 was substituted by the amending Act of 1923 for the old sub-section which had become unnecessary in view of the amendment made in sub-S. 1.

(5) Sub-Ss. 4 to 6 are new.

2. Scope of the section.—S. 123, *supra* provides that, if any person who has been ordered to give security under S. 106 or S. 118 does not give such security within the period fixed, he shall be committed to prison. This section gives power to the *District Magistrate or a Chief Presidency Magistrate* to order such person to be released if the Magistrate is of opinion that he may be released without hazard to the community or to any other person.[1]

3. Who may release.—It entirely rests with the District Magistrate or the Chief Presidency Magistrate, who is responsible for the peace of the inhabitants within his jurisdiction, to decide without interference from any

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be of opinion that such person can be released without hazard to the community.

When he must report.

303. In any case in which a Magistrate or other officer as aforesaid shall be of opinion that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, the Magistrate or other officer as aforesaid shall make an immediate report of the case for the orders of the Court which shall have required the person to furnish the security.

Section 124—Note 2.

(1) (1905) 2 Cri. L. Jour. 507 (510): 8 Oudh Cas. 245, *Mahabir* v. *King-Emperor*.

S. 124, Notes 3—5.

other authority, when and under what circumstances it would be safe for him to act under this section.[1]

It has been held by the High Court of Bombay in the undermentioned case[2] that if a subordinate Magistrate thinks that the term of imprisonment in default of furnishing security should be *shortened*, the proper course would be to report the matter to the District Magistrate with a view to his taking action under this section.

4. **"May be released."**—It is not a valid reason for a District Magistrate to refuse to act under this section on the mere ground that an appeal lay from the order requiring security.[1]

It is open to the District Magistrate to arrive at the conclusion, that the person imprisoned under S. 123, *supra*, may be released under this section, on a consideration of the evidence taken by the subordinate Magistrate.[2]

5. **Revision.**—It has been already mentioned in Note 3, *ante*, that it rests entirely with the District Magistrate or Chief Presidency Magistrate to exercise the powers under this section. Therefore, the High Court has no power in revision to direct the District Magistrate or the Presidency Magistrate to take and enquire into any application which may be made to him under this section.[1]

S 125.

Power of District Magistrate to cancel any bond for keeping the peace or good behaviour.

*125. The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

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*(CODE OF 1882—S. 125.)

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his district not superior to his Court.

(CODE OF 1872—S. 500.)

Discharge of recognizances.

500. The Magistrate of the District may, if he sees sufficient cause, discharge any recognizance and surety for keeping the peace taken by him or by any Magistrate subordinate to him, or by his predecessor under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

Note 3.

(1) (1893) 13 All. W. N. 183 (184), *Ohhotia v. Empress.*

(2) (1883) Rat. Un. Re. Cr. 668 (668), *Queen-Empress* v. *Moti Amtha.*

Note 4.

(1) (1894) 1894 All. W. N. 183 (184), *Empress* v. *Chhotia.*

(2) (1913) 14 Cri. L. Jour. 546 (553): 37 Mad. 125, *Mara Gowd* v. *Emperor.*

Note 5.

(1) (1893) 1893 All. W. N. 183 (184), *Empress* v. *Ohhotia.*

S. 125, Notes 1—2.

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PARTIES IF ENTITLED TO BE HEARD IN PROCEEDINGS UNDER THIS SECTION 6
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POWER TO ALTER TERMS OF BOND 9

Other Topics.

Cancellation by Magistrate not authorised. See S. 530.
Further enquiry cannot be directed. See Note 7, Pt. 1.
In his District—Chief Presidency Magistrate. See S. 20.
Nature of the Jurisdiction. See Note 2.
Proceedings under S. 107 started in one District and transferred to another. See Note 5, Pt. 1.
Security bond cannot be cancelled. See Note 8, Pt. 1, see Note 4, Pt. 1.

1. Legislative changes.—

(1) *Difference between the Code of* 1872 *and that of* 1882: The words "to be recorded in writing" as well as the words "at any time" were for the first time inserted in the Code of 1882.

(2) *Difference between the Code of* 1882 *and this Code*: The words "the Chief Presidency" and "or for good behaviour" were newly added on to the section of this Code.

2. Scope of the section.—A person who has been ordered to furnish security under S. 118 for keeping the peace or for good behaviour can, under S. 406, *infra*, appeal against such order to the Court of Session or the High Court as the case may be or, if the District Magistrate is empowered to hear such appeals, then to such Magistrate. This section gives a special and rather an exceptional power to the District Magistrate or the Chief Presidency Magistrate as the case may be to cancel for sufficient reasons a bond executed under this Chapter.[1] There is a conflict of opinion as to whether and how these powers under these two sections overlap each other for which, *see* Note 3, *infra*.

(CODE OF 1861—S. 291.)

Discharge of recognizances.

The Magistrate or other officer as aforesaid may, if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding section, and may order the release of the person confined for default in entering into such recognizance or giving such security.

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Section 125—Note 2.

(1) (1913) 14 Cri. L. Jour. 546 (554): 37 Mad. 125, *Mare Gowd* v. *Emperor*. (1868) 10 Suth. W. R. 40, *Anundee Koer Ranee Soonet Koer* (Under the Code of 1861 *any* Magistrate could cancel the order).

S. 125, Notes 3—5.

3. **Sufficient reasons, what are.**—There is a conflict of opinion on the question whether the grounds on which the Magistrate can act under this section should have arisen *subsequent* to the date of the order for security or whether they might include even grounds existing even on such date. The High Court of Calcutta[1] and Madras[2] and the Chief Court of the Punjab[3] have taken the view that there is no reason to restrict or qualify the meaning of the words "sufficient reasons" and that a bond can be cancelled even on the ground that the bond should not have been taken at all under the circumstances of the case as it existed on the date of the order for security. The High Court of Allahabad[4] and Patna[5] and the Chief Court of Oudh[6] have taken a contrary view. This view proceeds on the principle that the District Magistrate acts under this section in an *executive* and not in a judicial capacity,[7] that he does not exercise an *appellate or revisional* jurisdiction when acting under this section,[8] and that the only ground on which he could cancel the bond is that it having arisen subsequently to the order for security the bond has become *no longer necessary*.[9] The Nagpur Judicial Commissioner's Court has taken conflicting views on the point.[10] It is submitted that the view of the Calcutta and Madras High Courts is correct.

4. **"Cancel any bond."**—Reading together Ss. 188 and 121, *supra*, it is quite clear that the bond contemplated by this section is the bond which has been given by the person against whom the order has been passed under S. 118, and not the bond executed by the surety.[1]

5. **"By order of any Court in his district not superior to his Court."**—Where proceedings were taken under S. 107, *supra*, in District *N*, and then were transferred by order of the High Court to District *T*, and a First Class Magistrate of the latter district ordered the petitioner to be bound over to keep the peace, and the District Magistrate of the District *T* cancelled the bond under this section, it was held, that, as the order for security was passed by a Magistrate in District *T* not superior to the Court of the Dis-

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Note 3.

(1) (1906) 4 Cri. L. Jour. 399 (401): 34 Cal. 1 (F.B.), *Nabu Sardar* v. *Emperor* (32 Cal. 948 overruled).
(1910) 11 Cri. L. Jour. 147 (147): 37 Cal. 72, *Dayanath Thakur* v. *Emperor*.
(2) (1913) 14 Cri. L. Jour. 546 (552): 37 Mad. 125 (F.B.), *Mare Gowd* v. *Emperor*.
(3) (1908) 7 Cri. L. Jour. 348 (349) (Lah.), *Auditta Nand* v. *Emperor*.
(4) (1922) 1922 All. 191 (192): 44 All. 614, *Nizammuddin Khan* v. *Muhammad Zia-ul Nabi Khan*.
(1923) 1923 All. 484 (485), *Ramdin Singh* v. *Nanzadak Singh*.
(1913) 14 Cri. L. Jour. 63 (63): 35 All. 103, *Banarsidas* v. *Partab Singh*.
(1919) 49 Ind. Cas. 781 (783): 1919 All. 300, *Nasiban* v. *Emperor* (The District Magistrate cannot make an order of remand).
[See however (1918) 1918 All. 343 (343): 40 All. 140, *Lalji* v. *Emperor* (Assumed that District Magistrate could cancel bond for reasons other than that the person can be released without hazard to the community).]
(5) (1922) 1922 Pat. 334 (336), *Durga Singh* v. *Amar Dayal Singh*.
(6) [See also (1924) 1924 Oudh 241 (241), *Emperor* v. *Balwant Singh*.]
(7) (1924) 1924 Oudh 241 (241), *Emperor* v. *Balwant Singh*.
(1922) 1922 Pat. 420 (422), *Manmohan Das* v. *Babu Lal*.
(1922) 1922 Pat. 334 (336), *Durga Singh* v. *Amar Dyal Singh*.
(8) (1924) 1924 Oudh 241 (241), *Emperor* v. *Balwant Singh*.
(1914) 1914 Oudh 305 (306), *Sheo Singh* v. *Emperor*.
(1919) 1919 All. 205 (206): 41 All. 651, *Shankar Lal* v. *Emperor*.
(1922) 1922 Pat. 334 (336), *Durga Singh* v. *Amar Dayal Singh*.
(1917) 1917 All. 428 (428): 39 All. 466, *Sita Ram* v. *Emperor*.
(9) See cases cited in foot-notes (4), (5) and (6) above.
(10) (1915) 1915 Nag. 113 (113): 11 N. L. R. 98, *Emperor* v. *Dalli* (Follows the Calcutta view).
(1918) 1918 Nag. 173 (1), *Martand Rao* v. *Emperor* (Follows the Calcutta view).
(1920) 1920 Nag. 138 (138), *Kushal* v. v. *Emperor* (Follows the Allahabad view).

Note 4.

(1) (1911) 12 Cri. L. Jour. 480 (481): 33 All. 624, *Fakir-ud-din Khan* v. *Emperor*.

trict Magistrate, the latter had jurisdiction to pass an order under this section.[1] Again, the jurisdiction is not taken away from the District Magistrate to interfere under this section with an order already passed. S. 125, Notes 5—9.

6. **Parties if entitled to be heard in proceeding under this section.**—It has been held by the High Court of Patna that in dealing with an application under this section the District Magistrate is exercising neither appellate nor revisional powers and that, therefore, it is not *incumbent* upon him to hear the petitioner or his pleader before disposing of the application.[1] The High Court of Allahabad, without actually deciding whether it would be illegal to make an order without hearing the applicant or his pleader, has held that as a matter of general practice, the parties should be heard before the application is rejected.[2] Where the Magistrate, while he was on tour gave the petitioner a date for hearing, but did not inform him of the *place* at which it would be heard, it was held by the Chief Court of Punjab that an order of dismissal without hearing the petitioner could not be maintained.[3]

7. **Power to remand.**—S. 428, *infra*, dealing with the powers of the appellate Court in appeals under Chapter 31 of the Code, has no application to a proceeding under this section. The District Magistrate cannot, in such a proceeding, therefore remand the case to the Magistrate for further inquiry.[1]

8. **Power to demand fresh security.**—This section does not enable the District Magistrate to order fresh security to be given where security had been given and accepted by the Subordinate Magistrate.[1]

9. **Power to alter terms of bond.**—The District Magistrate, under this section, can either *cancel* the bond or leave it alone. He cannot *alter* or *modify it*. In an *appeal* against an order for security under S. 406, however, the bond may be altered or modified by the appellate Court.[1]

126.* (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, S. 126.

Discharge of sureties.

***(CODE OF 1882—S. 126, Paras. 1 and 2.)**

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate, or Magistrate of the first class, to cancel any bond executed under this

Discharge of sureties.

Note 5.

(1) (1919) 1919 Cal. 81 (81), *Guru Prasanna Roy* v. *Har Kumar Mazumdar*.

Note 6.

(1) (1918) 1918 Pat. 183 (184), *Khetra Basi Sahu* v. *Emperor*.
(2) (1917) 18 Cri. L. Jour. 630 (630): 1917 All. 428: 37 All. 429, *Sita Ram* v. *Emperor*.
(3) (1914) 1914 Lah. 73 (74), *Mehr Baksh* v. *Emperor*.

Note 7.

(1) (1919) 1919 Pat. 171 (172), *Mussammat Nasiban* v. *Emperor*.

Note 8.

(1) (1905) 2 Cri. L. Jour. 278 (278): 1905 Pun. Re. 16, *Emperor* v. *Pirya Lal*.
(1902) 6 Cal. W. N. 291 (292): 29 Cal. 455, *Panchoo Gazi* v. *Emperor*.
(1905) 2 Cri. L. Jour. 507 (510): 8 Oudh Cas. 245, *Mahabir* v. *Emperor*.
(1897) 1 Cal. W. N. 394, *Empress* v. *Ram Lal Acharjia*.

Note 9.

(1) (1922) 1922 Nag. 180 (180), *Baines* v. *Emperor*.

S. 126. District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

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SURETY FOR GOOD BEHAVIOUR	4

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chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear, or to be brought before him.

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(CODE OF 1872—Ss. 501, Paras. 1 and 2, 513, Paras. 1 and 2.)

501. A surety for the peaceable conduct of an other person may at any time apply to the Magistrate to be relieved from his engagement as surety.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person for whom such surety is bound may appear or be brought before him.

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513. A surety for the good behaviour of a person may at any time apply to a competent Magistrate to be relieved from his engagement as such surety.

Discharge of surety.

On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

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(CODE OF 1861—Ss. 292 and 304.)

292. A surety for the personal appearance of another person may at any time apply to the Magistrate or other officer as aforesaid, to be relieved from his engagement as surety. On such application being made, the Magistrate shall issue his summons or warrant in order that the person for whom such surety is bound, may appear or be brought before him.

Discharge of sureties.

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304. A surety for the good behaviour of a person may at any time apply to the Magistrate or other officer as aforesaid to be relieved from his engagement as surety. On such application being made, the Magistrate or other officer as aforesaid shall issue his summons or warrant in order that the person may appear or be brought before him.

Discharge of surety.

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S. 126, Notes 1—4.

1. **Legislative Changes—**

Amendment of 1923. Sub-S. (3) to the section has been deleted and re-enacted with an additional clause as S. 126-A, *infra*.

2. **Scope.—** This section applies to cases where one person stands surety for the *peaceable conduct* or *good behaviour* of another person. The object of this section is to protect the surety who finds that he is unable to control the principal for whom he has given surety.[1]

Section 502, *infra* deals with cases where a person stands surety for the *attendance* or *appearance* of another person released on bail.

3. **Surety for peaceable conduct.**—*See* Ss. 106 and 107.

4. **Surety for good behaviour.**—*See* Ss. 108, 109, and 110.

126. * * * *

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

S. 126-A.

126-A.* *When a person*

Security for unexpired period of bond.

for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) *of section* 122 *or under section* 126, *sub-section* (2), *appears or is brought before him, the Magistrate shall cancel the bond executed by such person* and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

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*(CODE OF 1882—S. 126-A Para. 3.)

126-A * * * * * *

Discharge of sureties.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of

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Section 126—Note 2.

(1) (1913) 14 Cri. L. Jour. 430 (432): (1913) 1 U. B. R. 159, *Emperor v. Ignato Riro.*

S. 126-A, Notes 1—4.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
UNDER THE PROVISO TO SUB-S. (3) OF S. 122	2
THE MAGISTRATE SHALL CANCEL THE BOND EXECUTED BY HIM	3
"EVERY SUCH ORDER SHALL.....AS THE CASE MAY BE"	4

1. **Legislative changes.**—This section is new.

By the Amending Act XVIII of 1923, sub-S. (3) of S. 126 was re-enacted as S. 126-A with an additional clause added to it.

The words "when a person.....executed by such person" are newly added.

2. **Under the proviso to sub-S. (3) of S. 122.**—The proviso to sub-S. (3) of S. 122 directs the issue of summons or warrant for the appearance of the person bound over, before a surety previously accepted, is rejected.

3. **The Magistrate shall cancel the bond executed by him.**—On the appearance of the person bound over to keep the peace or for good behaviour, the Magistrate is bound to cancel the bond.

4. **"Every such order shall.....as the case may be."**—Ss. 121 to 124 deal with the proceedings to be taken subsequent to orders to furnish security under Ss. 106 and 118. An order under this section to furnish fresh security being deemed to be an order under Ss. 106 or 118, as the case may be, attracts the provisions of Ss. 121 to 124. Therefore, when the effect of an

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the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of Ss. 121, 122, 123 and 124, be deemed to be an order made under S. 106 or S. 118, as the case may be.

(CODE OF 1872—S. 501, Para. 3 and S. 513, Para. 3.)

Discharge of sureties 501. * * * *

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and, in default thereof, shall order him to be kept in simple imprisonment.

Discharge of surety. 513. * * *

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

(CODE OF 1861—Ss. 292 and 304.)

Discharge of sureties. 292. * * *

On the appearance of the person to such warrant or on his voluntary surrender, the Magistrate or other officer as aforesaid, shall direct the engagement of the surety to be cancelled and shall call upon such person to give fresh security, and in default thereof shall commit him to custody.

Discharge of surety. 304. * * *

On the appearance of the party pursuant to the warrant or on his voluntary surrender, the Magistrate or other officer as aforesaid shall direct the engagement of the surety to be cancelled, and shall call upon the person to give fresh security, and in default thereof shall commit him to custody.

order discharging a surety is to remit the suspect to prison for a term exceeding one year, the Magistrate is bound to refer the case to the Sessions Court as required under S. 123.[1] S. 126-A, Note 4.

CHAPTER IX.[1]

UNLAWFUL ASSEMBLIES.

127.* (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly. S. 127.

Assembly to disperse on command of Magistrate or police-officer.

(2) This section applies also to the police in the town of Calcutta.

SYNOPSIS.

	Note No.
"ANY MAGISTRATE"	1
OFFICER IN CHARGE OF A POLICE STATION	2
"MAY COMMAND"	3
UNLAWFUL ASSEMBLY	4
ANY ASSEMBLY OF 5 OR MORE PERSONS	5

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[1]The whole of this chapter, so far as it applies to the City of Bombay, is repealed by the City of Bombay Police Act, 1902. *See* S. 2 (1) and Schedule.

*(CODE OF 1882—S. 127.)

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

127. Any Magistrate or officer in charge of a police-station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or police officers.

This section applies to the police in the towns of Calcutta and Bombay.

(CODE OF 1872—S. 480.)

PART XI.

Preventive Jurisdiction of Magistrates.

CHAPTER XXXVI.

Of the dispension of unlawful assemblies.

480. Any Magistrate or Officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse: and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse, on command of Magistrate or Police-Officer.

Section 126-A—Note 4.

(1) (1911) 12 Cri. L. Jour. 410 (411): 5 Sind L. R. 87, *Imperator* v. *Gul Mahomed*.

S. 127, Notes 1—4.

Note No.
"LIKELY TO CAUSE A DISTURBANCE OF THE PUBLIC PEACE" 6
SUB-SECTION (2) 7
EFFECT OF NON-COMPLIANCE WITH AN ORDER UNDER THE SECTION 8

Other Topics.

Lawful assembly may be commanded to disperse. See Note 5, Pts. 1 and 2.
Members of such assembly. See Note 4 and S. 142, I. P. C.
Order by a Superior Police-Officer. See Note 2, Pts. 1 and 2.
Punishment—Duty to disperse. See Note 8.
Scope of the section. See Note 3, and Note 7, Pt. 1 and 2.

1. **"Any Magistrate."**—Any Magistrate can exercise the power conferred under this section *anywhere* in the district.[1]

2. **Officer in charge of a police-station.**—Under S. 551 of the Code, police-officers superior in rank to an officer in charge of a police-station may exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. A Sub-Inspector of Police[1] or a Deputy Commissioner of Police[2] can command an assembly to disperse under this section. But a police-officer in charge of a petrol boat is only an officer in charge of an *out-post* and has no power to disperse an unlawful assembly under this section.[3]

3. **"May command."**—The command to disperse can be given only in the cases specified in the section. Where the assembly commanded to be dispersed does not come within this section the order to disperse is illegal. The legality of the command depends on the conduct of the assembly *preceding* the command and not on what *followed* it.[1]

4. **Unlawful Assembly.**—The word "unlawful assembly" is defined in S. 141 of the Penal Code as follows:—

"An assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is:—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant Governor, or any public servant in the exercise of the lawful power of such public servant, or

Second.—To resist the execution of any law, or legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

(CODE OF 1861—S. 111.)

Unlawful Assembly to disperse on the order of a Magistrate, etc.

111. A Magistrate or Officer in charge of a Police-Station may command an unlawful assembly to disperse, and it shall thereupon be the duty of the members of such unlawful assembly to disperse accordingly.

Section 127—Note 1.

(1) [See (1912) 13 Cri. L. Jour. 716 (716, 717): 34 All. 597, *Abbu Singh* v. *Emperor*.]

Note 2.

(1) (1933) 1933 Nag. 277 (279), *Yeswant* v. *Emperor*.

(2) (1883) 7 Bom. 42 (50), *Empress* v. *Tucker*.

(3) (1923) 1923 Cal. 517 (518): 50 Cal. 318, *Mahommed Yunus* v. *Emperor*.

Note 3.

(1) (1933) 1933 Nag. 277 (282), *Yeswant* v. *Emperor*.

S. 127, Note 4.

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly."

As to cases arising under the various clauses of S. 141 of the Penal Code, *see* the undermentioned cases.[1]

Note 4.

(1) *Cases under Clause* (1).
(1931) 1931 Mad. 484 (486): 54 Mad. 1025, *The Public Prosecutor* v. *Vaddamudi Satyanarayan.*
(1931) 1931 Cal. 128 (128), *Hari Kishore Saha* v. *Emperor.*
(1931) 1931 Cal. 410 (413): 58 Cal. 1303, *Ramendra Chandra Ray* v. *Emperor.*
(1933) 1933 Cal. 361 (362), *Ambika Charan De* v. *Emperor.*
Cases under Clause (2).
(1909) 10 Cri. L. Jour. 208 (209): 2 Sind L. R. 6, *Imperator* v. *Haji Baka.*
(1923) 1923 Pat. 1 (4): 2 Pat. 134, *Emperor* v. *Abdul Hamid.*
(1929) 1929 Pat. 206 (206), *Ramdarsan Mahton* v. *Emperor.*
(1925) 1925 Nag. 260 (265), *Sitaram* v. *Emperor.*
(1923) 1923 Mad. 592 (592): 46 Mad. 257, *Venkanna* v. *Emperor.*
(1882) 1 Weir 64 (65).
(1891) 14 Mad. 126 (130), *Empress* v. *Tirakadu.*
(1918) 1918 Lah. 332 (333): 1918 Pun. Re. 9, *Attar Singh* v. *Emperor.*
(1894) 21 Cal. 392 (397), *Moher Sheikh* v. *Queen-Empress.*
(1931) 1931 Bom. 520 (524): 55 Bom. 725, *Ramachandra Narayan Sastri* v. *Emperor.*
(1929) 1929 Bom. 433 (438), *Balchandra Trimbak Ranadivi* v. *Emperor.*
(1875) 7 N.-W. P. 209 (211), *Queen* v. *Narain.*
Cases under Clause (3):—
(1925) 1925 Lah. 49 (51), *Bagh Singh* v. *King-Emperor.*
(1917) 15 All. L. Jour. 47 (48), *Jageshar Rai* v. *Emperor.*
(1923) 1923 Oudh 167 (169), *Parmeshar Din* v. *Emperor.*
(1922) 1922 Oudh 228 (229), *Lila* v. *Emperor.*
(1914) 1914 Oudh 222 (223): 17 Oudh Cas. 21, *Sarabdawan Singh* v. *Emperor.*
(1933) 1933 Oudh 279 (280), *Emperor* v. *Mahomed Idris.*
(1922) 1922 Pat. 197 (199), *Ramakrishna Singh* v. *Emperor.*
(1918) 1918 Pat. 239 (239), *Bindeswari Prasad Singh* v. *Emperor.*
(1918) 1918 Pat. 193 (194), *Fouzdar Rai* v. *Emperor.*
(1928) 1928 Pat. 562 (564), *Lachmi Singh* v. *Emperor.*
(1928) 1928 Pat. 124 (127): 6 Pat. 794, *Emperor* v. *Bandhu Singh.*
(1925) 1925 Pat. 17 (19), *Gita Prasad Singh* v. *King-Emperor.*
(1924) 1924 Pat. 143 (144), *Jasuram Marwari* v. *Emperor.*
(1917) 18 Cri. L. Jour. 663 (664): 1917 All. 119, *Jageshar Rai* v. *Emperor.*
(1917) 18 Cri. L. Jour. 110 (112): 1916 Pat. 176, *Emperor* v. *Suba Singh.*
(1917) 17 Cri. L. Jour. 391 (392): 1917 Mad. 662, In re *Sambu Pillai.*
(1912) 13 Cri. L. Jour. 534 (535) (Mad.), *Sengodan* v. *Emperor.*
(1932) 1932 Pat. 215 (216): 11 Pat. 523, *Ghyasuddin Ahmad* v. *Emperor.*
(1925) 1925 Oudh 656 (658), *Dilli* v. *Emperor.*
(1925) 1925 Oudh 425 (427): 27 Oudh Cas. 292, *Baijnath* v. *Emperor.*
(1927) 1927 Mad. 986 (987): 51 Mad. 91, *Veerabadra Pillai* v. *Emperor.*
(1923) 1923 Mad. 606 (606), In re *Marimuthu Naidu.*
(1919) 1919 Mad. 885 (885), *Penumesa Thirumala Raju* v. *Emperor.*
(1931) 1931 Mad. W. N. 646 (650), *Marudachala Goundan* v. *Emperor.*
(1902) 25 Mad. 624 (627), *Emperor* v. *Ayya Annasamy Iyer.*
(1869) 5 Mad. H. C. App. 6 (7).
(1908) 7 Cri. L. Jour. 123 (129): 35 Cal. 103, *Jairam Mahton* v. *Emperor.*
(1908) 7 Cri. L. Jour. 374 (375, 376): 35 Cal. 384, *Maniruddin* v. *Emperor.*
(1909) 9 Cri. L. Jour. 443 (444): 36 Cal. 296, *Baijnath Dhanuk* v. *Emperor.*
(1909) 10 Cri. L. Jour. 471 (472): 36 Cal. 865, *Silajit Mahoto* v. *Emperor.*
(1913) 14 Cri. L. Jour. 463 (464) (Cal.), *Ram Nandan Prosad* v. *Emperor.*
(1916) 17 Cri. L. Jour. 9 (13): 1917 Cal. 687, *Deputy Legal Remembrancer* v. *Matukdhari Singh.*
(1914) 1914 Cal. 623 (625), *Chandulla Sheik* v. *Emperor.*
(1919) 1919 Cal. 305 (308), *Panchanon* v. *Emperor.*
(1924) 1924 Cal. 996 (998), *Abdul Jalil* v. *King-Emperor.*
(1926) 1926 Cal. 439 (440), *Chhakari Shaik* v. *Emperor.*
(1899) 26 Cal. 574 (575), *Anant Pandit* v. *Madhusudan.*
(1897) 24 Cal. 686 (690), *Pachkauri* v. *Empress.*
(1894) 21 Cal. 392 (397), *Mohar Sheikh* v. *Queen-Empress.*
(1889) 16 Cal. 206 (221), *Gemouri Lal* v. *Queen-Empress.*
(1883) 9 Cal. 639 (641), *Peary Mohan* v. *Empress.*
(1878) 3 Cal. 573 (584), *Empress* v. *Raj Coomar Singh.*

S. 127, Notes 5—6.

5. **Any assembly of five or more persons.**—The words "*any* assembly" are used as distinguished from "*unlawful* assembly." So any assembly of five or more persons can be ordered, under this section, to disperse, even if it has assembled *for a lawful purpose* if it is likely to cause a breach of the peace.[1] Where only three persons moved on carrying flags with the object of drawing a crowd and in fact gathered a crowd around them, it was held that the whole body of men constituted an assembly of 5 or more men within the meaning of this section irrespective of the fact whether the crowd was stationary or moving and even though only three persons were responsible for drawing the crowd.[2]

6. **"Likely to cause a disturbance of the public peace."**—In the case of an assembly other than an unlawful assembly this section enables a Magistrate or Police-officer, to order the assembly to disperse when he is convinced that it is likely to cause a disturbance of the public peace.[1] It is the fact that such an assembly is likely to cause a *disturbance of the public peace* that gives jurisdiction to the Magistrate or Police-officer to act under this section.[2] The expression "likely to cause the disturbance of the public peace" has not been defined anywhere, but it is clear that before an assembly can be

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(1875) 23 Suth. W. R. 25 (26) (Cr.), *Shunkar Singh* v. *Burmah Mahto.*
(1890) 14 Bom. 441 (446), *Empress* v. *Narsang.*
(1923) 1923 All. 194 (196, 197): 45 All. 250, *Emperor* v. *Hira.*
(1917) 18 Cri. L. Jour. 663 (664): 1917 All. 119, *Jageshar Rai* v. *Emperor* (In this case it was found that they had no time to have recourse to public authorities).

Cases under Clause (4).
(1925) 1925 Oudh 425 (426): 27 Oudh Cas. 292, *Baijnath* v. *Emperor.*
(1925) 1925 Rang. 243 (244, 245), *Maung Oh Kyan* v. *Emperor.*
(1912) 13 Cri. L. Jour. 534 (535) (Mad.), *Sengodan* v. *Emperor.*
(1925) 1925 Oudh 656 (658), *Dilli* v. *Emperor.*
(1932) 1932 Pat. 189 (191), *Matte Mandal* v. *Emperor.*
(1915) 16 Cri. L. Jour. 743 (744).
(1933) 1933 Nag. 277 (282), *Yeshwant* v. *Emperor.*

Cases under Clause 5.
(1900) 2 Bom. L. R. 1129 (1131), *Empress* v. *Shettya.*
(1901-1902) 6 Cal. W. N. 507 (509), *Ragho Singh* v. *Emperor.*

Miscellaneous.
(1927) 1927 Oudh 151 (153), *Wajid Ali* v. *Emperor.*
(1918) 1918 Pat. 146 (150), *Ritbarran Singh* v. *Emperor.*
(1912) 13 Cri. L. Jour. 556 (558): 15 Oudh Cas. 183, *Raghunandan* v. *Emperor.*
(1932) 1932 Mad. 501 (501), *Kuppuswami* v. *Emperor.*
(1909) 4 Ind. Cas. 1142 (1143) (Mad.), In re *Vyapuri Chetty.*
(1909) 4 Ind. Cas. 870 (870): 32 Mad. 527, *Mannada* v. *Nallaya.*
(1881) 1 Weir 53 (54).
(1901) 24 Mad. 124 (128, 129), *Queen-Empress* v. *Peelimuthu Tevan.*
(1927) 1927 Lah. 193 (193), *Lajja* v. *Emperor.*
(1922) 1922 Lah. 135 (136), *Girdhara* v. *Crown.*
(1887) 1887 Pun. Re. No. 61, p. (166), *Madat Khan* v. *Empress.*
(1889) 1889 Pun. Re. No. Cr. 4, p. (14), *Jitmal* v. *Empress.*
(1887) 1887 Pun. Re. No. Cr. 2 (5), *Ralya* v. *Arjan.*
(1877) 1877 Pun. Re. No. Cr. 5 (14), *Sardar Khan* v. *Empress.*
(1870) 1870 Pun. Re. No. Cr. 13 (24), *Kulian* v. *Crown.*
(1868) 1868 Pun. Re. No. 34, p. (131), *Koura Khan* v. *Crown.*
(1927) 1927 Cal. 520 (522): 54 Cal. 476, *Dibakar* v. *Saktidhar.*
(1912) 13 Cri. L. Jour. 905 (Cal.), *Jhakri Chamar* v. *Emperor.*
(1902) 29 Cal. 244 (247), *Umacharan Singh* v. *Emperor.*
(1895) 22 Cal. 306 (312), *Jahiruddin* v. *Empress.*
(1888) 15 Cal. 388 (402), *Bhagiram Dame* v. *Abar Dome.*
(1869) 12 Suth. W. R. 75 (76), *Queen* v. *Suroop Chunder Paul.*
(1868) 9 Suth. W. R. 19 (20), *Reg.* v. *Dinobundo.*
(1931) 1931 Bom. 132 (133): 55 Bom. 356, *Emperor* v. *Balkrishna.*
(1925) 1925 Rang. 362 (363), *Emperor* v. *Nag Tan Maung.*
(1931) 1931 Bom. 129 (130, 131): 55 Bom. 484, *Emperor* v. *Shripad Ramchandra.*
(1898) 20 All. 459 (464), *Empress* v. *Prag Dat.*
(1915) 1915 Cal. 236 (237), *Reqaddin Molla* v. *Emperor.*
(1875) 24 Suth. W. R. (Cr.) 26 (27), *Zuhiruddin Hossain* v. *Empress.*

Note 5.
(1) (1887) 1887 Pun. Re. No. 22, p. 45, *Murlidhur* v. *Emperor.*
(1883) 7 Bom. 42 (50), *Empress* v. *Tucker.*
(2) (1883) 7 Bom. 42 (49), *Empress* v. *Tucker.*

Note 6.
(1) (1925) 1925 All. 165 (170): 47 All. 205, *Emperor* v. *Raghunath.*
(1922) 1922 Lah. 135 (137), *Girdhara Singh* v. *Emperor.*
(2) (1933) 1933 Nag. 277 (283), *Yeshwant* v. *Emperor.*

said to be likely to cause the disturbance of the public peace it must appear that the behaviour of such assembly is such as to indicate that it would be an active party to the disturbance of public peace or that it is reasonably calculated to provoke others to a breach of the peace[3] whether any such assembly was likely to cause a disturbance of the public peace at the time the order to disperse was made, is a question of fact[4] which must be proved by independent evidence. The mere opinion of the officer is not sufficient.[5] In arriving at a conclusion on this point, the conduct and behaviour of the assembly should be considered.[6] **S. 127, Notes 6—8.**

7. **Sub-S. 2.**—This sub-section did not exist in the corresponding S. 480 of the Code of 1872. S. 127 of the Code of 1882 was made applicable to the Police in both the Towns of Calcutta and Bombay. But the words "and Bombay" were repealed by S. 2 (1) of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

8. **Effect of non-compliance with an order under this section.**—If the assembly, after being commanded to disperse does not do so, the officer so commanding may forcibly disperse such assembly under the next S. 128. Further in the case of an unlawful assembly the members of such assembly can be charged under S. 145 of the Penal Code and in the case of other assemblies under S. 151 of the Penal Code.[1]

128.* If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869* and acting as such, for the purpose of **S. 128.**

Use of civil force to disperse.

*(CODE OF 1882—S. 128.)

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law.

Use of civil force to disperse.

(3) (1933) 1933 Nag. 277 (281), *Yeshwant* v. *Emperor.*
(4) (1933) 1933 Nag. 277 (279), *Yeshwant* v. *Emperor.*
(5) (1922) 1922 Lah. 135 (137), *Girdhara Singh* v. *Emperor.*
[See also (1923) 1923 Pat. 1 (4): 2 Pat. 134, *Emperor* v. *Abdul Hamid.*]
(6) (1928) 1928 Pat. 98 (99), *Jogi Raut* v. *Emperor.*

Note 8.

(1) (1927) 1927 Pat. 191 (192), *Harikrishna Mahtab* v. *Emperor.*
(1925) 1925 All. 165 (171): 47 All. 205, *Emperor* v. *Raghunath Venayak Dhulaher.*

S. 128, Notes 1—2.

dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"SUCH ASSEMBLY"	3
"OFFICER-IN-CHARGE OF THE POLICE-STATION" ..	4
DUTIES OF CITIZENS	5
EFFECT OF DISOBEDIENCE OF THE ORDER TO DISPERSE	6
DUTIES, RIGHTS AND LIABILITIES OF OFFICERS ACTING UNDER THIS SECTION	7

Other Topics.

Force—Civil force. See Note 2, Pt. 1.

1. Legislative changes.—

(1) There was no provision corresponding to this in the Code of 1861 and any police-man appointed under Act V of 1861 could apprehend any of the members of an unlawful assembly.[1]

(2) *Difference between the Code of* 1872 *and* 1882:—

(*a*) The word "male" was newly added in 1882 before the word "person."

(*b*) The words "not being an officer.....as such" were substituted for the words "other than any European or Native Troops of Her Majesty acting as such."

(*c*) The words "arresting and confining .....according to law" were substituted for the words "for the purpose of disposing it and arresting the persons who form part of it."

(3) There is no difference between the Code of 1882 and this Code in this respect.

2. Scope of the section.—S. 127 empowers any Magistrate or officer-in-charge of a Police-station to command any unlawful asesmbly

*The Indian Volunteers Act, 1869, has since been repealed by the Auxiliary Force Act, 1920.

(CODE OF 1872—S. 481.)

481. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police station may proceed to disperse such assembly by force, and may require the assistance of any person, other than any European or Native Troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

Use of force to disperse.

(CODE OF 1861—Nil.)

Section 128—Note 1.

(1) (1870) 13 Suth. W. R. Cr. 75 (76), *Queen* v. *Assan Shurreff.*

S. 128, Notes 2—6.

to disperse. This section lays down what the Magistrate or officer-in-charge of the Police-station has to do if the assembly disobeys or shows a determination to disobey, such order. This section lays down when *civil force* is to be used in dispersing the unlawful assembly. Ss. 129 to 131, *infra* enact under what circumstances *military force* can be resorted to. The object of these sections is to see that, as far as possible, only *minimum force* is used in dispersing the assembly. The degree of force which may lawfully be used in the suppression of an assembly depends on the nature of such assembly, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be obtained.[1]

3. "**Such assembly.**"—The words "*such* assembly" refer to the assembly specified in S. 127. It must be an *unlawful assembly* as defined in S. 141 of the Penal Code or an assembly of five or more persons likely to cause *disturbance of the peace*. Where three persons whose object was to draw a crowd which was likely to cause a breach of the peace refuse to disperse on being commanded to do so and in fact about 60 persons followed them, it was held that the three persons with the other crowd of 60 persons constituted an unlawful assembly.[1]

4. "**Officer-in-charge of a Police-station.**—*See* S. 4 (*p*). It has been held in the undermentioned cases[1] that an officer in charge of a petrol boat who had no greater powers than that of an officer-in-charge of an out-post, and who has no powers of investigation under S. 156, *infra*, was not an "officer in charge of a Police station" and could not act under this section. A Police-officer who is *superior* to the officer in charge of a Police station is also entitled to act under this section.[2]

5. **Duties of citizens.**—This section does not empower the Magistrate or Police-officer to take the assistance of an officer or soldier in Her Majesty's army or of any volunteer enrolled under Act XX of 1869 for dispersing unlawful assemblies. He can only require the assistance of any *male person* for the said purpose. Every such person is bound to assist the Magistrate or Police-officer.[1] *See also* S. 42, *ante*.

6. **Effect of disobedience of the order to disperse.**—The unlawful assembly which refuses to disperse may be dealt with as follows:—

(*a*) The assembly may be dispersed by force.[1]

(*b*) Ring-leaders or as many of the persons forming part of it as may be necessary may be arrested and confined.[2]

(*c*) The persons disobeying may be prosecuted under S. 145 of the Penal Code.[3]

Note 2.

(1) (1898) 21 Mad. 249 (259), *Empress* v. *Subba Naick* (Citing Lord Bowen's Report in "the Colliers strike and riot 1893").

Note 3.

(1) (1883) 7 Bom. 42 (49), *Empress* v. *Tucker*.

Note 4.

(1) (1923) 1923 Cal. 517 (518): 50 Cal. 318, *Mahommed Yunus* v. *Emperor*.

(2) (1883) 7 Bom. 42 (50), *Empress* v. *Tucker*.

Note 5.

(1) (1931) 1931 Bom. 57 (65) (S. B.), *Chanappa Santirappa* v. *Emperor*.

Note 6.

(1) (1904) 1 Cri. L. Jour. 920 (923), *Emperor* v. *Kala Nanji* (Kathiawar).

(2) (1931) 1931 Bom. 520 (521, 524): 55 Bom. 725, *Ramachandra Narain* v. *Emperor*.

(3) (1931) 1931 Mad. 484 (485): 54 Mad. 1025, *Public Prosecutor* v. *Vadlamudi Satyanarayana*.

S. 128, Note 7.

7. Duties, rights and liabilities of officers acting under this section.—If the Magistrate or officer in charge of a Police station commands an unlawful assembly to disperse and the assembly does not disperse it will be the *duty* of the police-officer or Magistrate, before resorting to force to arrest the persons who appear to be the leaders of the assembly and see what effect it would have on the assembly. If the assembly still persists in not dispersing, a warning should be given that if they refused to disperse, force would be used.[1] Of course, the section authorises the officer to disperse the assembly by force even without commanding it to disperse, "if it conducts itself in such a manner as to show a determination not to disperse." But great caution should be exercised in exercising the power.

If the officer is *competent to act* under this section and acts in *good faith* he is entitled under S. 132, *infra*, to be protected from prosecution for doing such acts.[2]

S. 129.

129.* If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

S. 130.

130.† (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volun-

Duty of Officer commanding troops required by Magistrate to disperse assembly.

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*(CODE OF 1882—S. 129.)

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

(CODE OF 1872—S. 482.)

482. If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

(CODE OF 1861—Nil.)

†(CODE OF 1882—S. 130.)

130. When a Magistrate determines to disperse any such assembly by military

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Note 7.

(1) (1898) 21 Mad. 249 (252), *Empress* v. *Subba Naick*.

(2) (1921) 1921 Cal. 697 (698), *Abdul Rahim* v. *Emperor*.

teers Act, 1869*, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. S. 130, Notes 1—2.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"EVERY SUCH OFFICER SHALL OBEY SUCH REQUISITION"—SUB-S. 2.	2

1. **Legislative changes.**—The words "any officer in command of any of Her Majesty's Troops, whether European or Natives" in S. 484 of the Code of 1872 were substituted by the words "any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869" in S. 130 of the Code of 1882.

2. **"Every such officer shall obey such requisition"—Sub-S. 2.**—It is the duty of the Military officers in the service of the Crown to aid the civil authorities in quelling disorder.[1]

Duty of officer commanding troops required by Magistrate to disperse assembly.

force he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

(CODE OF 1872—S. 484.)

484. When a Magistrate determies to disperse an assembly by military force, he may require any officer in command of any of Her Majesty's Troops, whether European or Native, to disperse such assembly by such force, and it shall be the duty of every such officer to obey every such requisition in such manner as in his discretion appears proper; but in doing so he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the

Duty of officer commanding troops required by Magistrate to disperse assembly.

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*The Indian Volunteers Act, 1869, was repealed by the Auxiliary Force Act, 1920.

Section 130—Note 2.

(1) (1931) 1931 Bom. 57 (59), *Channappa Santirappa* v. *Reg.*

S. 131. **131.*** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Powers of commissioned military officers to disperse assembly.

S. 132. **132.†** No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in

Protection against prosecution for acts done under this Chapter.

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assembly and arresting and detaining such persons as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

(CODE OF 1861—Nil.)

***(CODE OF 1882—S. 131.)**

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Power of Commissioned Military officers to disperse assembly.

(CODE OF 1872—S. 487.)

487. When the public security is manifestly endangered by an unlawful assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's European or Native Forces may disperse any such assembly by military force; and in doing so, he shall have the same protection as a Magistrate, and all officers and soldiers acting under his orders shall have the protection mentioned in section four hundred and eighty-six; but as soon as such Commissioned Officer can communicate with any Magistrate, it is his duty to do so.

Duty of Queen's officers to suppress assembly.

(CODE OF 1861—Nil.)

†**(CODE OF 1882—S. 132.)**

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court except with the sanction of the Governor-General in Council; and

Protection against prosecution for acts done under this chapter.

any Criminal Court, except with the sanction of the Local Government; and— S. 132.

(*a*) no Magistrate or police-officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence :

*"Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's army except with the sanction of the Governor-General in Council."

*This proviso was added by the Devolution Act, 1920.

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

(CODE OF 1872—Ss. 483, 485, 486 and 488.)

When use of military force is not an offence.

483. No Magistrate shall be held to commit any offence by ordering the dispersion, by military force of any assembly, the dispersion of which he regards, on reasonable grounds and in good faith, as necessary to the public security.

What acts done in obeying requisition not an offence.

485. No officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

Acts of inferior officers and soldiers, done in obedience to order, not an offence.

486. No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order which he was bound by the Mutiny Act or by the Indian Articles of War to obey.

Sanction required to prosecutions for acts done, sections 481, 482, 484, and 487.

488. No prosecution against any Magistrate, officer or soldier, for any act done under the provisions contained in sections four hundred and eighty-one, four hundred and eighty-two, four hundred and eighty-four and four hundred and eighty-seven, shall be instituted in any Criminal Court, except with the sanction of the Government of India, or the Government of Madras or Bombay.

(CODE OF 1861—Nil.)

S. 132, Notes 1—4.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
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"GOOD FAITH"	8
CLAUSE (*d*)	9
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Other Topics.

In obedience to any order. See Note 9, Pt. 2.

1. Legislative changes.—By Act XXXVIII of 1920 the words "Local Government" were substituted for the words "Governor-General in Council" which stood originally, and the proviso was newly added.

2. Scope of the section.—This section requires that no prosecution shall be instituted against any person for any act purporting to be done under this chapter without the sanction of the competent authority. The object obviously is to protect responsible public servants against the institution of possibly vexatious criminal proceedings in respect of such acts. The policy of the legislature is to afford adequate protection to public servants, to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause. The section should therefore be construed as broadly as it is framed.[1]

3. Distinction between this section and S. 79, Penal Code.—S. 79 of the Penal Code provides that nothing is an offence which is done by any person who is justified by law or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith, believes him to be justified by law, in doing it. The protection granted by it is a protection *against conviction* and applies only when all the facts are known, *i.e.*, when the *trial is over*. But this operates even *before* the trial begins. In other words the protection given by this section is one against the *trial itself*.[1]

4. "Prosecution"—Meaning of.—An inquiry which merely results in the dismissal of a complaint does not amount to a "prosecution" within the meaning of this section.[1]

Section 132—Note 2.

(1) (1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao.*

Note 3.

(1) (1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao.*

Note 4.

(1) (1929) 1929 Cal. 229 (231), *Santi Ram Mandal* v. *Emperor* (*Per* Graham, J.).

S. 132, Notes 5—9.

5. **"Purporting to be done".**—It is enough for the application of the section if a person empowered to act under this chapter *purported to act* under it. It is not necessary for him, before the question of sanction is raised to prove that there was in fact such an assembly as is contemplated by this chapter.[1] In deciding whether a person purported to act or not the Court is not confined to the complaint and the sworn statement. The reason is that appropriate assertions in the complaint or the sworn statement, even if false, can deprive officers of the protection given by this section and this cannot have been intended by the Legislature.[2]

6. **Except with the sanction of the Local Government.**—The sanction of the Local Government is a condition precedent to the prosecution of any person empowered to act under this chapter for any act done or purported to have been done by such person under this chapter.[1]

7. **Police-officer acting under this chapter.**—The power to disperse an unlawful assembly is not given by the Code to any police-officer below the rank of an officer in charge of a police station. Any officer below that rank, *e.g.*, an officer in charge of a petrol boat who purports to act under section 127, *supra*, is not protected by the provisions of this section.[1]

8. **"Good faith".**—Under S. 52 of the Penal Code "nothing is said to be done or believed in *good faith* which is done or believed without due care and attention" This definition applies also to this Code by virtue of S. 4, *supra*.[1]

The term is to be interpreted relatively to the position of the person doing an act or omission with due regard to the surrounding circumstances.[2] Where a police-officer did not believe it necessary for the public security to desperse an assembly by firing on them, but nevertheless gave orders to shoot with the result that a man was shot dead, it was held that he did not act in good faith.[3]

9. **Clause (d).**—A police-officer is not protected simply because he obeyed the orders of his superior officer[1] unless the order is one which he is *bound to obey*. He is not bound to obey an *illegal* order of the superior officer. Where therefore an order is *manifestly illegal* and the subordinate has the same opportunities of observing and judging the circumstances as the superior, it is no defence for the former to plead that he obeyed the orders of his superior.[2] A subordinate obeying the orders of his superior will, however, even if the order

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Note 5.

(1) (1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao.*
(1921) 1921 Cal. 697 (698), *Abdul Rahim* v. *Emperor.*

(2) (1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao.*

Note 6.

(1) (1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao.*

Note 7.

(1) (1923) 1923 Cal. 517 (518): 50 Cal. 318, *Mahommed Yunas* v. *Emperor.*

Note 8.

(1) (1898) 21 Mad. 249 (252), *Empress* v. *Subba Naick.*
(2) (1868) 10 Suth. W. R. Cr. 20 (20), *Sheo Surun Sahai.*
(3) (1898) 21 Mad. 249 (252), *Empress* v. *Subba Naick.*

Note 9.

(1) (1898) 21 Mad. 249 (252), *Empress* v. *Subba Naick.*
(2) (1898) 21 Mad. 249 (252), *Empress* v. *Subba Naick.*
(1924) 1924 Sind 33 (35): 17 Sind L. R. 182, *Allahrakhio* v. *Emperor.*

S. 132, Notes 9—10.

is illegal, be entitled to protection under S. 76 of the Penal Code, if, by reason of a mistake of fact, he believes, in good faith, to be bound by law to obey it.[3]

10. Whether want of sanction is cured by S. 537.—As has been seen in Note 6, *ante*, the sanction is a condition precedent, to the institution of a prosecution against any person for an act done under this chapter and consequently, the absence of a sanction is an illegality which cuts at the very root of the prosecution and is not one curable by S. 537.[1]

CHAPTER X.

PUBLIC NUISANCES.

S. 133.

133.* (1) *Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,*

Conditional order for removal of nuisance.

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

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*(CODE OF 1882—S. 133.)

CHAPTER X

Public Nuisances.

133. Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

Conditional order for removal of nuisance.

that any unlawful obstruction or nuisance should be removed from any way, river, or channel, which is, or may be, lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandize, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood, or passing by, and that, in consequence, its removal, repair, or support is necessary, or

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(3) [See (1883) 1883 Pun. Re. No. 17, p. 27, *Niamat Khan* v. *Emperor*.]

Note 10.

(1) (1907) 6 Cri. L. Jour. 382 (383): 31 Mad. 380, In re *Perumal Nayadu*.

S. 133.

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, *tent, structure*, substance, tank, well or excavation, *or owning or possessing such animal or tree*, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

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that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandize, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or
to suppress or remove such trade or occupation; or
to remove such goods or merchandize; or
to prevent or stop the construction of such building; or
to remove, repair, or support it; or
to alter the disposal of such substance; or
to fence such tank, well, or excavation, as the case may be; or

S. 133. to remove or support such tree; or to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; *or, if he objects so to do,*

to appear before himself or some other Magistrate of the First or Second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation:—(a) 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

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to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside, or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes.

(CODE OF 1872—S. 521.)

521. Whenever a Magistrate of the District or a Magistrate of a Division of a District, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place,

Magistrate may order removal of nuisances.

or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place,

or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflag.ation, should be prevented,

or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary,

or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public—such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank or well, as aforesaid, calling on him, within a time to be fixed in the order,

SYNOPSIS. **S. 133.**

		Note No.
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to remove such obstruction or nuisance, or to suppress or remove such trade or occupation,

or to stop the construction of such building,

or to remove it,

or to alter the disposal of such substance or to fence such tank or well, as the case may be,

or to appear before himself or some other Magistrate of the first or second class within the time mentioned in the order and show cause why such order should not be enforced.

Order to be a judicial proceeding. The issue of an order under this section shall be a judicial proceeding, whether or not evidence is taken therein.

Order to be in the alternative. Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed, either to obey it, or to show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.

Explanation.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

(CODE OF 1861—S. 308.)

CHAPTER XX.

Of Local Nuisances.

Magistrate may order removal of nuisances. 308. Whenever the Magistrate of a District or of a Division of a District may consider that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place, or that the construction of any building or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public, he may issue an order to the person causing such obstruction or nuisance or carrying on such trade or occupation, or being the owner or in possession of, or having control over such building, substance, tank, or well as aforesaid, calling on such persons, within a time to be fixed in the order, to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of, or to remove such building, or to alter the disposal of such substance, or to fence such tank or well as the case may be, or to appear before such Magistrate within the time mentioned in the order and show cause why such order should not be enforced.

S. 133.

SYNOPSIS.

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Future obstruction cannot be dealt with. See Note 10, Pt. 16 & Note 17, Pt. 7.

General proclamation to the public. See Note 19, Pt. 4.

Inoculation against small-pox—not a trade. See Note 15, Pt. 10.

Instances of obstruction. See Note 10, Pts. 8-15.

Nature of the order. See Note 3, Pt. 3, & Note 19.

Other Topics.

Nature of proceedings. See Note 3, Pts. 4 & 5.
Orders not under the section. See Note 20, Pts. 3-19.
Order to fix time. See Note 19, Pt. 3.
Owning of a cremation ground—Not a trade. See Note 15, Pt. 10-A.
Person proceeded against—whether an accused. See Note 3, Pt. 4.
Proceedings—A Criminal trial. See Note 3, Pt. 5.
Proceedings of Magistrates not empowered. See S. 530 (g).
Provision under other laws. See Note 2, F. N. (1).
Revival of proceedings. See Note 30, Pts. 2 & 3.
Should be removed. See Note 3, Pt. 1.
To remove obstruction. See Note 20.

1. Legislative Changes.—

Changes introduced in 1872—

(1) After the words "division of a District" in the first paragraph the words "or when empowered by the Local Government in this behalf, a Magistrate of the first class" were added.

(2) At the end of the section (308 of 1861) for the words "before such Magistrate" the words "before himself or some other Magistrate of the first or second class" were substituted.

(3) The last two paragraphs and the explanation were newly added.

Changes introduced in the Code of 1882—

(1) The last paragraph of S. 521 of the Code of 1872 was omitted and as a consequence (*a*) after the word "considers" in para. 1 of S. 133 of the Code of 1882, the following words were added "on receiving a report or other information and on taking such evidence (if any) as he thinks fit".

(*b*) In para. 7, before the word "order" the word "conditional" was added.

(2) In the second para, for the word "thoroughfare" the words "way, river or channel, which is or may be lawfully used by the public" were substituted.

(3) In the third para, after the words "trade or occupation" the words "or the keeping of any goods or merchandise" were added, and before the word "comfort" the word "physical" was added. After the word "stopped" the words "or prohibited" were added.

(4) In the fourth paragraph for the words "combustible substance as likely to occasion conflagration" the words "substance as likely to occasion conflagration or explosion" were substituted; and after the word "prevented" the words "or stopped" were added.

(5) In the fifth paragraph, after the word "persons" the words "living or carrying on business in the neighbourhood" were added and after the word "removal" the words "repair, or support" were added.

(6) In the sixth paragraph, after the word "well", the words "or excavation" were added.

S. 133. Notes 1—2.

(7) In the seventh paragraph, additions consequent on the additions indicated above were made;

The "place" at which to appear was mentioned in the order.

For the words "show cause why such order should not be enforced" the words "move to have the order set aside or modified in manner hereinafter provided" were substituted.

(8) The last but one para. of S. 521 of the Code of 1872 was omitted.

(9) The last para. of the section corresponding to the present sub-S. (2) was newly added.

Changes introduced in 1898—

For the word 'report' in para. 1 the word "police report" was substituted in sub-S. (1) of S. 133 of the Code of 1898.

Changes made in 1923—

(1) In sub-S. (1), para. 1, the words "when empowered by the Local Government in this behalf" were omitted.

(2) In para. 3 before the words "any trade" the words "conduct of" were added and for the words "should be suppressed or removed or prohibited", the words "should be prohibited . . . regulated" were substituted.

(3) In para. 5, after the word "building" the words "tent or structure or any tree" were added and after the words "repair or support" the words "of such building . . . of such tree" were added.

(4) After para. 5, a new para. with regard to "any dangerous animal" was added.

(5) In para. 6, appropriate changes and additions of words consequential on the additions referred to above, were made

2. Remedies for a public nuisance.—*See also* Note 5 to S. 91 in the commentary on the Code of Civil Procedure by the same authors.

The remedies available in respect of public nuisance are as follows:—

Under the Civil Law—

(*a*) A suit will lie under S. 91 of the Code of Civil Procedure, and in such suit, it is not necessary for the plaintiffs to prove that they have sustained any special damage.

(*b*) A suit will also lie at the instance of a private individual where he had suffered special damage by reason of the nuisance.

Under the Criminal Law—

(*a*) The person committing a public nuisance will be prosecuted under Chapter 14 of the Indian Penal Code.

(*b*) The person committing the nuisance may be proceeded against in summary proceedings under Ss. 133 to 144 of this Code.

(c) The person committing the nuisance may be proceeded against under any other special or local law where a remedy is provided in such law against such nuisance.[1] S. 133, Note 2.

The remedies are concurrent and the pursuit of one does not bar the other. A proceeding under this chapter is therefore not a condition precedent to a prosecution under the Penal Code,[2] or to the maintenance of a civil suit.[3] Similarly the existence of an alternative remedy under the special Act does not oust the jurisdiction of a Magistrate to proceed under this chapter.[4]

The proceedings under this chapter are *summary* and are intended to enable Magistrates to summarily deal with cases of urgency or of imminent danger to public interest. They are not intended to enable a complainant to obtain, by this process any civil relief.[5] Therefore this very exceptional jurisdiction given in this chapter should be exercised with all possible fairness and reasonable precautions,[6] and should be so worked as not to become itself a nuisance to the community at large.[7]

It is not open to any member of the public to take the law in his own hands and demolish the building or other structure alleged to be a public nuisance without recourse to the proper authorities and without adopting the proper procedure prescribed by law.[8]

Section 133—Note 2.

(1) *Cases under the United Provinces Municipalities Act, I of* 1900.
(1912) 13 Cri. L. Jour. 685: 35 All. 24, *Imami* v. *Emperor.*
(1916) 1916 All. 166, *Jagannath* v. *Emperor.*
(1916) 1916 All. 133, *Gulab Singh* v. *Emperor.*
(1916) 1916 All. 361, *Rahas Bihari* v. *Municipal Board, Cawnpore.*
Cases under the Bengal Municipal Act.
(1918) 1918 Cal. 280, *Bhushan Chandra Dutta* v. *Chairman, Kotechandpur Municipality.*
(1873) 19 Suth. W. R. 309, *Brindaban Chundur* v. *Chairman.*
(1905) 2 Cri. L. Jour. 613 (Cal.), *Shama Bibee* v. *Jadab Chandur Banerjee.*
Cases under the Calcutta Municipal Act.
(1906) 4 Cri. L. Jour. 408 (Cal.), *Chuni Lal Dutt* v. *Corporation, Calcutta.*
(1910) 11 Cri. L. Jour. 377 (Cal.), *Khagendranath* v. *Bhupendra Narayan.*
(1913) 14 Cri. L. Jour. 490: 41 Cal. 164, *Benoda Lal Ghosh* v. *Corporation of Calcutta.*
Cases under the Bombay District Municipal Act of 1873.
(1890) 14 Bom. 180, *Empress* v. *Hari Lal.*
(1910) 11 Cri. L. Jour. 60 (Bom.), *Laduram* v. *Emperor.*
(1912) 13 Cri. L. Jour. 785 (Bom.), *Imperator* v. *Tyebali Cyrim.*
(1913) 14 Cri. L. Jour. 251 (Bom.), *Emperor* v. *Shivdas Omkar Marwadi.*
(1918) 1918 Bom. 207: 42 Bom. 454, *Nagindra Chhabilda* v. *Emperor.*
(1931) 1931 Bom. 141: 59 Bom. 89, *In re Motilal Amratlal Shah.*
(1918) 1918 Sind 53: 11 S. L. R. 90, *Khusalda Moolchand* v. *Emperor.*
Cases under the Bombay City Municipal Act.
(1910) 11 Cri. L. Jour. 270: 34 Bom. 346, *Emperor* v. *Shivlal.*
(1913) 14 Cri. L. Jour. 43 (Bom.), *Emperor* v. *Edalji K. Patel.*
(1924) 1924 Bom. 241: 48 Bom. 24, *Municipal Corporation of Bombay* v. *Mallandaine.*
Cases under the Punjab Municipal Act.
(1918) 1918 Lah. 328, *Shahab-ud-din* v. *Emperor.*
Cases under the Bombay Regulation XII of 1827.
(1881) Rat. Un. Crl. Cases 159.
(1887) Rat. Un. Crl. Cases 356.
Cases under the Bombay Village Police Act.
(1892) Rat. Un. Crl. Cases 609, *Empress* v. *Punja.*
(1898) Rat. Un. Crl. Cases 980, *Empress* v. *Dama Ghela.*
Cases under the Bombay District Police Act.
(1878) Rat. Un. Crl. Cases 134, *Empress* v. *Nilkanth.*
(1890) Rat. Un. Crl. Cases 521, *Empress* v. *Shiva Kashi Ram.*
(1931) 1931 Bom. 326, *Emperor* v. *Vadilol Dev Chand.*
(1913) 14 Cri. L. Jour. 282: 6 S. L. R. 224, *Crown* v. *Versimal.*
Cases under Calcutta Port Act:
(1925) 1925 Cal. 404: 51 Cal. 1030, *Radha Kissen Chamaria* v. *Emperor.*
(2) (1869) Rat. 23 (23), *Reg.* v. *Suklal.*
(1870) 14 Suth. W. R. 63 (64, 65), *Niamuttulla* v. *Gopal.*
(3) (1862-65) 1 Bom. H. C. 1 (2), *Jina Ranchhod* v. *Jodha Grella.*
Marsh 537, *Ram Tunnoo* v. *Sreenath Das* (After application under this section Magistrate declined to act—Still civil suit not barred).
(4) (1920) 1920 Cal. 550 (550), *Krishna Mohan Banerjee* v. *A. K. Guha* (Bengal Municipal Act, 1899).
(1868) 9 Suth. W. R. Cr. 70 (71), *Omooram* v. *Lamessor* (Cattle Trespass Act).
(5) (1897) 1897 32 Pun. Re. No. 4, p. 7 (9), *Mir Imam Abdul.*
(6) (1897) 1897 Pun. Re. No 4, p. 7 (9), *Mir Imam Abdul.*
(1892-1896) Vol. I, U. B. R. 176 (177), *Empress* v. *Sata Din.*
(7) (1888) 1888 Pun. Re. No. 17, p. 31 (32), *Shadi* v. *Empress.*
(8) (1934) 1934 Mad. 95 (96): 57 Mad. 351, *Nagur Narashimlu* v. *Nagur Sahib.*

S. 133, Notes 3—4.

3. **Scope and applicability of the section.**—This section enumerates certain specific public nuisances and provides a summary remedy for their removal. It is an emergent section framed to deal with evils either existent or imminent and is applicable only to physical obstructions or nuisance which is capable of being removed and which is actually *in situ*. It could not be made use of to put a stop to and prohibit certain objectionable accompaniments to ceremonies practised by a religious sect to the discomfort and annoyance of their fellow townsmen.[1]

As the section is intended to provide a speedy remedy in the interests of the *public*, a Magistrate should be on his guard, against any tendency to use it as a substitute for litigation in Civil Courts for the settlement of a *private* dispute.[2]

The proceedings under this section are *ex parte* and a Magistrate commencing such proceedings should issue a conditional order in conformity with the section, and not issue a *notice* instead to show cause why action should not be taken.[3] As to the effect of the absence of such a conditional order, *see* the undermentioned case.[3-a]

The proceedings are more of the nature of civil than of criminal proceedings and a party to such a proceeding is not an accused person and there is nothing to prevent his being examined on oath, or prosecuted for an offence under S. 193 of the Penal Code.[4] But orders passed under this section are orders in criminal proceedings and no Letters Patent appeal lies therefrom.[5]

The section does not apply to private nuisances.[6] Further, a proceeding under this section is not the proper procedure to follow when there is a dispute between the Government and a private individual.[7] *See* Notes under S. 139-A.

3-A. Preventive action in respect of anticipated nuisance.—Except in the case of the construction of a building or the disposal of a substance which is likely to occasion a conflagration or explosion, this section only applies where the unlawful obstruction or nuisance is actually in existence and does not justify any action being taken in regard to an anticipated but non-existent obstruction or nuisance.[1]

4. **Sections 133 and 144.**—The essential difference between this section and S. 144, *infra* is that the former expressly states that the order passed should be only *conditional* (*i.e.*), that it is not to operate if the party shows cause, while an order under S. 144 is an order *absolute*. Where a case falls both under this section and S. 144, the order should, under this section, be a conditional one

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Note 3.

(1) (1901) 1901 All. W. N. 126 (126), *Emperor* v. *Faizul Hassan*.
(2) (1914) 1914 All. 491 (492): 37 All. 26, *Farzand Ali* v. *Hakim Ali*.
(1926) 1926 All. 157 (157), *Ghurahu Das* v. *Shakalraj*.
(1933) 1933 Cal. 150 (151), *Corbet* v. *Sonaulla Basunia*.
(1897) 1897 Pun. Re. No. 4, p. 7 (9), *Mirgmam Abdul Aziz* v. *Empress*.
(1866) 5 Suth. W. R. 66 (66), *Ram Lal Mookerjee*.
[See also (1870) 13 Suth. W. R. Cr. 51 (52), *Queen* v. *Madho Churan*.]
[But see (1912) 13 Cri. L. Jour. 594 (595) (Lah.), *Budha* v. *Mohan Lal*.]
(3) (1928) 1928 Lah. 95 (96), *Brahman Water Mills Co.* v. *Mangladha Mal*.
(3-a) (1885) 1885 All. W. N. 266 (266), *Emperor* v. *Rameshar* (*Held*, no liability, for disobedience).
(4) (1905) 2 Cri. L. Jour. 575 (578) (Cal.), *Hirananda Ojha* v. *Emperor*.
(5) (1915) 16 Cri. L. Jour. 349 (350): 1916 Mad. 970, *Nissankara Row Subbayya* v. *Poola Ramayya*.
(6) (1925) 1925 Oudh 130 (130), *Gowri Shankar* v. *Bhagely Pandey*.
(7) (1904) 2 Bom. L. R. 818 (819, 820), In re *Ramsingh Naroba*.

Note 3-A.

(1) (1934) 1934 Nag. 230 (231), *Rambharose* v. *Sundarlal*.

giving the party an opportunity to show cause against the order.[1] But where the case does not fall under this section, as where an order has to be passed prohibiting burial in certain places on sanitary grounds, it should be made under the more general provision, S. 144.[2] It was held in cases decided under the Code of 1861 that where an order could not be passed under S. 308 (corresponding to this section) an order could be passed S. 62 (now S. 144), provided the party is given notice to show cause.[2] Under the Code of 1872, it was held that the explanation 1 to S. 518 (S. 144) provided a speedy remedy when resort to S. 521 (S. 133) would be too slow, that the former section was merely ancillary to the latter section and that therefore it would not apply to cases where the latter would not apply.[4] In the absence of such an explanation in the present S. 144, it is doubtful, if the above decision is any longer law. **S. 133, Notes 4—7.**

5. **Sections 133 and 147.**—This section is not a bar to a proceeding under S. 147 where a case falls under both the sections. Thus the fact that this section provides for an order directing the removal of an obstruction to a pathway does not imply that an order cannot be passed under S. 147, when there is a likelihood of a breach of the peace in respect thereto.[1] But when proceedings are taken under this section, no order can be passed under S. 147. That section clearly states that the procedure shall be as under S. 145 which is entirely different from this section and is entirely for a different purpose.[2]

6. **Who may act under the section.**—Under the Code of 1861, only the Magistrate of a District or Magistrate of a division of a district could issue an order under this section.[1] So it was held that a Joint Magistrate while in charge of a District Magistrate's office could not act under the section,[2] though he may do so if he is already in charge of a sub-division.[3]

Under the later Codes this power was extended to any Magistrate of the first class *specially empowered* by the Local Government in this behalf.

After the amendment of 1923, any *first class* Magistrate may act under this section, without being specially empowered in this respect by the Local Government.

It is however only the officers specified in the section that can make an order thereunder. A *kurnam* cannot therefore issue an order for the removal of an obstruction from a public way[4] nor can a third class Magistrate make any enquiry under this section.[5]

7. "**Considers**".—It is enough if the Magistrate has before him sufficient materials upon which *prima facie* he can act.[1] Where the acts com-

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Note 4.

(1) (1868) 10 Suth. W. R. Cr. 53 (54), In the matter of *Hari Mohan Malo. Jayakrishna Mookerji.*
(1869) 1 N.-W. P. 197 (198), *Khanchand* v. *The Collector of Boolundshuhur.*
(1867) 2 Weir 58 (58).
(1874) 21 Suth. W. R. Cr. 24 (25), *Brindaban Dutt.*
(2) (1881) 2 Weir 64 (64).
(3) (1869) 12 Suth. W. R. Cr. 40 (41), *Kalidass Bhuttacharjee* v. *Mohendronath Chatterji.*
(4) (1870) 2 Weir 66 (67).

Note 5.

(1) (1914) 1914 Mad. 712 (713), *Karupana Koundan* v. *Kandaswami Koundan.*
(2) (1911) 12 Cri. L. Jour. 43 (44) (Cal.), *Abdul Rackman Mia* v. *Safar Ali.*
(1922) 1922 Cal. 59 (65) (F.B.), *Ram Sagar Mondal* v. *Alek Naskar.*

Note 6.

(1) (1867) 2 Agra 1 (2), *Choonee Lall.*
(2) (1871) 15 Suth. W. R. Cr. 36 (36), In re *Grish Chandra Chuckravarthy.*
(3) (1871) 15 Suth. W. R. Cr. 41 (41), In the case of *Punchannun Bose.*
(4) (1885) 1 Weir 132 (133), In re *Agora Maistri.*
(5) (1929) 1929 Cal. 813 (813), *Isaddar Ali* v. *Isimulla.*

Note 7.

(1) (1900-01) 5 Cal. W. N. 173 (174), *Ishan Chandra* v. *Prasanna Kumar.*
[See also (1910) 14 Cal. W. N. cxcix (cxcix).]

S. 133, Notes, 7—10.

plained of amount to a nuisance, it *prima facie* gives the Magistrate jurisdiction to pass an order under this section.[2]

8. "**On receiving police report or other information**".—A proceeding under this section is in the first instance *ex parte*, and the report or other information on which, it is based, is no evidence against the opposite party.[1]

9. "**And on taking such evidence**".—The expression on taking such evidence, "if any, as he thinks fit" does not make it *incumbent* on the Magistrate to hold an inquiry before he makes an order under this section.[1]

10. **Unlawful obstruction.**—There is no definition of the words "unlawful obstruction" and "nuisance" in this Code. But the words "public nuisance" are defined by S. 268 of the Penal Code and by virtue of S. 4, sub-S. (2), *ante*, that definition applies to this Code also.[1] According to that definition a person is guilty of public nuisance "who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who have occasion to use any public right."

Any act or illegal omission which must necessarily cause obstruction to persons who may have occasion to use any public right is a public nuisance.[2] The present section deals, however, with unlawful obstruction of a *particular kind*, namely, those relating to any *way*, *river* or *channel* which is or may be lawfully used by the public, or any *public place*.[3] Obstruction to persons who may have occasion to use *other* public rights, though a public nuisance, cannot be dealt with under this section. Nor does the section apply to obstruction of *private* rights.[4]

The question whether there has been an obstruction is a question of fact which must be decided having regard to the facts and circumstances of each case.[5] The spreading of a branch of a tree 15 feet over a country road,[6] or the mere placing of a *charpoy* temporarily on a public road,[7] may not, having regard to the nature of the traffic, amount to an obstruction. On the other hand, the

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(2) (1904) 1 Cri. L. Jour. 70 (72) (Cal.), *Belat Ali* v. *Abdur Rahim*.

Note 8.

(1) (1916) 17 Cri. L. Jour. 409 (410): 1917 Cal. 207: 44 Cal. 61, *Raimohan Karmakar* v. *Emperor*.

Note 9.

(1) (1931) 1931 All. 257 (257), *Abdul Shakur Khan* v. *Emperor*.

Note 10.

(1) [See (1868-69) 5 Mad. H. C. R. 345 (357), *Seshaiyangar* v. *Raghunatha*.]
(1912) 13 Cri. L. Jour. 183 (184): 34 All. 345, *Bharosa Patak* v. *Emperor* (Under S. 133, Cr. P. Code, a Magistrate is enabled to take action if he considers on information that any unlawful obstruction or nuisance should be removed).
[See also (1870) 2 N.-W. P. 452 (453), *Queen* v. *Damodur Das*.]
(2) (1866-68) 5 Mad. H. C. R. 345 (357), *Seshaiyangar* v. *Raghunatha*.
(3) (1907) 5 Cri. L. Jour. 97 (99) (Bom.), *Emperor* v. *Abdul*.
(1866) 5 Suth. W. R. 5 (5), *Burodha Pershad* v. *Mudoo Soodun*.
(1905) 2 Cal. L. Jour. 47-n (47-n), *Monmatha Nath* v. *Bejoy*.
(1922) 1922 Cal. 59 (70), *Ram Sagar* v. *Alek Naskar*.
[See also (1926) 1926 All. 193 (193), *Kadhori* v. *Emperor*.
(1915) 16 Cri. L. Jour. 560 (560): 1916 Mad. 847: 38 Mad. 305, *Venkappa* (Prabha left lying in a public road).]
(4) (1898) 22 Bom. 988 (993), *Maharana Jaswant Sangji*, In re.
(1928) 1928 All. 627 (628): 50 All. 871, *Munna Tewari* v. *Chandrabali*.
(5) (1893) 20 Cal. 665 (670), *Jugal Das Dalat* v. *Queen-Empress*.
(1934) 1934 Nag. 230 (231), *Rambharose* v. *Sundarlal* (Covered cess pool not obstruction).
(6) (1924) 1924 All. 667 (667), *Gokul* v. *Emperor*.
(7) (1912) 13 Cri. L. Jour. 830 (830) (All.), *Kamalaprasad* v. *King-Emperor*.

S. 133, Note 10.

unlawful cutting up of a public road[8] or the filling up of a portion of a ditch or drain forming part of such road,[9] or the placing of erections thereon,[10] or the holding of a cattle market resulting in the driving of cattle to and from such market through narrow and congested public lanes[11] may amount to an obstruction. Similarly an obstruction in the channel of a public and navigable canal,[12] or an erection of a bund or dam obstructing the right of the public to cross the bed of the river easily and on foot[13] may amount to an unlawful obstruction and a nuisance. The High Court of Lahore has, in the undermentioned case,[14] however, held purporting to follow a decision of the Calcutta High Court[15] that *any encroachment*, however small, on a public road must *inevitably result in obstruction* to persons who may have occasion to use such road, and is therefore a public nuisance. The decisions relied upon in that case do not really support that view. It is submitted that the decision cannot be accepted as correct on principle.

In order, however, to constitute an act, an unlawful obstruction, it is essential, not only that the obstruction should be to persons who may have occasion to use any *public right*, but also that the obstruction should be an *existing* and not merely a *future* one.[16]

The section is not inapplicable merely because the motive for causing the obstruction is good[17] or the obstruction does not cause practical inconvenience to persons using such way[18] or the obstruction affords some convenience to the person causing it.[19] On the other hand, it must be remembered that the section is not intended to be employed to avoid the necessity of filing civil suits in regard to longstanding obstructions, but only for unlawful obstructions *lately* caused in public places and rendering their immediate summary removal necessary.[20]

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(8) (1867) 7 Suth. W. R. 59 (59), *Queen* v. *Mahomed Afzul*.

(9) (1872) 18 Suth. W. R. Cr. 38 (38), In re *Roop Narain Dutt*.

(10) (1930) 1930 All. 751 (751), *Sallumal* v. *Emperor* (Chabutra unlawfully erected over a public way).

(1897) 20 Mad. 433 (434), *Queen-Empress* v. *Virappa Chetty* (Building over it).

(1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagroshan Bharathi* v. *Madan Pande*.

(1904) 1 All. L. J. (N.) 271 (271), *Makhan* v. *Todar*.

(1897) 7 M. L. J. 95, *Queen-Empress* v. *Krishna Reddi*.

(11) (1921) 62 Ind. Cas. 822 (822, 823) (Cal.), *Mohendra Narain Roy Chowdhury* v. *Emperor*.

(12) (1887) 14 Cal. 656 (659), In re *Umesh Chandra Kar* (Placing a bamboo stockade across a tidal navigable river for the purpose of fishing and leaving narrow opening for the passage of boats).

(1867) 7 Suth. W. R. 59 (59), *Queen* v. *Mahd. Afzul*.

[See also (1919) 1919 Oudh 74 (74, 75), *Jagannath* v. *Chandrika*.

(1927) 1927 Oudh 122 (124), *Bhagwan Baksh* v. *Emperor*.]

(13) (1905) 2 Cri. L. Jour. 762 (763): 32 Cal. 930, *Zafeer Nawab* v. *Emperor*.

(14) (1925) 1925 Lah. 454 (455): 6 Lah. 203, *Emperor* v. *Nisar Muhammad Khan* (The decision purports also to follow 20 Mad. 433 which however states as a fact that the particular encroachment in the case was one which must necessarily cause obstruction to the public).

(15) (1887) 14 Cal. 656 (658), In re *Umesh Chandra Kur*.

(16) (1874) 21 Suth. W. R. 10 (10), *Kasi Chund* v. *Yar Mohd*.

(1934) 1934 Nag. 230 (231), *Rambharose* v. *Sundarlal*.

(17) (1901) 23 All. 159 (162), *Empress* v. *Kedarnath*.

(18) (1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagroshan Bharathi* v. *Madan Pande* (The question of a sufficient width of the road being left for public use is no ground for allowing the encroachment or obstruction to continue).

(1930) 1930 All. 751 (751), *Sallu Mal* v. *Emperor*.

(1897) 7 Mad. L. Jour. 95, *Queen* v. *Krishna Reddi*.

(1916) 1916 Mad. 847 (847), In re *Venkappa*.

(1901) 23 All. 159 (162), *Queen-Empress* v. *Kedarnath*.

(19) (1912) 13 Cri. L. Jour. 183 (184): 34 All. 345, *Bharosa Pathak* v. *Emperor*.

(20) (1930) 1930 Lah. 361 (361), *Baisakhi Ram* v. *Emperor*.

(1926) 1926 All. 157 (157), *Ghurahu* v. *Shakalraj Das*.

(1935) 1935 Lah. 28 (29), *Khair Din* v. *Wasan Singh*.

S. 133, Notes 10—11.

A public road will comprise all the ground forming part of the road, whether metalled or not, over which the public have a right of way.[21]

11. Nuisance.—The second paragraph of the section deals with the removal of a nuisance from any *way, river* or *channel* which is or may be lawfully *used by the public* or from any *public place*. It is not necessary that the place where the nuisance *originates* should be a public place. It may be a private place and the act or omission may be an exercise of a right in respect of one's own property.[1] But the right to use one's own property as one likes is subject to the maxim *sic utere tuo ut alienum non laedas* (so use your own property as not to injure the right of another): In *Indra Nath Banerjee* v. *Empress*, I.L.R. 25 Cal. 425, their Lordships of the Calcutta High Court observed: "We have no hesitation in saying that, in our opinion, a private proprietor may be guilty of acts done on his private property which may give rise to a public nuisance to those living in the neighbourhood. A private owner who fires off blank *charges* from a cannon in his compound may give rise to a public nuisance so far as regards persons riding or driving on a public way just outside the compound". The following are illustrations of cases where acts of private user may amount to a public nuisance:—

(1) Where a latrine is used in such a way as to amount to be a nuisance to the neighbours;[2]

(2) Where a burning *ghat* or ground is kept in such an offensive state or the cremation is carried on in such an offensive manner as to be a source of danger, injury, or annoyance to persons living in the vicinity;[3]

(3) Where a high wall is built with the result that there is no space to clear the drainage between it and the neighbour's house and there is consequent accumulation of filth[4];

(4) Where a cooking shop is conducted in such a manner or beef is cooked there under such circumstances as may cause annoyance to the public or the neighbours;[5]

(5) Where a person allows prickly pear from his land to spread on a road used by the public;[6]

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(21) (1914) 1914 All. 341 (342): 37 All. 9, *Municipal Board* v. *Sudarshan*.
(1881) 7 Cal. L. R. 272 (273), *Harrendro Coomar Chowdhry* v. *Taramonee Chowdhrain*.
(1901) 1901 A. W. N. 25 (25), *Queen-Empress* v. *Umrao*.
[*See also the following cases*:—
(1912) 13 Cri. L. Jour. 513 (513) (Bom.), *Emperor* v. *Munilal Mohanlal* (Case under the Bombay District Police Act, 1890).
(1918) 1918 Bom. 91 (93): 43 Bom. 122, *Emperor* v. *Ramrao Visvanath* (Case under the City of Bombay Municipal Act of 1888).
(1918) 19 Cri. L. Jour. 742 (Cal.), *Nando Lal* v. *Bejoy Chandra Chatterjee* (Case under the Bengal Municipal Act).
(1913) 14 Cri. L. Jour. 511 (Cal.), *Corporation of Calcutta* v. *Mahamaya Debi* (Do.).
(1931) 1931 Cal. 433 (435): 58 Cal. 1124, *Jatindranath Borat* v. *Corporation of Calcutta* (Do.).]

Note 11.

(1) (1898) 25 Cal. 425 (430), *Indranath Banerjee* v. *Empress*.
(1905) 2 Cri. L. Jour. 762 (762): 32 Cal. 930, *Zafar Nawab* v. *Emperor*.
(2) (1928) 1928 All. 128 (128), *Gauri Shankar* v. *Sri Krishna*.
(3) (1898) 25 Cal. 425 (430), *Indranath Banerjee* v. *Empress*.
(1896) 19 Mad. 464 (468, 469), *Empress* v. *Saminadha Pillai*.
(4) (1910) 11 Cri. L. Jour. 665 (667) (Cal.), *Khagendranath Mitra* v. *Bhupendra Narain Dutt*.
(5) (1868) 1868 Pun. Re. No. 15, p. 36 (38), *Assa Nand* v. *Hoosain Buksh*.
(6) (1928) 1928 Mad. 1235 (1235, 1236): 52 Mad. 79, *Molaippa Goundan* v. *Emperor*.

(6) Where a toy shop owner exhibits certain clock work toys,[7] or sells 'satta' tickets in a shop[8] with the result that a large crowd is collected, and there is a dangerous rush; S. 133, Note 11.

In order, however, to constitute an act or illegal omission a public nuisance, it must, having regard to S. 268 of the Penal Code,—

(1) cause common injury, danger or annoyance to the *public* or to *the people in general* who dwell or occupy property in the vicinity, or

(2) be one which must *necessarily* cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.[8-a]

In cases coming under class 1, above, it is necessary to show that the act or the illegal omission *actually causes* injury, danger or annoyance to the public or the *people in general* who dwell or occupy the property in the vicinity.

It is not enough to show that the sentiments of certain persons or of a class of persons are offended by the act. The nuisance is *lex non favet votis delicatorum* (the law favours not the wishes of the dainty). In other words, the law makes no allowance for the susceptibilities of the hypersensitive.[9] So where certain Mahommedans for a religious purpose kill two cows in a private compound, only partly visible, it will not amount to a public nuisance.[10] But it was held that a person wilfully slaughtering cattle in a public street so that the slaughter could be heard and seen by the passers-by, would be committing a public nuisance.[11] Similarly, where a person cut up meat on his verandah and exposed it to the sight of persons passing along the road, it would not amount to a public nuisance merely because the sight would offend some Jains whose temple was close by.[12] So also a cremation held on a particular spot dedicated for that purpose[13] or the playing of music before a Mosque[14] or the making of noise by a Chowkidar for keeping thieves away[15] is not a public nuisance simply because it may annoy some people nearby.

In cases coming under class 2, above, it is not necessary to show that it has *actually caused* injury, etc. It is enough to show that the act is such as must *necessarily* cause the injury, etc. The High Court of Allahabad has, however, in the undermentioned case[16] held that in order to establish a charge of committing a public nuisance in a public place to the annoyance of *residents or passengers in the locality*, it is necessary to show that somebody was *actually* annoyed, though annoyance even to a *single person* is sufficient. The decision

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(7) (1911) 12 Cri. L. Jour. 258 (258, 259): 35 Mad. 368, *Emperor* v. *Noor Mahommed Suleman*.

(8) (1924) 1924 All. 568 (568), *Happoo Mal* v. *Emperor*.

(8-a) (1906) 4 Cri. L. Jour. 492 (493), *Emperor* v. *Madho Ram* (Temporary obstruction of public thoroughfare is public nuisance).

(9) (1908) 7 Cri. L. Jour. 381 (385, 386): 30 All. 181, *Shahbaz* v. *Umrao Puri*.

(10) (1908) 7 Cri. L. Jour. 381 (385, 386, 387): 30 All. 181, *Shahbaz Khan* v. *Umrao Puri*.

(1888) 10 All. 44 (46, 47), *Empress* v. *Zakiruddin*.

(1876) 25 Suth. W. R. 72 (73), *Muzhur Ali* v. *Gundowree*.

(1929) 1929 Lah. 252 (253), *Chuhar* v. *Emperor*.

(11) (1888) 10 All. 44 (46), *Empress* v. *Zakiruddin*.

(12) (1887) 12 Bom. 437 (439), *Queen-Empress* v. *Byramji Edalji*.

(13) (1896) 19 Mad. 464 (468, 469), *Empress* v. *Saminadha Pillai*.

(14) (1931) 1931 All. 674 (686, 687): 53 All. 836, *Janki Prasad* v. *Karamat Husain*.

(15) (1926) 1926 Oudh 414 (414, 415): 29 Oudh Cas. 302, *Emperor* v. *Ramcharan Ahir*.

(16) (1924) 1924 All. 194 (195), *Lallu Ram* v. *The Crown*.

S. 133, Note 11.

does not advert to the distinction between the two classes of cases specified in S. 268 of the Penal Code. It is submitted that the decision cannot be accepted as correct.

The question whether an act or omission causes or must necessarily cause injury, danger, or annoyance is one of fact which depends upon the circumstances of each case.[17] In *Bamford* v. *Turnley*,[18] Polloch, C.B., observed as follows:

"Most certainly, in my judgment, it cannot be laid down as a legal proposition or doctrine that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at midday which would not be a nuisance at midnight. That may be a nuisance which is permanent and continual which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose may be a nuisance if unreasonably loud and discordant of which the jury alone must be the Judge; but although not unreasonably loud, if the owner from some whim or caprice made the clock strike the hour every 10 minutes or the bell ring continually, I think that a jury would be justified in considering it to be a very great nuisance.....The compromises that belong to social life and upon which the peace and comfort of it mainly depend will furnish an indefinite number of examples in which some apparent natural right is invaded or some enjoyment abridged". Thus the bare solicitation of chastity[19] or the visiting of a prostitute to a Dak bungalow at the request of a person staying there,[20] or the letting of water on a public road[21] or gambling in a private place or in front of a Zamindary Cutcherry,[22] or mere angling in a tank,[23] or skinning an animal which dies a natural death[24] or the construction of a latrine on one's own land,[25] or the disposal of a corpse on a cremation ground or burning ghat set apart for the purpose[26] or allowing one's cattle or pigs to stray into other people's premises[27] or the building of a wall on one's own property[28] or the keeping of a cooking shop and cooking beef there[29] or using nightsoil as manure[30] or the selling of "satta" tickets in a shop along the road-side[31] may

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(17) See (1932) 1932 Mad. W. N. 111 (113), *Manikkam Pillai* v. *Emperor*.
(18) 31 L. J. Q. B. 286 (292).
(19) (1895) Rat. 765 (765), *Queen-Empress* v. *Raji*.
(1900) 22 All. 113 (114, 115), *Queen-Empress* v. *Nanni* (Not one which must necessarily cause nuisance).
(20) (1870) 2 N.-W. P. 349 (352), *Queen* v. *Mussamat Begum*.
(21) (1932) 1932 Mad. W. N. 111 (113), *Manikkam Pillai* v. *Emperor*.
(22) (1902-1903) 7 Cal. W. N. 710 (711), *Sasi Kumar Bose* v. *Emperor*.
(1867) 1867 Pun. Re. No. 16, pp. 35 (35), *Crown* v. *Pustoor Khan* (Gambling in a private house).
(1880) 1 Weir 240 (241) (Do.).
(1891) 14 Mad. 364 (365), *Queen-Empress* v. *Thandavarayudu*.
(1870) 7 Bom. H. C. Cr. C. 74 (76), *Reg.* v. *Hari Nagji* (Admitting gamblers to a house).
(23) (1883) 1 Weir 231 (231), *Punni Besoyi*.
(24) (1914) 1914 All. 363 (363), *Emperor* v. *Beni*.
(25) (1928) 1928 All. 128 (128), *Gauri Shankar* v. *Sri Krishna*.
(26) (1902) 25 Mad. 118 (130, 131), *Md. Mohidin Sait* v. *Municipal Commissioner*.
(1916) 1916 Bom. 122 (123), In re *Mukundrai Atmaram Desai*.
(1881) 2 Weir 64 (64).
(1898) 25 Cal. 425 (430), *Indranath Banerjee*.
(1896) 19 Mac. 464 (468, 469), *Emperor* v. *Saminadha Pillai*.
(27) (1894) 1 Weir 244 (244), *Vallapoo Kokdu*.
(1868) 9 Suth. W. R. Cr. 70 (71), *Onooram* v. *Lamessor*.
(1866) 6 W. R. 71 (72), *Joynath Mundul* v. *Jamul Sheikh*.
(28) (1910) 11 Cri. L. Jour. 665 (667) (Cal.), *Khagendranath* v. *Bhupendra Narayan*.
(29) (1868) 1868 Pun. Re. No. 15 Cr. pp. 36 (38), *Assa Hand* v. *Hossein Buksh*.
(30) (1886) 8 All. 99 (101), *Empress* v. *Jokhu*.
(31) (1929) 1929 Lah. 801 (801), *Nanakchand* v. *Emperor*.

not, under the particular circumstances of a case, amount to a public nuisance. But the same facts under another set of circumstances may amount to a public nuisance. Thus the solicitation by prostitutes in open public place some of them carrying charpoys with them,[32] or gambling in the market place[33] or on a thoroughfare[34] or cultivating paddy in the bed of a tank used for drinking purposes by the public[35] or angling in a tank with a bait which is of a foul kind,[36] may, in a given set of circumstances, amount to a public nuisance.

The jurisdiction of a Magistrate to take steps to remove a public nuisance cannot be defeated merely because it has been carried on without complaint for many years. The reason is that no one can acquire a prescriptive right to commit a public nuisance.[37]

12. 'Channel'.—The word 'channel' is not defined in the Code but is quite wide enough to include a catchment area in the centre of which there is a watercourse, any interference with which, justifies an action under this section.[1]

It is doubtful if a field across which surplus water of the neighbouring lands used to flow into the tank is a 'channel' within the meaning of this section.[2]

13. "Which is or may be lawfully used by the public".—It is essential for the applicability of the section that the way, river, channel or place from which a nuisance is sought to be removed is one which is or may be lawfully used by the public.[1] An obstruction, etc., in respect of a *private* place is not within the section.[1-a] The fact that the Magistrate has taken action under S. 133 is, however, sufficient *prima facie* to show that he considered that the *locus in quo* is a public place.[2] On the passing of the conditional order under this section the party proceeded against may appear and claim under S. 139-A, *infra*, that it is not a public place and if, on enquiry, the Magistrate finds that there is reliable evidence in support of such claim, he should stay proceedings and refer the party to the Civil Court.

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(32) (1900) 1900 Pun. Re. No. 2, pp. 3 (8, 9), *Mt. Nur Jan* v. *Queen-Empress.*
(33) (1881) 1 Weir 242 (242).
(34) (1915) 16 Cri. L. Jour. 254 (254): 1916 Mad. 617, In re *Juturi Venkatappa.*
(35) (1881) 1 Weir 229 (229).
(36) (1881) 1 Weir 231 (231).
(37) (1882) 2 Weir 59 (59), *Sheikh Mohidin.*
(1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagroshan Bharathi* v. *Madan Pandey.*
(1931) 1931 Bom. 326 (327), *Emperor* v. *Vadilal Dev Chand* (Case under Bombay District Police Act).

Note 12.

(1) (1926) 1926 Mad. 165 (166), *Ramaswami Chettiar* v. *Ramanathan Chettiar.*
(2) (1914) 1914 All. 213 (213): 36 All. 209, *Jagarnath Sahu* v. *Parameshwar Narayan.*

Note 13.

(1) (1919) 1919 Pat. 528 (529), *Teni Prasad Singh* v. *Sarjoo.*
(1923) 1923 Pat. 540 (541), *Rangi Sah* v. *B. N. W. Ry.*
(1874) 22 Suth W. R. Cr. 19 (19), In re *Shah Soojant Hoossein.*
(1876) 25 Suth. W. R. 4 (5), *Petamber Jugi* v. *Nasaruddy.*
(1876) 25 Suth. W. R. Cr. 72 (73), *Hadjee Muzhur Ali* v. *Gundowree Sahoo.*
(1902) 6 Cal. W. N. 886 (886), *Adhore Chandra Dey* v. *Ambika Churan Roy.*
(1880) 5 Cal. 875 (876), In the matter of *the petitioner of Chundernath.*
(1-a) (1864) 1 Suth. W. R. 324 (324), *Sham Doss* v. *Bhola Doss* (Path).
(1865) 2 Suth. W. R. 36 (36), *Queen* v. *Janokenath Bhuttacharjee.*
(1893-1900) 1893-1900 L. B. R. 574 (575), *Queen-Empress* v. *Ma Mya* (Path).
(1925) 1925 Oudh 130 (130), *Gauri Shankar* v. *Bhagalu Pandey* (Path).
(1866) 5 Suth. W. R. 58 (59), In re *Troylokhonath Bose* (Drain).
(1871) 15 Suth. W. R. 67 (68), *Beeharam Bhutta Charjee* (Drain).
(1928) 1928 All. 627 (628): 50 All. 871, *Munna Tewari* v. *Chandarbali* (Channel).
(1890) Rat. Un Cr. C. 516 (517, 518), In re *Jasvantsingji* (Channel).
(1903) 1903 Pun. Re. No. 2, pp. 4 (7), *Murad* (Channel).
(1867) 8 Suth. W. R. 239 (240), *Eshanchunder Banerjee* v. *Nund Coomar Banerjee* (Place).
(1921) 1921 Oudh 204 (204): 24 Oudh Cas. 327, *Emperor* v. *Sukhdei.*
(2) (1881) 8 Cal. L. R. 399 (400), *Imandi Khan.*

S. 133, Notes 13—14.

It is not necessary to give jurisdiction under this section that the way should be one which is generally *used* by the public. All that is required is that the way, etc., should be one which is or *may be* lawfully used by the public.[3]

Private property cannot be treated as public, merely because a section of the public have enjoyed *permissible* user over it.[4] Similarly, the fact that the residents of a particular village have a right to take their cattle across a field does not constitute the field a public way which is or may be lawfully used by the public.[5] But a way or a road may be established to be a public one where acts of user by the public are shown to have been acquiesced in by the owner of the land over which the way passes and those acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a public highway.[6]

14. "Public place"—Meaning of.—The expression "public place" has not been defined in this or in the Penal Code.

In *Queen* v. *Wellard*,[1] Grove, J., laid down that a public place "is a place where *the public go*, no matter whether they have a *right to go or not*" and this definition has been accepted by subsequent judicial decisions both in England and in India.[1-a] A place, in order to be public, must consequently be open to the public, *i.e.*, a place to which the public have lawful access by right of permissive usage or otherwise.[2]

Where a place is dedicated to the use of the public, it is of course, a public place. But it is not necessary that the *title* to the place should be in the public. A place may be a "public place" though it is the *private property* of an individual. It will depend upon the character of the place itself and the use actually made of it at a particular time,[3] and there are questions of fact which depend on the evidence in each particular case.[4] Thus a well belonging to a private individual who allows the public to use the water for drinking purposes[5] will

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(3) (1909) 10 Cri. L. Jour. 210 (211) (Cal.), *Hriday Chandra Das* v. *Shib Chandra.*
(4) (1924) 1924 All. 1 (7): 45 All. 656, *Abdul Wahid Khan* v. *Abdullah Khan.*
(5) (1906) 4 Cri. L. Jour. 65 (66) (All.), *Jhunnu Singh* v. *Emperor.*
(1930) 1930 Cal. 286 (288): 57 Cal. 526, *Pramnath Kundu* v. *Emperor.*
(1916) 35 Ind. Cas. 355 (355): 1916 Lah. 214: 1916 Pun. Re. 109, *Municipal Committee, Karnul* v. *Mahomed Umar Daraz Ali.*
(1869-1870) 5 Mad. H. C. R. 345 (358), *Seshaiyangar* v. *R. Raghunatha Rao.*
(1914) 1914 All. 213 (213): 36 All. 209, *Jagarnath Sahu* v. *Parmeshwar Narain* (User of a field as a channel).
[See also (1920) 1920 P. C. 43 (44): 1 Lah. 117: 43 Ind. App. 25, *Muhammad* v. *Municipal Committee of Karnal City.*]
(6) (1880) 6 Cal. L. R. 282 (284), *Anderson* v. *Juggodumba Debi.*

Note 14.

(1) (1884) 14 Q. B. D. 63 (66).
(1-a) (1915) 16 Cri. L. Jour. 704 (704): 1916 Mad. 474, *Emperor* v. *Govinda.*
(1916) 18 Cri. L. Jour. 7 (8): 1917 Mad. 124: 40 Mad. 556, In re *Musa.*
(1917) 18 Cri. L. Jour. 650 (650): 1916 Nag. 15: 12 Nag. L. R. 68, 542, *Rankaram Lal* v. *Emperor.*
(1904) 1 Cri. L. Jour. 349 (352): 31 Cal. 542, *Hari Singh* v. *Jadu Nandan Singh.*
(2) (1925) 1925 Nag. 123 (123), *Sabiniya* v. *Emperor.*
(1895) 17 All. 166 (166, 167), *Empress* v. *Srilal.*
(1906) 3 Cri. L. Jour. 216 (220): 30 Bom. 348, *Emperor* v. *Hussein Noor Mohomed* (A railway carriage forming part of a through special train is not a public place within the meaning of S. 12 of the Bombay Prevention of Gambling Act (IV of 1887) because to railway track as such public have no right of access except as passengers by train).
(3) (1902) 31 Cal. 542 (546), *Hari Singh* v. *Jadu Nandan Singh.*
[See also (1924) 1924 All. 768 (769): 46 All. 787, *Tulsidas* v. *Emperor.*]
(4) (1925) 1925 Nag. 123 (124), *Sabimiya* v. *Emperor.*
(5) (1916) 1916 Nag. 15 (15): 13 Nag. L. R. 68, *Ram Karan Lal* v. *Emperor.*

be a "public place". Similarly, a railway platform at a time when passenger trains arrive[6] or the goods yard of a railway station[7] will be a public place. But Railway land, not being a platform or yard to which the public have access is not a public place.[8] Nor is the verandah of a private house a public place merely by reason of the fact that it is accessible from a public street.[9] *See also* the following cases.[10]

Under the explanation to the section, a "public place" will include property belonging to the State camping grounds and grounds left unoccupied for sanitary or recreative purposes. The Explanation was first enacted in the Code of 1872 and gave legislative sanction to the decision in the undermentioned case[11] that land, the property of the State, designedly left unoccupied for sanitary or recreative purposes was a public place.

15. Trade or occupation injurious to the health or physical comfort of the community.—Before the amendment of 1923, it was held that the section only dealt with trades or occupations which are *in themselves* injurious to the health or physical comfort of the community and not with trades which in themselves were harmless, but in the conduct of which a public nuisance might be committed.[1] The addition of the words "conduct of" before the words "trade or occupation" now makes it clear that the section applies not only to cases where the trade or occupation is in itself injurious to the community, but also to cases where the *conduct* of the trade is injurious to the community.[2]

Where the manager of a bone mill permitted a large stock of bones to remain uncovered in the open for a long time with the result that it became rotten and emitted noxious smell, it was held that it was a nuisance as it materially interfered with the ordinary physical comfort of human existence.[3]

A noise made by the working of an engine in a factory or a mill is a serious nuisance if it is sufficient to prevent the neighbours from sleeping at night and from concentrating on their work during the day.[4]

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(6) (1857) 26 L. J. Exch. 393, *Davis.*

(7) (1902) 26 Bom. 609 (613), *Cawasji Merwanji Shroff* v. *G. I. P. Ry.* (Though the public have a limited right of access).

(8) (1923) 1923 Pat. 540 (541), *Remgi Sah* v. *B. N. W. Ry. Co.*

(9) (1931) 1931 Lah. 576 (576), *Janga* v. *Emperor.*

(1881) 1881 All. W. N. 17 (17), *Bhagwan* v. *Reg.* (Verandah attached to a room of a private house, looking on an alley is not public place within S. 13 of Act III of 1867).

(10) (1921) 1921 Oudh 204 (204): 24 Oudh Cas. 327, *Emperor* v. *Sukhdei* (Vacant space between two houses not public place).

The following are cases under the Gambling Acts.

(1881) 1881 All. W. N. 8, *Empress* v. *Ratan.*

(1881) 1881 All. W. N. 17, *Empress* v. *Bhagwan.*

(1887) 1887 All. W. N. 75, *Empress* v. *Kalamdar Khan.*

(1895) 1895 All. W. N. 127, *Empress* v. *Choke Lal.*

(1902) 6 Cal. W. N. 33, *Khudi Sheikh* v. *Emperor.*

(1920) 1920 Lah. 104, *Moula* v. *Emperor.*

(1920) 1920 Lah. 262, *Badro-ud-din* v. *Emperor.*

(1895) 18 Mad. 46, *Empress* v. *Jagannayakulu.*

(1913) 14 Cri. L. Jour. 670: 9 Nag. L. R. 164, *Vithu* v. *Emperor.*

(1917) 1917 Nag. 154: 14 N. L. R. 137, *Gajju* v. *Emperor.*

(1913) 14 Cri. L. Jour. 167 (Bom.), *Emperor* v. *Chenappa.*

(1913) 14 Cri. L. Jour. 449: 37 Bom. 651, *Fathu Mahomed* v. *Emperor.*

(11) (1869-1870) 5 Mad. H. C. R. 345 (358), *Seshaiyangar* v. *Raghunatha Rao.*

Note 15.

(1) (1888) 1888 P. R. 47, page 118 (119), *Mrs. Boreiro* v. *Empress* (Keeping a house of public entertainment).

(1889) 1889 Pun. Re. No. 39, page 142 (143), *Moti Shah* (Sowing of maize, bajree, etc., near a town).

(1920) 1920 Lah. 258 (261): 1 Lah. 163, *Gokal Chand* v. *Emperor.*

(2) (1930) 1930 Cal. 757 (758), *The Calcutta Steam Navigation Co., Ltd.* v. *Emperor* (*Per* S. K. Ghose, J.—Graham, J., contra).

(3) (1907) 5 Cri. L. Jour. 45 (48): 34 Cal. 73, *G. Berekefeldt* v. *Emperor.*

(4) (1931) 1931 All. 433 (433): 53 All. 706, *Raghunandan Prasad* v. *Emperor.*

S. 133, Note 15.

The dwelling of a prostitute in a quarter inhabited by respectable persons cannot by itself be considered to be "injurious to the comfort" of the community and therefore a nuisance,[5] but the solicitation for immoral purposes by prostitutes with *charpoys* with them, on a public road and their remaining in open space in close proximity to the habitations of respectable citizens and the conduct of their occupation there will be injurious both to the health and physical comfort of the community and the public using the road.[6] The driving of cattle to and from a cattle market through very narrow and congested lanes, if it causes obstruction to the public and is a source of danger to human life is a trade or occupation injurious to the physical comfort of the community.[7] An order under this section can be made to prevent a discharge from a factory into a river of a noxious effluent which might be injurious to the health of the community which has right to the use of the water in such river.[8]

Inoculation for small pox is not by itself an offence, but where it is necessary to prohibit it in the interests of the public, proceedings may be taken under this section against the inoculator.[9] But where certain persons got their children inoculated for small pox, it was held that they could not be said to be carrying on any trade or occupation and that the section had no application.[10] The proprietor of a cremation ground cannot be said to be carrying on any trade or occupation within the meaning of this section.[10-a]

The following are not trades or occupation injurious to the health or physical comfort of the community:—

(1) The opening of a new market close to an old one, even if sometimes people are dragged from one market to the other.[11]

(2) Plying of rival steam launches even though in their rivalry people are taken on board from places other than jetties and from boats, much to the annoyance and danger to the public travelling in the launches.[12]

(3) Keeping a house of public entertainment.[13]

(4) Cultivation of maize, jowar or bajra within a short distance from the town.[14]

Where there is no effect on public health, the conduct of an occupation like a tannery[15] or a lime-kiln[16] or a brick-kiln[17] cannot be ordered to be stopped.

(1904) 1 Cri. L. Jour. 513 (513): 1904 P. R. Cr. 9, *Phiraya Lal* v. *Emperor* (Rice husking machines).

(1920) 1920 Cal. 550 (550), *Krishna Mohan Banerjee* v. *A. K. Guha* (Noise in an iron-yard).

(1934) 1934 Nag. 193 (193), *Munnalal* v. *Lele* (Noise of mill causing discomfort to residents of locality).

(5) (1875) 24 Suth. W. R. 68 (69), *Numdo Kumaree* v. *Anund Mohan.*

(1900-01) 5 C. W. N. 566 (567), *Basant Baistabi.*

(6) (1900) 1900 Pun. R. 2, p. 3 (8, 9), *Nurjan.*

(7) (1921) 62 I. C. 822 (822, 823) (Cal.), *Mohendra Narain Roy Chowdhury* v. *Emperor.*

(8) (1926) 1926 Pat. 506 (507), *Deshi Sugar Mill* v. *Tupri Kahar.*

(9) (1893-1900) 1893-1900 L. B. R. 545 (546), *Empress* v. *Nga San Pu.*

(10) (1914) 1914 U. B. 3 (3): 1 U. B. R. 180, *Emperor* v. *Nga Kyank Lon.*

(10-a) (1898) 25 Cal. 425 (431), *Indranath Banerjee* v. *Queen-Empress.*

(11) (1904) 14 Mad. L. J. 207 (208), *In re Moidin Kutti.*

(12) (1930) 1930 Cal. 757 (758), *Calcutta Steam Navigation Co., Ltd.* v. *Emperor.*

(13) (1888) 1888 Pun. Re. 47, p. 118 (119), *Mrs. Boreiro* v. *Empress.*

(14) (1889) 1889 P. R. 39, p. 142 (143), *Moti Shah* v. *Crown.*

(15) (1911) 12 Cri. L. Jour. 146 (147, 148) (Lah.), *Emperor* v. *Fazal Din.*

(1888) 1888 P. R. 17, p. 31 (32), *Shadi* v. *Empress.*

(16) (1932) 1932 All. 159 (161): 54 All. 359, *Lalman* v. *Bishambharnath.*

(17) (1920) 1920 Lah. 258 (261): 1 Lah. 163, *Gokal Chand* v. *Emperor.*

S. 133, Notes 15—17.

Though the legislature has under local or special Acts, left certain trades or occupations to the control of Local and Municipal Boards and provided remedies thereunder, the existence of such an alternative remedy does not deprive the Magistrate of jurisdiction to pass an order under this section. The Magistrate has jurisdiction to regulate the manner in which a trade is to be conducted and not be a nuisance to the community.[18]

But it is generally inexpedient for a Magistrate to take action in such cases and he will act wisely if he refers the party to set in motion the machinery provided in those local Acts.[19]

This section relates only to existing state of things and not to the possibility of future results. Therefore no order can be passed under this section on the possibility that the digging of pits for the purpose of brick making may, in the future, be injurious to the health of the community.[40]

16. Community—meaning of.—The meaning of the word "community" cannot be distinguished from the words "public" or "neighbours". Therefore an act found to be injurious to the physical comfort of the neighbours must be held to be so to the physical comfort of the community and comes under this section even though there may be some part of the community which is not affected.[1] But the interference with public comfort must be considerable and must be caused to a considerable section of the public.[2]

17. Building, tent or structure or tree.—An order can be passed under this section requiring a person owning, possessing or controlling a building, tent, structure or tree to prevent or stop the erection of, or to remove, repair, or support such building, tent or structure or to remove or support any tree that is likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passing by.[1]

Before the amendment in 1923, the section dealt only with "buildings" and the expression "building" was held to indicate some structure whether roofed or not[2] intended to afford protection to the persons dwelling inside it or the property placed there for custody.[3] It was held not to include any other enclosure or structure.[4]

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(18) (1920) 1920 Cal. 550 (550), *Krishna Mohan Banerjee* v. *A. K. Guha.*
(1932) 1932 All. 159 (161): 54 All. 359, *Lalman* v. *Bishambharnath.*
(1871) 16 Suth. W. N. Cr. 6 (9 and 10), *Municipal Commissioner of Calcutta* v. *Mahomed Ali.*

(19) (1932) 1932 All. 159 (161): 54 All. 359, *Lalman* v. *Ch. Bishambarnath.*
(1920) 1920 Cal. 550 (550), *Krishna Mohan Banerjee* v. *A. K. Guha.*

(20) (1920) 1920 Lah. 258 (261): 1 Lah. 163, *Gokal Chand* v. *Emperor.*

Note 16.

(1) (1931) 1931 All. 433 (433): 53 All. 706, *Raghunanden Prasad* v. *Emperor.*
(1904) 1 Cri. L. Jour. 513 (513): 1904 P. R. Cr. 9, *Phiraya Mal* v. *Emperor.*

(2) (1911) 12 Cri. L. Jour. 146 (147), *Emperor* v. *Fazal Din.*
(1926) 1926 Oudh 414 (414, 415): 29 Oudh Cas. 302, *Emperor* v. *Ram Charan Ahir.*

Note 17.

(1) (1868-69) 4 Mad. H. C. App. 34 (35) (House in dangerous and dilapidated condition).
(2) (1926) 1926 Lah. 28 (29): 6 Lah. 463, *Ismail* v. *Crown.*
(1879) 1879 Pun. Re. No. 35, page 97 (100), *Shera* v. *Empress.*

(3) (1927) 1927 Mad. 343 (344), *Lakshmana Koundan* v. *Emperor.*
(1879) 1879 Pun. Re. 10, p. 29 (29), *Deed* v. *Crown.*
(1879) 1879 Pun. R. 35, p. 97 (101, 102), *Shera* v. *Empress.*
(1925) 1925 Lah. 117 (118), *Niamat* v. *Crown.*
(1929) 1929 Sind 17 (18, 19): 22 S. L. R. 466, *Wali Mahommed* v. *Emperor.*
(1881) 1881 Pun. Re. 1, p. 1 (1), *Jabar* v. *Empress.*
(1930) 1930 Lah. 414 (415), *Bhag* v. *Emperor.*
(1916) 17 Cri. L. Jour. 536 (537): 1916 Oudh 109, *Salig Ram* v. *Emperor.*
(1874) 6 N.-W.P.H.C.R. 307 (309), *Queen* v. *Dullee.*

(4) (1928) 1928 All. 607 (607), *Munshi* v. *Emperor* (Open space adjoining a house, surrounded by thorns, with no door).
(1887) 1887 Pun. Re. 57, page 151 (152),

S. 133, Notes 17—19.

A "railway carriage" or "a brake van" is not a "building" within this section.[5]

The ground for taking action under this clause is that the building, etc., is *likely to fall* and thereby cause injury. The likelihood of a tree enabling thieves to get into a house is no ground for ordering the tree to be removed under this section.[6]

The section does not apply unless the danger or injury is an *existing* one.[7]

Again, in order to justify the taking of action under this section, the state of the building should be dangerous *in presenti* and not *in futuro*. In other words, it is the condition of things at the time when the inquiry is held that has to be looked to. If at such a time a building or a tree is likely to fall and thereby endanger the life of a passer-by, action under the section is justified. It is not meant to apply to what may happen at some indefinite time in the future or under quite abnormal circumstances.[8]

18. Persons living or carrying on business in the neighbourhood or passing by.—The persons who require protection under this section are persons living or carrying on business in the neighbourhood or passing by. It will not apply to persons living in the alleged dangerous house itself or in the servants' house in the compound. The words "persons passing by" will not include persons going to or from the house for their private business or pleasure in the exercise of their *private* rights. A Magistrate cannot therefore issue an order under this section to repair a house standing away from a public road in its own compound.[1]

19. Form of order.—*See* Schedule V, Form No. XVI.

An order under this section is only a conditional and not an absolute.[1] It should be in writing,[2] and should state the *time* within which, the *Magistrate* before whom and the *place* at which the person proceeded against may appear and move to have the order set aside.[3] It should not be a general order, but should be directed to particular individuals.[4] It must not be vague, but must be definite. Where the person against whom it is directed cannot learn from

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Deed v. *Crown* (Cattle enclosure having a wall on one side and thorn hedge on other sides).
(1905) 1905 Pun. Re. 28, p. 62 (63), *Emperor* v. *Ramzan* (Cattle pen).
(1919) 1919 Lah. 333 (333), *Sundar* v. *Emperor* (A Court yard partly surrounded in the front by a mudwall with no roof over it nor any door or gate way).
(1924) 1924 Lah. 623 (623), *Buta* v. *Emperor* (A Court yard bounded by walls with no door).
(1925) 1925 Lah. 279 (279), *Mulchand* v. *Emperor* (A court yard bounded by walls on 3 sides only).
(1927) 1927 Mad. 343 (344), *Lakhmana Koundan* v. *Emperor* (A fencing which is a means of merely preventing ingress or egress).
(5) (1880) 1 Weir 436 (436).
(6) (1883) 1883 All. W. N. 222 (223), *Hiralal*.
(7) (1890) 1890 P. R. 5, p. 11 (11), *Mt. Rajawan* v. *Empress*.
(8) (1924) 1924 All. 667 (668), *Gokul* v. *Emperor*.

Note 18.

(1) (1898) 20 All. 501 (505), *Empress* v. *Jasoda Nand*.

Note 19.

(1) (1868) 10 Suth. W. R. Cr. 53 (54), In re *Hari Mohan Malo*.
(1883) 9 Cal. 637 (639), *Empress* v. *Brojo Kanto Roy*.
(2) (1870) 2 Agra 1 (2), *Government* v. *Chooneelal*.
(1868) 10 Suth. W. R. 53 (53), In re *Hari Mohan Mulo*.
(1915) 16 Cri. L. Jour. 24 (25): 1915 Cal. 741, *Janakinath Chakravarthi* v. *Jnendranath Chakravarthy*.
(1892-96) 1 Upp. Bur. R. 178 (178), *Empress* v. *Nga Po Tun*.
(3) (1883) 9 Cal. 637 (639), *Empress* v. *Brojokanto Roy*.
(1867) 1867 Pun. Re. 26, p. 46 (46), *Crown* v. *Babur Mull*.
(1872-1892) L. B. R. 363 (364), *Queen-Empress* v. *Shwe Pe*.
(4) (1886) 8 All. 99 (100, 101), *Queen-Empress* v. *Jokhu*.
(1887) Rat. Un. Cr. 342 (342, 343), *Manekchand Lalchand*.

S. 133, Notes 19—20.

its terms what it is that he is to do for the purpose of complying with it, the order will be set aside as being vague and indefinite.[5] An order directing the demolition of a portion of a structure, must definitely point out and mark off how much of the structure should be removed.[6] Again, in a proceeding instituted against a number of persons it is essential that the order should state accurately with regard to each person, the specific obstruction made by him and which he is required to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions.[7] The time specified in the order runs from the date of the order and not of the service on the person, and if it is served after the expiry of such time, the order is a nullity and all the consequent proceedings thereon are void.[8]

20. Directions in the order.—The section gives an exhaustive list of the matters in respect of which the Magistrate is empowered to pass orders.[1] It does not confer general powers to pass orders on any matter he may consider necessary.[2] Thus no order can be passed under this section directing a person to refrain from drinking the water of a certain well and to prevent others from drinking that water,[3] or not to cultivate certain lands beyond a particular spot,[4] or to construct a new drain in place of an old one,[5] or a new *bund*[6] or to build pig styes at a certain distance from the road,[7] or not to use a place as a cremation ground[8] or to allow a place to be used as a cremation ground[9] or to deliver custody of children.[10]

Again, an order under this section should direct the removal of an obstruction or nuisance or the doing of anything thereunder, only in the way specified therein and not otherwise.

Illustrations.

(1) Where the obstruction to a road was by a fence the order should be for removal of the fence and not of the house itself from which the fence was constructed.[11]

(2) Where a latrine is allowed to remain in such a condition as to be a nuisance to persons using a public place, the order should be to abate the nuisance and not to remove the latrine.[12]

(1916) 1916 Bom. 122 (123), In re *Mukundrai.*
(1870) 14 Suth. W. R. 177 (177), *Becharam Ghoroou* v. *Boistubnath Bhooyan.*
(1872-1892) S. J. & R. L. B. 363 (364), *Empress* v. *Shwe Pe.*
[See also (1928) 1928 All. 300 (301), *Jugal Kishore* v. *Emperor.*]
(5) (1916) 17 Cri. L. Jour. 409 (411): 1917 Cal. 207: 44 Cal. 61, *Rahimohan Karmokar* v. *Emperor.*
(1910) 11 Cri. L. Jour. 213 (214) (Cal.), *Kali Mohan* v. *Nakari Chandra Das.*
(6) (1925) 1925 All. 310 (310), *Emperor* v. *Jhaulal.*
(1915) 16 Cri. L. Jour. 160 (160): 1915 Cal. 402, *Bhagat Pershad* v. *Ramrup Karmarkar.*
(7) (1916) 17 Cri. L. Jour. 409 (410): 1917 Cal. 207: 44 Cal. 61, *Rai Mohan Karmakar* v. *Emperor.*
(1928) 1928 Lah. 187 (188), *Khemchand* v. *Emperor.*
(8) (1872) 1 Bom. P. J. 282 (283), *District Magistrate, Khandesh* v. *Sitaram.*

Note 20.

(1) (1893) 1893 A. W. N. 145 (145), *Queen-Empress* v. *Sheoambar Lal.*
(2) (1874) 22 Suth. W. R. Cr. 19 (19), *Soojant Hossein.*
(1837-41) 2 Moo. I. A. 428 (435): 3 Moo. P. C. 368: 1 Sar. 215, *E. C. Morgan* v. *Leech.*
(3) (1893) 1893 A. W. N. 145 (145), *Empress* v. *Sheoambar Lal.*
(4) (1904) 1904 All. W. N. 233 (234), *Emperor* v. *Kalian.*
(5) (1900) 1900 A. W. N. 138 (138), *Bishunath* v. *Empress.*
(6) (1925) 1925 Cal. 399 (400), *Rahimaddi Jamadar.*
(7) S. C. Oudh 60, *Empress* v. *Jodhi.*
(8) (1907) 6 Cri. L. Jour. 370 (371) (Cal.), *Saran Lal* v. *Lal Mahomad Lal.*
(9) (1875) 24 Suth. W. R. 6 (7), *Gudadhur Kamula* v. *Baidanath.*
(10) (1880) 2 Weir 66 (67).
(11) (1904) 1 Cri. L. Jour. 669 (671), *Moung Shwe Ye* v. *Moung Pyu.*
(12) (1902) 4 Bom. L. R. 882 (882), In re *Balaji Narayan Chitale.*
(1928) 1928 All. 128 (128), *Goure Shankar* v. *Shri Krishna.*
(1910) 7 All. L. J. (N.) 53, *Madan Lal* v. *King-Emperor.*

S. 133, Notes 20—22.

(3) Where the nuisance is caused by the accumulation of filth and want of space to clear the drainage between a wall and the neighbour's house, the order should be to abate the nuisance and not to pull down the wall.[13]

(4) Where the nuisance is caused by a burning *ghat*, the order should be to remove the nuisance, *i.e.*, take such steps, as would result in the cremation of corpses ceasing to be a nuisance and not to remove the *ghat* itself.[14]

(5) Where the cooking of beef in a cooking shop under certain circumstances or the manner in which the shop is conducted, is a nuisance, the order should be to abate the nuisance and not to order the shop to be closed.[15]

(6) While stopping a brick-kiln as being a trade or occupation injurious to the public, the order cannot direct the filling up of pits made for the purpose of making bricks.[16]

(7) Where the sparks from a forge might set fire to cotton stored in an adjoining factory, the order should be to so construct the forge as not to allow sparks to issue out of it and not to have the forge removed.[17]

(8) Even where a branch of a tree is likely to endanger human life, the order should not be to cut it down but to secure the safety of the public, by directing a proper support to be given so as to prevent the branch from falling.[18]

(9) In the case of a tank, well or excavation, the order should be to fence the same and not to order them to be filled up[19] or repaired.[20] But where the tank, becomes dry and people throw rubbish in it and it ceases to be any longer a tank, and becomes a public nuisance, it can be ordered to be filled up[21] and in such a case, the method of removing the nuisance should be left to the person proceeded against, and to order it to be done in a particular way, for example, by excavating it, is improper.[22]

21. "**To appear before himself or some other Magistrate of the first or second class**".—Under the Code of 1861, an order under this section could direct a person against whom an order was issued to appear only before the Magistrate *who issued the order*. But under this Code, the order may direct such person to appear before the Magistrate who issues the order, or any other Magistrate of the first or second class, except where the party demands a jury under S. 135, *infra*, in which case the matter can be disposed of only by the Magistrate issuing the conditional order and not by any other Magistrate.[1]

22. "**And move to have the order set aside or modified**".—An order under the corresponding sections in the Codes of 1861 and 1872 had to direct the party against whom the order was made "to show cause why the order should not be enforced" and on cause being shown, the Magistrate was empower-

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(13) (1910) 11 Cri. L. Jour. 665 (667) (Cal.), *Khagendranath Mitra* v. *Bhupendra Narayan Dutt.*
(14) (1898) 25 Cal. 425 (431), *Indranath Banerjee* v. *Queen-Empress.*
(15) (1868) 1868 P. R. No. 15, p. 36 (38), *Assa Nand* v. *Hoosein Buksh.*
(16) (1929) 1929 All. 114 (115): 51 All. 489, *Bhagat Ram* v. *Emperor.*
(17) (1896) Rat. Un. Cr. C. 872 (872), In re *Lahanu.*
(18) (1924) 1924 All. 667 (668), *Gokul* v. *Emperor.*
(19) (1868) 10 Suth. W. R. 27 (27), *Bistoo Chunder Chakrabutty* (Tank).
(1929) 1929 All. 114 (115): 51 All. 489, *Bhagat Ram* v. *Emperor* (Excavations).
(1898) 22 Bom. 714 (715), In re *Sulemanji Gulam Husen* (Excavations).
(1874) 22 Suth. W. R. 19 (19), *Soojaut Hossein* (Excavations).
(20) (1871) Rat. Un. Cr. C. 50 (50), *Reg.* v. *Tatya* (Well).
(21) (1868) 10 Suth. W. R. Cr. 27 (27), In the case of *Bistoo Chunder Chukrabutty.*
(22) (1868) 10 Suth. W. R. 51 (52), *Paul Dass.*

Note 21.

(1) See (1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagrosem Bharthi* v. *Madan Pande.*
(1898) 25 Cal. 278 (279, 280), *Preonath Dey* v. *Gobardhone Malo* (Code of 1882).
(1886) 9 Mad. 201 (202), In re *Narasimha* (Code of 1882).
[See also (1898) 2 Weir 61 (61), In re *Venkanna* (Do.).]

S 133, Notes 22—28.

ed to let the matter drop.[1] Under the present section, an order has to direct the person proceeded against "to move to have the order set aside, or modified". The section thus contemplates that in suitable cases the order initially made may not only be set aside, but may be modified and the modified order be allowed to stand.[2]

A Magistrate does not act legally if he does not call upon the person with whose property he proposes to interfere to appear and show cause.[3]

23. "Order when to become final".—*See* Ss. 136, 137 and 139, *infra*.

24. Enquiry and finding.—*See* Ss. 137 and 139-A, *infra*.

24-A. Parties to order.—An order under this section binds the person against whom it is passed, and nobody else.[1] It has to be directed to a particular individual and cannot be addressed to the public in general.[2] (Compare S. 144 in this respect.)

25. Order, if a judicial proceeding.—Under the Code of 1861, it was held that an order under this section was a judicial proceeding.[1] The Code of 1872 specifically provided that it was a judicial proceeding.[2] Under the Code of 1882 and the present Code, any proceeding in the course of which evidence is or may be legally taken on oath is a judicial proceeding,[3] and will include an order under this section.

26. Effect of death of party on order.—Where the individual proceeded against under this section dies, the order must be considered spent and ceases to have further effect. If it is necessary to issue an order against the successor in interest, separate proceedings must be taken against him.[1]

27. Disobedience of order.—*See* Ss. 136 and 140, *infra*.

28. Jurisdiction of Civil Courts—Sub-S. (2).—Even before the provision corresponding to sub-S. (2) was introduced in 1882, it had been held by decisions that a Civil Court could not set aside an order duly made under this section.[1] The introduction of the said provision gave legislative effect to those decisions. The object of the provision is to enable Magistrates to make

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Note 22.

(1) (1882) 8 Cal. 883 (884), *Ishur Chandurnath* v. *Kali Chandurnath*.
(2) (1925) 1925 All. 310 (311), *Jhan Lal* v. *Emperor*.
(3) (1871) 16 Suth. W. R. Cr. 63 (68), *Collector of Hooghly* v. *Taraknath Mukhopadhya*.

Note 24-A.

(1) (1935) 1935 All. 79 (80), *Ram Sahai* v. *Uttama Debi*.
[See (1874) 22 Suth. W. R. 461 (462), *Deb Chunder Das* v. *Joy Chunder Pal* (Person not party to proceedings dispossessed under colour of order in proceedings can sue in ejectment on ground of such dispossession).]
(2) (1883) 12 Cal. L. R. 231 (232), In the matter of *Komul Kisto Bonick* (General order directing the public not to frequent the roads and public places in a village between certain hours is illegal).

Note 25.

(1) (1872) 9 B. H. C. R. 160 (163), *Ganprasad Bin Sobaram* (Overruling 4 Bom. H. C. R. 150).
(1871) 16 Suth W. R. 63 (72, 73), *Taraknath*.
(1869-70) 5 Mad. H. C. R. 345 (353), *Seshaiyangar* v. *Raghunath Rao*.
(2) (1874) 22 Suth. W. R. (Cr.) 19 (19), *Shah Soojant Hossein*.
(1875) 1875 Pun. R. 17, p. 23 (24), *Abdul Kadir*.
(3) [See section 4-l (m).]

Note 26.

(1) (1928) 1928 All. 300 (301), *Bohray Jugai Kishore* v. *Emperor*.

Note 28.

(1) (1868) 12 Suth. W. R. 18 (19, 20) (F.B.), *Ujalamaye Dasi* v. *Chandra Kumar Neogi* (Overruling 7 W. R. 95).
(1869) 11 Suth. W. R. 434 (435), *E. G. Rooke* v. *Pearee Lal*.
(1867) 7 Suth. W. R. 11 (12), *Bakas Ram Sahoo* v. *Chummun Ram*.
(1872) 1 Bom. P. J. 225 (226), *District Magistrate, Kandesh* v. *Sitaram*.

S. 133, Notes 28—31.

speedy orders and deal speedily with cases where a public nuisance has been committed.[2]

This bar is only applicable to a *conditional* order passed under this section but not to an order absolute which might be made under later sections in the absence of a clause similar to this in S. 140, *infra*.[3]

As to the maintainability of a suit for a declaration against any one of the public who claims to use the road or place as a public one, *see* S. 140, *infra*, and the following cases.[4]

As an order under this section cannot be questioned in any Civil Court, it ought to be passed sparingly and after great caution.[5]

29. Costs.—There is no provision for payment of costs by one party to the proceedings to the other and an order for costs is therefore improper.[1]

30. Further enquiry.—As a complaint under this section is not a complaint of an offence as defined in S. 4 (1) (*h*), *supra*, S. 436, *infra*, under which further enquiry could be ordered, will not apply to such a complaint and therefore any order for further enquiry into a matter coming under this section is *ultra vires*.[1] *See* further, Notes to S. 436, *infra*.

But there is nothing in law to prevent the Magistrate himself reviving a proceeding,[2] or drawing up fresh proceedings[3] under this section regarding the same matter which had been previously dropped, provided there are materials before him on which he could act.

31. Revision.—A High Court has undoubtedly jurisdiction to entertain a revision on grounds of fact, but this power will be sparingly used and the rule on which it will so act is that it will interfere where, either there is no evidence to support the finding or where the finding arrived at is perverse or such as no reasonable man could have arrived at on the evidence produced.[1] But a person invoking the revisional jurisdiction of the High Court is bound,

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[See also (1865) 2 Suth. W. R. 287 (287), *Anund Chunder* v. *Rokho Taran Chaterjee*.]

(1871) 15 Suth W. R. 293 (295), *Madhab Chandra Guho* v. *Komala Kant Chakrobutty*.

(2) (1921) 1921 Bom. 29 (30), *Rangu Bai Guru Rao*, In re.

(1929) 1929 All. 833 (833): 51 All. 1025, *Dulichand* v. *Emperor*.

(3) (1929) 1929 All. 833 (833): 51 All. 1025, *Dulichand* v. *Emperor*.

(4) (1882) 6 Bom. 670 (672), *Nilkantappa*.

(1882) 6 Bom. 672 (673), *B. Chatrakalal* v. *The First Class Magistrate*.

(1893) 17 Bom. 293 (299), *Secretary of State for India in Council* v. *Jethabhai Kalidas*.

(1864) 1 Suth. W. R. 277 (277), *Kadar Mahomed* v. *Mohamed Zafar*.

(1867) 7 Suth. W. R. 47 (48), *Azeezoollah Guzee* v. *Bank Beharee Roy*.

(1873) 19 Suth. W. R. 426 (426), *Gorroo Pershad* v. *Probhoo Ram Chuttopadhya*.

(1881) 6 Cal. 291 (294), *Muttee Ram* v. *Mohi Lall*.

(1887) 14 Cal. 60 (63), *Khoda Buksh* v. *Mongling Mundal*.

(1910) 6 Ind. Cas. 46 (46) (Cal.), *Ekkar Ali* v. *Anumanji*.

(5) (1914) 15 Cri. L. Jour. 698 (699): 1915 Cal. 168: 42 Cal. 158, *Manipur day* v. *Bidhu Bhusan Sarkar*.

(1903) 1903 Pun. Re. No. 2, p. 4 (8), *Marad*.

Note 29.

(1) (1925) 1925 Cal. 399 (401), *Rahimaddi Jamadar*.

Note 30.

(1) (1897) 24 Cal. 395 (397, 398), *Srinath Roy* v. *Ainaddie Haldar*.

(1925) 1925 Oudh 736 (736), *Prittupal* v. *Emperor*.

(1910) 14 Cal. W. N. lv (lv).

(2) (1898) 25 Cal. 425 (428), *Indranath Banerjee* v. *Empress*.

(1900-01) 5 Cal. W. N. 173 (174), *Ishan Chandra* v. *Pranna Kumar*.

(3) (1931) 1931 Cal. 2 (3), *Satish Chandra Sen* v. *Krishna Kumar Das*.

(1885) 11 Cal. 271 (273, 274), *Makan Lal Saha* v. *Makhan Chora Saha*.

Note 31.

(1) (1924) 1924 All. 1 (4): 45 All. 656, *Abdul Wahid Khan* v. *Abdullah Khan*.

(1871) 7 Beng. L. R. 516 (533), *Municipal Commissioners for the Suburb of Calcutta* v. *Amnant Ali*.

according to the practice of the High Court, to apply first to the Sessions Judge or to District Magistrate.[2] S. 133, Note 31.

S. 134.

Service or notification of order.

134.* (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"PERSON"	2
"HEREIN PROVIDED FOR SERVICE OF A SUMMONS" ..	3
IF SUCH ORDER CANNOT BE SO SERVED	3-A
WHETHER MERE KNOWLEDGE WITHOUT SERVICE SUFFICIENT	4
WHETHER DEFECT IN SERVICE OR PROCLAMATION CURABLE BY S. 537.	5

Other Topics.

Non-service of notice—Effect. See Note 4, Pt. 1. Scope of the section. See Note 5, Pt. 1.

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*(CODE OF 1882—S. 134.)

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

(CODE OF 1872—S. 522.)

Service or notification of order.

522. The order mentioned in section five hundred and twenty-one shall, if practicable, be served personally on the person to whom it is issued.

But if personal service is found to be impracticable, such order shall be notified by proclamation and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

(CODE OF 1861—S. 309.)

Service or notification of order.

309. Such order shall, if practicable, be served personally on the person to whom it is issued; but if personal service is found to be impracticable, the order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

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(2) (1924) 1924 All. 1 (4): 45 All. 656, *Abdul Wahid Khan* v. *Abdulla Khan.*
(1921) 1921 Cal. 76 (76): 48 Cal. 584, *Rash Behari Saha* v. *Phani Bhusan Haldar.*

S. 134, Notes 1—5.

1. **Legislative changes.**—The words "in manner herein provided for service of a summons" were newly added in S. 134 of the Code of 1882. This section and S. 134 of the Code of 1882 are similarly worded.

2. **"Person."**—The word "person" includes any company or association or body of persons whether incorporated or not.[1] It can, therefore, include all the male adult residents in a certain *mohalla*.[2]

3. **"Herein provided for service of a summons."**—Ss. 69 to 71, *supra*, lay down the procedure for service of summons. An order under S. 133 should also be served in the same manner. Thus it cannot be affixed as provided by S. 71 unless it is found that it cannot be served as provided by Ss. 69 and 70.[1]

3-A. **"If such order cannot be so served."**—It is only when an order cannot be served in the manner provided for the service of summons that a proclamation under sub-S. (2) can be resorted to. Thus where the person to be served cannot be found, an attempt must be made to serve the order on some adult male member of his family (S. 70) or to fix it on some conspicuous part of his house. It is only when either of these courses is not possible that a proclamation must be issued.[1]

4. **Whether mere knowledge without service sufficient.**—Where the parties affected have information of the order issued under S. 133, it is immaterial that the mode in which it is brought to their notice is not in strict accordance with law.[1]

5. **Whether defect in service or proclamation curable by S. 537.**—This section is only directory and an omission to follow the direction given therein is an irregularity curable by S. 537, provided the person or persons affected had actual knowledge of the order issued under S. 133 and could have defended themselves under S. 135.[1]

S. 135.

135.* The person against whom such order is made shall—

(*a*) perform, within the time

Person to whom order is addressed to obey or show cause or claim jury.

135. The person against whom such order is made shall—

(*a*) perform, within the time

Person to whom order is addressed to obey or show cause or claim jury.

*(CODE OF 1882—S. 135.)

135. The person against whom such order is made shall—

Person to whom order is addressed to obey;

(*a*) perform, within the time specified in the order, the act directed thereby; or

Section 134—Note 2.

(1) See S. 11 of the Penal Code and S. 3 (39) of the General Clauses Act 1897.
(2) (1923) 1923 Lah. 525 (527): 4 Lah. 224, *Khushi Ram* v. *Crown.*

Note 3.

(1) (1926) 1926 Cal. 1208 (1209), *Beni Madhab Sapni* v. *Jadunath Sapni.*

Note 3-A.

(1) (1935) 1935 Cal. 251 (252), *Abdul Jabbar Sarkar* v. *Emperor.*

Note 4.

(1) (1866) 5 Suth. W. R. 4 (4), *Hochan* v. *Elliot.*
(1929) 1929 Bom. 433 (436), *Bhal Chandra Trimbak* v. *Emperor.*
(1889) 12 Mad. 475 (477), *Queen* v. *Narayan.*
(1923) 1923 Lah. 525 (527): 4 Lah. 224, *Khushi Ram* v. *The Crown.*
(1900) 1900 Pun. Re. No. 2, page 6, *Queen* v. *Mt. Nur Jan.*

Note 5.

(1) (1889) 16 Cal. 9 (12), *Parbutty Churn Aitch.*

specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

and in the manner specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

S. 135.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"APPEAR AND SHOW CAUSE"—CLAUSE (*b*) ..	3
BONA FIDE CLAIM OF RIGHT	4
APPLICATION TO APPOINT A JURY	5
TO WHOM APPLICATION FOR JURY IS TO BE MADE ..	6
DUTY OF THE MAGISTRATE TO WHOM AN APPLICATION FOR JURY IS MADE	7
POWER OF JURY UNDER THIS SECTION	8
FINDING OF JURY—EFFECT OF	9
EFFECT OF NON-APPEARANCE AND FAILURE TO OBEY AN ORDER UNDER S. 133	10
REVISION	11

Other Topics.

Application for jury amounts to a waiver of bona fide claim. See Note 9, Pt. 1.

Application for jury should be stamped. See Note 5.

Civil suit. See S. 139-A.

Parties and witnesses are not competent to be jurors. See S. 138, Note 7.

Whether a party can show cause and also apply for jury. See Note 5, Pts. 1 and 2.

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or show cause or claim jury.

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

(CODE OF 1872—S. 523, Para. 1.)

Person ordered shall obey or may claim a jury.

523. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate before whom he was required by the order to appear and show cause as aforesaid; or he may apply to such Magistrate for an order for a jury to be appointed to try whether such order is reasonable and proper.

S. 135, Notes 1—5.

1. **Legislative Changes.**—

(1) There is no material difference between the Codes of 1872 and 1882 in this respect.

(2) The words "and in the manner" have been added in Cl. (*a*) by the Amending Act of 1923.

2. **Scope of the section.**—This section enables a party against whom an order under S. 133 is made to do any of the following things:—

(*a*) Obey the order, or

(*b*) Appear and show cause against the order, or

(*c*) Demand a jury to consider whether the order by the Magistrate is reasonable and proper.[1] The reason is as the proceedings under S. 133, are *ex parte* in the first instance, an opportunity is given under this section to the party against whom the conditional order is made to contest the validity of the order.[2]

3. **"Appear and show cause"—Clause (b).**—It is open to the party who is ordered to remove the obstruction to appear before the Magistrate who issued the order or before the Magistrate before whom he is asked to appear under S. 133, and show that the order ought not to be made absolute. If he does so, such Magistrate should proceed under S. 137, *infra*.[1]

4. **Bona fide claim of right.**—*See* S. 139-A.

5. **Application to appoint a jury.**—The third alternative open to the person who has been served with a conditional order under S. 133, is to demand a jury, to try whether the order passed by the Magistrate is *reasonable and proper*. Before the Amending Act of 1923 it was held that a party cannot both show cause and also apply for the jury at the same time.[1] Under the new S. 139-A, such party can now set up a private claim and if the Magistrate finds that there is no reliable evidence to support that claim, he can still apply for a jury under

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(CODE OF 1861—S. 310.)

Person ordered shall obey the order, or may claim a Jury.

310. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same or to appear before the Magistrate to show cause as aforesaid, or he may apply to the Magistrate by petition for an order for a jury to be appointed to try whether the order is reasonable and proper.

Section 135—Note 2.

(1) (1910) 11 Cri. L. Jour. 1 (2) (Cal.), *Upendra Nath Mandal* v. *Rampal.*
(1910) 10 Cri. L. Jour. 494 (495) (Cal.), *Kishori Lal* v. *Emperor.*
(1907) 5 Cri. L. Jour. 97 (99) (Bom.), *Emperor* v. *Abdul Satar.*
(1889) 12 Mad. 475 (477), In re *Khajah Bhoy.*
(1920) 1920 Mad. 378 (379): 43 Mad. 316, *Angappa Mudali* v. *Ramapuram Perumal Chetty.*

(2) (1917) 1917 Cal. 207: 44 Cal. 61, *Rai Mohan Karmokar* v. *Emperor.*

Note 3.

(1) (1899) 1 Bom. L. R. 783 (784), *Empress* v. *Ramachandra.*

Note 5.

(1) (1909) 10 Cri. L. Jour. 494 (495) (Cal.), *Kishori Lal* v. *Emperor.*

this section.[2] The application for jury must be in writing and stamped under Sch. II of Art. I of the Court-Fees Act. S. 135, Notes 5—11.

6. To whom application for jury is to be made.—Under S. 133 a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the First Class may make a conditional order and direct the party to appear *before him or some other Magistrate of the first class or second class* and have the order set aside or modified. But if a *jury is demanded* by such party the application can be made only to the Magistrate *who made the conditional order*. The Magistrate to whom the case is sent under S. 133 has no jurisdiction to entertain such an application.[1]

7. Duty of the Magistrate to whom an application for jury is made.—*See* Ss. 138 and 139-A, *infra*.

8. Power of jury under this section.—The only purpose for which a jury is appointed is to try the question whether the order of the Magistrate is *reasonable and proper*.[1] Thus the jury is not to decide on questions of *bona-fide* claim of right as, for example, whether the place is a public or private one.[2] A jury appointed under S. 138 can decide the question whether the order is reasonable and proper only after taking evidence. *See* S. 139, *infra*.

9. Finding of jury—Effect of.—If the party who is served with a conditional order under S. 133, applies for the appointment of a jury under this section and the jury submits its finding, it is not *thereafter* open to the party to set up a *bona-fide* claim of private right in him. He must be taken to have abandoned and waived that right.[1] *See also* S. 139-A, *infra*.

10. Effect of non-appearance and failure to obey the order under S. 133.—*See* S. 136.

11. Revision.—An order made under this section can be revised by the High Court under S. 439, read with Ss. 435 and 423 (1) (*c*).[1] But a Sessions Judge has no jurisdiction under S. 437 to order further enquiry where a Magistrate abstains from further proceedings on the ground that the order under S. 133 is not reasonable and proper.[2]

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(2) (1933) 1933 Cal. 318 (319), *Shamji Tricum Das Bhatia* v. *Rammoye*.
(1880) 5 Cal. 875 (876), In re *Ohundranath Sen*.

Note 6.

(1) (1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagroshan* v. *Madem Pande*.
(1886) 9 Mad. 201 (202), In re *Narasimha*.

Note 8.

(1) (1899) 26 Cal. 869 (870), *Kailash Chandra Sen* v. *Ram Lal Mittra*.
(1914) 24 Ind. Cas. 603 (604): 1915 Cal. 113, *Mohammad Ashrafuddin* v. *Sheikh Kareem Buksh*.
(2) (1910) 11 Cri. L. Jour. 305 (305) (Cal.), *Dharam Mandal* v. *Gossain Das Mandal*.
(1904-05) 9 Cal. W. N. 72 (74): 31 Cal. 979, *Mahdari Tewari* v. *Hari Das Madhab*.
(1908) 1908 All. W. N. 151 (152): 30 All. 365, *Emperor* v. *Ram Bilas*.
(1881) 6 Cal. 291 (301), *Muthy Ram Sahoo* v. *Mohlall Roy*.

Note 9.

(1) (1931) 1931 All. 257 (257, 258), *Abdul Shakur Khan* v. *Emperor*.
(1910) 11 Cri. L. Jour. 402 (402) (Cal.), *Promotha Nath* v. *Basantha Kumar*.
(1914) 1914 L. B. 31 (32), *Ahyway* v. *Ma Gyi*.
(1900) 22 All. 267 (268), *Lachman*.
(1908) 1908 All. W. N. 151 (152): 30 All. 364, *Emperor* v. *Ram Bilas*.

Note 11.

(1) (1904) 1 Cri. L. Jour. 514 (517): 1904 Pun. Re. 8, *Crown* v. *Sobha Ram*.
(1885) 1885 Pun. Re. No. 42, p. 89, *Ram Kala* v. *Ganda*.
(1928) 1928 All. 627 (628): 50 All. 871, *Munna Tewari* v. *Chandar Bali*.
(2) (1897) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi*.

S. 136.

136.* If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

Consequence of his failing to do so.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"IF SUCH PERSON DOES NOT.....SHOW CAUSE" ..	2
"HE SHALL BE LIABLE TO THE PENALTY.....S. 188" ..	3
"SHALL BE MADE ABSOLUTE"	4
INVALID ORDER, WHEN CAN BE QUESTIONED BY PARTY CONCERNED	5
POWER OF COURT TO SET ASIDE EX PARTE ORDER ..	6

Other Topics.

if the party appears to show cause. See Note 2, Pt. 1.

No notice necessary for prosecution. See Note 3, Pts. 1 and 2.

Order without jurisdiction. See Note 5, Pt. 2.

Provisions of the section are stringent. See Note 1, Pt. 2.

Validity of an order when can be questioned. See Note 5, Pts. 1 and 2.

***(CODE OF 1882—S. 136.)**

136. If such person does not perform such act or appear and show cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

(CODE OF 1872—S. 525.)

525. If the person to whom the order mentioned in section 521 is issued appears to show cause against the same, as hereinafter provided, the Magistrate shall take evidence in the matter, but if he does not appear, or does not obey the order, or apply for a jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code. * * * * * *

Procedure in case of disobedience or neglect by person ordered.

(CODE OF 1861—S. 311.)

311. If the person to whom the order mentioned in section 308 is issued shall not obey such order, or show cause against the same as hereinafter provided, or petition for a jury within the time specified in such order, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code.

Procedure in case of disobedience or neglect by party ordered.

S. 136, Notes 1—4.

1. **Scope of the section.**—Where a Magistrate lawfully makes a conditional order under S. 133 and the same is served or notified as prescribed by S. 134, the person against whom the order is made is bound to do one of the things specified in S. 135. If he fails to do so a *conclusive presumption* arises under this section that the conditional order was correctly made and accordingly is to be made absolute. He also becomes liable to the penalty prescribed by S. 188 of the Penal Code. The whole object of Chapter X is to enable the Magistrate to make speedy orders and deal speedily with cases where a public nuisance has been committed.[1] The provisions of this section are consequently stringent the intention of the law being to create facilities for conditional orders becoming final without needless delay and thereby promptly to ensure public safety.[2]

2. **"If such person does not . . . show cause".**—This section has no application where the person against whom an order under S. 133 has been made, *appears and shows cause* under S. 135. In such a case the Magistrate must only proceed under S. 137 and cannot make the order absolute under this section.[1]

3. **"He shall be liable to the penalty . . . S. 188".**—The failure to act in accordance with S. 135, *ante* is a non-compliance with *the law* and not a disobedience of any *order* such as is contemplated by S. 188 of the Penal Code. The intention of the law is, however, to treat such non-compliance as a contempt of authority and to make it punishable and consequently it is specifically provided that the person failing to act according to S. 135 shall be liable to the penalty prescribed by S. 188 of the Penal Code.[1a] No notice is necessary to be given to the person not complying with S. 135, before he is prosecuted therefor.[1]

Where, the order under S. 133 is *made absolute* on the failure to comply with S. 135, a disobedience of *such order* is clearly within S. 188 of the Penal Code. In such a case, however, it is necessary that, under S. 140, *infra* a *notice* should be given to the person that in case of disobedience of the order within a time fixed by the Court, he will be liable to the penalty under S. 188 of the Penal Code.[2]

Disobedience of the Magistrate's order cannot be held to take place till after the expiry of the term fixed in the order for carrying it out.[3]

4. **"Shall be made absolute".**—The object of the section being, as has been seen already in Note 1, *ante*, to deal speedily with cases where a public nuisance has been committed, a conditional order, should, if the person against whom it was made, does not act in compliance with S. 135, be made absolute as early as possible after the date fixed for his appearance. Where a conditional order was made against a person fixing the 14th of August, 1916, for his appearance and he failed to appear or to obey the order, but nothing further

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Section 136—Note 1.

(1) (1921) 1921 Bom. 29 (30), *Rungubai Guru Rao*, In re.
(2) (1889) 12 Mad. 475 (478), *Queen* v. *Narayana.*

Note 2.

(1) (1876) 26 Suth. W. R. 7 (7), *Nimae* v. *Kashie.*
(1922) 1922 All. 335 (336), *Jassi* v. *Emperor.*

Note 3.

(1a) (1891) 13 All. 577 (578, 579), *Queen* v. *Bishambar Lal.*
[See also (1900) 1900 Pun. Re. No. 2, p. 3 (Cr.), *Mt. Nurjan* v. *Empress.*]
(1) (1908) 8 Cri. L. Jour. 151 (152): 31 Mad. 280, In re *Aluvala Guruviah.*
(2) (1908) 8 Cri. L. Jour. 151 (151): 31 Mad. 280, In re *Aluvala Guruviah.*
(3) (1882) 1882 All. W. N. 232 (233), *Empress* v. *Beni Kishen.*

S. 136, Notes 4—6.

was done till 11th September, 1920, it was held that it was improper to revive the proceeding in 1920, and that if there was a nuisance in 1920 the proceeding should have been commenced *de-novo* under S. 133.[1]

5. **Invalid order, when can be questioned by party concerned.**—Where a Magistrate is *lawfully empowered* to make an order under S. 133 and makes an order, and the person against whom it was made does not act in any one of the ways specified in S. 135, it will be conclusively presumed under this section that the order was correctly made and such person cannot, in future proceedings against him, question the same.[1] But where a Magistrate has *no jurisdiction* or is not empowered to pass the order at all, a failure to act in the manner prescribed under S. 135, will not, where a prosecution is instituted against such person under this section, disentitle him from questioning the validity of the order.[2]

6. **Power of Court to set aside ex parte order.**—It has been held by the High Court of Patna in the undermentioned case[1] that there is no express provision in the Code for setting aside orders absolute made *ex parte* but that on general principles Courts are entitled to set aside such orders, if they are satisfied with the reasons given for the absence of the party. *See also* S. 561-A, *infra* for a fuller discussion.

It was also held in the same case that when an *ex parte* order absolute is set aside and cause is shown against the conditional order, the Magistrate should proceed to record evidence as provided by S. 137 and that it is only thereafter that the Magistrate could make the order absolute or drop the proceedings.

S. 137.

Procedure where he appears to show cause.

137.* (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

***(CODE OF 1882—S. 137.)**

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Note 4.

(1) (1921) 1921 Bom. 29 (30), In re *Ranga Bai.*

(1891) 13 All. 577 (579), *Empress* v. *Bishambar.*

(2) (1898) 20 All. 501 (506), *Jasodanand.*

Note 5.

(1) (1889) 12 Mad. 475 (478), *Empress* v. *Narayana.*

Note 6.

(1) (1917) 1917 Pat. 124 (125), *Ramsaran Koeri* v. *Ram Lagan Ahir.*

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"THE MAGISTRATE"	2
'SHALL TAKE EVIDENCE IN THE MATTER'	3
AS IN A SUMMONS CASE	4
SUMMONS TO WITNESSES	5
SUB-S. 2	6
IF THE MAGISTRATE IS NOT SO SATISFIED	7
THE ORDER SHALL BE MADE ABSOLUTE	8
EFFECT OF THE ORDER BEING MADE ABSOLUTE ..	9
HIGH COURT'S POWERS OF REVISION	10

S. 137, Note 1.

Other Topics.

Dropping of proceedings. See Note 6.
Hearing objections. See Note 3, Pt. 8.
Illegal order cannot be made absolute. See Note 8, Pt. 1.
Illegality of procedure not cured. See Note 10, Pt. 2.
Magistrate cannot act on personal local investigation. See Note 3, Pt. 3.
Magistrate must take evidence on the matter of complaint as also that of the opposite party. See Note 4, Pt. 1.
Non-appearance of objector on the adjourned date. See Note 7, Pt. 1.
Order absolute on different grounds. See Note 8, Pt. 5.
Order of examination of witnesses—Cross examination. See Note 4, Pt. 1.
Orders on matters not legal evidence. See Note 3, Pts. 3—7.
Parties cannot compromise nor can Magistrate arbitrate. See Note 3, Pt. 6.
Procedure. See Note 4.
Vague or indefinite orders. See Note 8, Pt. 1 (*b*).

1. **Scope of the section.**—A person proceeded against under S. 133 has two courses open to him:—

(1) To show cause against the order or

(2) to apply for the appointment of a jury to consider whether the order is reasonable or proper.

(CODE OF 1872—S. 527.)

Procedure where person ordered satisfies Magistrate that order is not reasonable.

527. If the person to whom the order of the Magistrate, under section 421, is issued, appears and shows cause against it so as to satisfy the Magistrate who issued it that it is not reasonable and proper, no further proceedings shall be taken in the case.

(CODE OF 1861—S. 313.)

If party ordered satisfy the Magistrate that the order is not reasonable and proper.

313. If the person to whom the order of the Magistrate is issued, shall appear and show cause against the same, and shall satisfy the Magistrate that the order is not reasonable and proper, no further proceedings shall be taken in the case.

S. 137, Notes 1—3.

This section applies only where the first course is adopted and Ss. 138 and 139 apply where the second course is adopted.[1] All the three sections are, however, subject to the provisions of S. 139-A, *infra* where the order is in respect of a *way, river, channel or place*. In such cases the Magistrate should question the person proceeded against whether he denies the existence of any public right in respect of such way, etc., and if he denies it, the matter should *first* be enquired into. It is only where there is no *reliable evidence* in such inquiry, in support of such denial that the procedure in this section or S. 138 as the case may be, is to be adopted. Where there *is* such evidence the proceedings under this chapter should be stayed until the matter of the existence of such right is decided by a competent civil Court. The provisions of this Chapter are not intended to apply to cases where the party has a *bona-fide* claim of title.[2]

2. **"The Magistrate".**—The word "Magistrate" in this section will include both the Magistrate who made the order and the Magistrate before whom the party is required to appear under S. 133, *ante*.[1] Where therefore a party is *required to appear* before a Magistrate other than the one who made the order, the former can, under this section take evidence in the matter.[2] The Magistrate who made the order can, on the evidence so taken, make the conditional order absolute.[3]

3. **"Shall take evidence in the matter".**—The provisions of this section are mandatory. Where a party on whom a conditional order under S. 133, *supra*, has been served, appears and shows cause, the Magistrate is bound, before making the order absolute, to record evidence in the matter[1] and

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Section 137—Note 1.

(1) (1909) 10 Cri. L. Jour. 494 (495) (Cal.), *Kishori Lala Panuri.*
(2) (1923) 1923 Oudh 152 (153), *Bhagwan Das* v. *Emperor.*
(1923) 1923 Oudh 22 (23), *Ram Lakhan* v. *Emperor.*
(1898) 2 Weir 61 (61), *Venkanna.*
(1931) 1931 Lah. 62 (63), *Manoharlal* v. *Emperor.*
(1903) 1903 Pun. Re. 2, p. 7 (8), *Murad.*
(1933) 1933 Cal. 790 (791), *Uma Kanta Chatterji* v. *Kalipada Chowdhury.*
(1930) 1930 Cal. 486 (486): 57 Cal. 368, *Matabbar Molla* v. *Gulam.*
(1930) 1930 Cal. 144 (144), *Dhananjoy Pal* v. *Nagendra.*
(1886) 12 Cal. 696 (703, 704), *Lal Miah* v. *Nazir Khalashi.*
(1885) 11 Cal. 8 (10), *Basaruddin Bhujah* v. *Bahar Ali.*

Note 2.

(1) (1899) 2 Weir 61 (61), *Venkanna.*
(1904) 1 Cri. L. Jour. 669 (671) (Rang.), *Moung Shweye* v. *Moung Pyu.*
(2) (1898) 25 Cal. 278 (280), *Preonath Dey* v. *Gobardhone Malo.*
(1886) 9 Mad. 201 (202), *Narasimha.*
(3) (1924) 1924 Pat. 418 (419), *Chandrika Koeri* v. *Budhu Dusadh.*

Note 3.

(1) (1885) 11 Cal. 271 (274), *Makhan Lal Saha* v. *Makhan Chora Saha.*
(1926) 1926 Jour. 189 (189), *Attar Singh* v. *Hari Singh.*
(1917) 1917 Pat. 124 (125), *Ramsaran Koeri* v. *Ramlagan Ahir* (In this case an *ex parte* order under S. 136 had been re-opened).
(1900) 5 Cal. W. N. 173 (174), *Ishan Chandra* v. *Prasanna* (Even if the proceedings on the same subject-matter had been dropped previously by admission of parties).
(1931) 1931 Oudh 397 (397), *Emperor* v. *Mulchand.*
(1927) 1927 Oudh 26 (27), *Ram Bahadur Singh* v. *Bhagwati Prasad.*
(1922) 1922 Oudh 29 (29), *Sant Shai* v. *Lachman Singh.*
(1924) 1924 Lah. 392 (392), *Manchand* v. *Emperor.*
(1886) Weir 731 (731), *Kolandavelu.*
(1899) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi Haldar.*
(1881) 8 Cal. L. R. 431 (432), *Mohur Mandur.*
(1908) 12 Cal. W. N. ccxxiii (ccxxiii), *Samsul* v. *Sheikh.*
(1917) 18 Cri. L. Jour. 738 (738): 1917 Cal. 800, *Chandra Mandal* v. *Ram Mandal.*
(1929) 1929 Cal. 21 (21), *Ganga Prasad* v. *Khittish Chandra Sanyal.*
(1870) 13 Suth. W. R. civ. 13 (17), *Mookerjee* v. *Collector of Hooghly.*
(1887) 11 Bom. 375 (376), In the matter of the petition of *Maha Daji Sadashiv Tilak.*
(1899) 1 Bom. L. R. 783 (784), *Ramchandra.*
(1927) 1927 All. 350 (351): 49 All. 475, *Tirkha* v. *Nanak.*
(1927) 1927 All. 384 (384): 49 All. 453, *Abdul Karim* v. *Emperor.*
(1927) 1927 All. 825 (826), *Jagannath* v. *Emperor.*
(1927) 1927 All. 267 (268): 49 All. 270, *Bhoora* v. *Tara Singh.*
(1904) 1904 All. L. J. 229 (229) (N.), *Re Ram Sakal.*

give a judicial decision *on the evidence so recorded.*[2] Thus he cannot make a conditional order absolute merely— S. 137, Notes 3—4.

(1) on the result of his local inspection[3] or
(2) on his personal opinion[4] or
(3) on the report of a tahsildar or panchayatdar[5] or
(4) on arbitration, even if the parties consent thereto[6] or
(5) on the evidence recorded or information or report received at the time of the conditional order.[7]

Nor can he refuse to take evidence on the ground that the objections were filed beyond the time allowed provided they are filed before the case is taken up.[8] The fixing of an arbitrary time limit for the cross-examination of witnesses is improper.[9]

4. As in a summons case.—Section 244, *infra*, refers to the taking of evidence in a summons case. It lays down that the complainant if any and all his witnesses should be examined first before the accused is heard and his witnesses are examined. This is the procedure to be adopted in proceedings under this section also and the complainant, *i.e.*, the person who set the law in motion, should examine his evidence first in the presence of the opposite party. The latter is not bound to produce his evidence till this is done. He may cross-examine the complainant's witnesses and then produce his evidence if so advised.[1]

(1916) 14 All. L. J. (N.) 13 (13), *Chuni Lal* v. *Emperor.*
(1909) 10 Cri. L. Jour. 297 (298, 299): 31 All. 453, *Hingu* v. *Emperor.*
(1922) 1922 All. 335 (336), *Jassi* v. *Emperor.*
(1916) 1916 Cal. 151 (152): 42 Cal. 702, *Sarojbasini Deri* v. *Sripati Charan Chowdhury* (Dropping of proceedings on the person appearing and showing cause, without taking evidence is illegal).
[Cf. (1869) 12 Suth. W. R. 24 (25), *The Queen* v. *Allah Buksh* (Parties not offering to adducing evidence—Failure to take evidence not material—Case under 1861 Code).]
(2) (1922) 1922 All. 265 (266), *Ismail* v. *Banda.*
(1926) 1926 All. 193 (193), *Kadhori* v. *Emperor.*
(1901) 1901 Pun. L. R. 147, *Emperor* v. *Karam Chand.*
(3) (1921) 1921 Oudh 147 (147): 24 Oudh Cas. 267, *Emperor* v. *Kanhaiya Lal.*
(1922) 1922 All. 335 (336), *Jassi* v. *Emperor.*
(1926) 1926 All. 193 (193), *Kadhori* v. *Emperor.*
(1917) 1917 Pat. 509 (510), *Balbhadra Prasad* v. *Emperor.*
(1919) 1919 Pat. 172 (173), *Biru Thakur* v. *Gokul Raut.*
(1919) 1919 Cal. 153 (153), *Kalisaday* v. *Siddeswar.*
(1916) 17 Cri. L. Jour. 409 (410): 1917 Cal. 207: 44 Cal. 61, *Raimohan Karmokar* v. *Emperor.*
(1927) 1927 All. 350 (351): 49 All. 475, *Trikha* v. *Nanak.*
(1904) 14 Mad. L. Jour. 207 (208), *Kolandavelu Chetty.*
(1934) 1934 All. 325 (326), *Rajjoo Lal* v. *Emperor.*
(1935) 1935 Lah. 28 (29), *Khair Din* v. *Wasan Singh.*
(1934) 1934 Pat. 316 (316), *Ramachandra Lal* v. *Emperor.*
(4) (1915) 16 Cri. L. Jour. 207 (207): 1916 Mad. 304, *Duraisami* v. *Sudarsana.*
(1927) 1927 All. 825 (826), *Jagannath Prasad* v. *Emperor.*
(1935) 1935 Lah. 28 (29), *Khair Din* v. *Wasan Singh.*
(5) (1926) 1926 All. 193 (193), *Kadhori* v. *Emperor.*
(1927) 1927 Oudh 26 (27), *Ran Bahadur Singh* v. *Bhagwati Prasad.*
(6) (1927) 1927 All. 267 (268): 49 All. 270, *Bhoora* v. *Tava Singh.*
(1916) 18 Cri. L. Jour. 738 (738): 1917 Cal. 800, *Chandra Mandal* v. *Ram Mandal.*
(1921) 1921 Jour. 28 (4), *Raj Balam Rai* v. *Nawlakh Singh.*
(1916) 17 Cri. L. Jour. 409 (410): 1917 Cal. 207: 44 Cal. 61, *Raimohan Karmokar* v. *Emperor.*
(1910) 11 Cri. L. Jour. 1 (2) (Cal.), *Upendranath Mandal* v. *Rampal.*
(7) (1897) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi Haldar.*
(1916) 17 Cri. L. Jour. 409 (410): 1917 Cal. 207: 44 Cal. 61, *Raimohan* v. *Emperor.*
(8) (1868) 10 Suth. W. R. 27 (27), *Case of Bistoo Chunder Chuckerbutty.*
(1877) 26 Suth. W. R. 7, *Nimae Churn* v. *Kashie Nath.*
(9) (1921) 62 Ind. Cas. 412 (412), *Emperor* v. *Asiruddin Sarkar.*

Note 4.

(1) (1909) 10 Cri. L. Jour. 297 (298): 31 All. 453, *Hingu* v. *Emperor.*
(1918) 1918 Mad. 984 (984), *Dakshinamoorthy*, In re.
(1917) 18 Cri. L. Jour. 888 (888): 1917 Lah. 243, *Sitaram* v. *Emperor.*
(1897) 24 Cal. 395 (398), *Srinath Roy* v. *Ainaddi Haldar.*
(1925) 1925 All. 614 (614): 47 All. 341, *Bechan Teli* v. *Emperor.*
(1914) 15 Cri. L. Jour. 23 (23) (All.),

S. 137, Notes 5—8.

5. **Summons to witnesses.**—Inasmuch as the procedure as to the taking of evidence to be adopted in enquiries under this section is that prescribed for summons cases and inasmuch as in the latter classes of cases S. 244, sub-S. (2) provides for the issue of summons to witnesses, the person proceeded against under the section is also entitled to apply to the Court to compel the attendance of his witnesses by issuing summons and the Court should issue summons to witnesses if necessary in such cases.[1]

6. **Sub-Section (2).**—Sub-S. (2) provides for the dropping of proceedings initiated by an order under S. 133. But this can be done only after the evidence is recorded under sub-S. (1) and the Court is satisfied, on such evidence that the preliminary order was not reasonable and proper.[1] The existence of a genuine dispute as to title suitable for decision by a Civil Court may be sufficient to show that the order was *not reasonable and proper* within the meaning of this section.[2]

7. **If the Magistrate is not so satisfied.**—The Magistrate, if he is not satisfied that the preliminary order is not reasonable and proper, should make it absolute. But as has been seen already such an order can be made only on the basis of *evidence* recorded by him. So where the party appears to show cause against the preliminary order and the enquiry is started under this section, the Magistrate cannot, even if the party failed to appear at a subsequent hearing make the order absolute without any evidence, since the procedure laid down in this section is that of a summons case and Ss. 249—251, *infra*, require that evidence must be taken on behalf of complainant when the other side denies the offence.[1] Where the party proceeded against is required to appear before the Magistrate who made the conditional order, the latter must himself take the evidence and cannot forward the proceedings to another Magistrate for taking evidence, and then act upon the evidence so taken.[2]

8. **The order shall be made absolute.**—The order referred to in sub-S. (3) is the order issued under S. 133, *supra*. The Magistrate can only confirm the order made under that section. So, if no preliminary order exists[1-a] or if the preliminary order was itself illegal as being made without jurisdiction[1] or too vague and indefinite[1-b] it cannot be made absolute under

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Indar v. *Emperor*.
(1930) 1930 Lah. 662 (663): 11 Lah. 247, *Achhru* v. *Emperor*.

Note 5.

(1) (1902) 6 Cal. W. N. 548 (550), *Bhoman Munshi* v. *Digambar Dass* (Magistrate must make an order either granting or refusing application for summons—Mere order to 'file' is not proper disposal).
(1903) 13 Cal. W. N. cclxxxiii.

Note 6.

(1) (1921) 22 Cri. L. Jour. 239 (240) (Cal.), *Shew Kelaon* v. *Nayan* (Action dropped on the report of Assistant Commissioner without recording evidence—Order set aside).
(1920) 1920 Cal. 834 (834), *Rajakhan* v. *Emperor*.
(2) (1878) 1 Cal. L. R. 486 (487), *Shonai Parmanick* v. *Jogendro Shaha*.
(1888) 15 Cal. 564 (572), *Luckhee Narain Banerjee* v. *Ram Kumar*.
(1882) 8 Cal. 883 (884), *Issur Chunder Nath* v. *Kali Chunder Nath*.
(1898) 25 Cal. 278 (282), *Preonath Dey* v. *Gobordhone Malo*.
(1923) 1923 Oudh 152 (153), *Bhagwan Das* v. *Emperor*.
(1923) 1923 Oudh 22 (23), *Ram Lagan* v. *Emperor*.
(1921) 1921 Cal. 118 (118), *Emperor* v. *Asiruddin Sarkar*.

Note 7.

(1) (1900) 2 Bom. L. R. 818 (819), *Ram Singh*.
(2) (1922) 1922 Bom. 384 (384): 47 Bom. 89, In re *Kariyappa Ningappa*.

Note 8.

(1-a) (1921) 1921 Bom. 29 (30), *Rangubai Gururao* In re (Proceedings started and discontinued—Order absolute passed after several years set aside as not based on any preliminary order).
(1) (1890) Rat. Un. Re. Cr. Cas. 516 (518), *Jasvant Singji Fattesingji*.
(1-b) (1910) 11 Cri. L. Jour. 213 (214) (Cal.), *Kali Mohan* v. *Nakari Chandra Das*.

this section. The provisions of this chapter should be worked so as not to become themselves a nuisance to the community at large. Although every man is bound to use his own property in such a way as not to work damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with free and full enjoyment by another of his property. So an order cannot be made absolute except on clear and absolute proof that the act complained of is a nuisance and a removal thereof is absolutely necessary.[2] Where the Magistrate confirms an order under this section, he should lay down fully the grounds on which he acted and in deciding on the objections of the parties, he ought to record in each case the grounds of his rejection of such objection.[3] A verbal order issued under S. 133, *supra*, cannot amount to or have the force of an order made absolute under this section.[4] The Magistrate cannot make an order absolute under this section, on grounds different from those on which the preliminary order under S. 133 was issued.[5]

S. 137, Notes 8—10.

9. Effect of the order being made absolute.—*See* S. 140, *infra*.

Once a Magistrate confirms a conditional order, under this section his successor in office cannot go behind it and question its legality.[1]

10. High Court's powers of Revision.—An order absolute under this section can be varied or confirmed by the High Court in revision.[1] The provisions of this section being mandatory an order passed in contravention thereof is not merely an irregularity within the meaning of S. 537 of the Code but is an illegal order made without jurisdiction.[2] The High Court will interfere in revision in the following cases:—

(1) Where the Magistrate fails to take evidence under this section but confirms an order on information which is not legal evidence.[3]

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(2) (1888) 1888 P. R. 17, p. 32, *Shadi* v. *Empress.*
(3) (1869) 12 Suth. W. R. 24 (25), *Queen* v. *Ala Buksh.*
(1921) 62 Ind. Cas. 412 (412), *Emperor* v. *Asiruddin Sarkar* (Clear finding as to the *bona fides* of the claim set up by the party against whom order is directed is necessary).
(4) (1915) 16 Cri. L. Jour. 24 (25): 1915 Cal. 741, *Janakinath Chakravarthy* v. *Jnandranath Chakravarthi.*
(5) (1919) 1 Lah. 163 (165), *Gokalchand* v. *Crown.*

Note 9.

(1) (1923) 1923 Cal. 589 (589), *Chowdhury* v. *Ramesh Chandra Chowdhury.*

Note 10.

(1) (1929) 1929 All. 220 (222), *Manoharsingh* v. *Emperor.*
(2) (1927) 1927 All. 350 (351): 49 All. 475, *Teikha* v. *Nanak.*
(1927) 1927 All. 267 (268): 49 All. 270, *Bhoora* v. *Tara Singh.*
(3) (1930) 1930 Lah. 662 (664): 11 Lah. 247, *Achhru* v. *Emperor.*
(1924) 1924 Lah. 392 (392), *Mamchand* v. *Emperor.*
(1915) 16 Cri. L. Jour. 207 (207): 1916 Mad. 304, *Doraiswami Mudaliar* v. *Sudarsana Chariar.*
(1922) 1922 Oudh 29 (29), *Sant Sahai* v. *Lachman Singh.*
(1931) 1931 Oudh 397 (397), *Emperor* v. *Mulchand.*
(1907-08) 12 Cal. W. N. ccxxiii (ccxxiii), *Samsul Hug* v. *Sheikh Hafiz.*
(1915) 16 Cri. L. Jour. 415 (416): 1916 Cal. 151: 42 Cal. 702, *Sarojbasini Devi* v. *Sripathi Charan Chowdhury.*
(1881) 8 Cal. L. R. 431 (432), *Muhur Mandar.*
(1887) Rat. 320 (321), In re *Mahadoji.*
(1899) 1 Bom. L. R. 783 (784), *Ramchandra Sham Rao.*
(1927) 1927 All. 350 (351): 49 All. 475, *Tirkha* v. *Nanak.*
(1904) 1 All. L. Jour. (N.) 229 (229), *Ram Sakal Rai.*
(1927) 1927 All. 825 (826), *Jagannath* v. *Emperor.*
(1929) 1929 Cal. 21 (21), *Ganga Prosad* v. *Khitish Chandra* (Order only on the statement filed without recording evidence).
(1887) 11 Bom. 375 (376), In the matter of the petition of *Mahadaji Sadashiv Tilak* (Order made absolute solely on personal opinion of Magistrate).
(1910) 11 Cri. L. Jour. 1 (2) (Cal.), *Upendranath Mandal* v. *Ram Pal* (Order absolute solely on local inspection).
(1917) 1917 Pat. 509 (510), *Balbhadra Prasad* v. *Emperor* (Order solely on local inspection).
(1919) 1919 Pat. 172 (173), *Biru Thakur* v. *Gokul Raut* (Order on local inspection).
(1927) 1927 All. 384 (384): 49 All. 453, *Abdul Karim* v. *Emperor* (Order solely on Thasildar's report).
(1922) 1922 All. 265 (266), *Ismail Alias Chotiya Bunda* (Absolute order passed on the report of Thasildar who inspected the spot).

S. 137, Note 10.

(2) Where the Magistrate calls upon the person served with notice to produce his evidence as if the *onus* is on him and then considering that that evidence is of no weight makes the order absolute.[4]

(3) Where he confirms the preliminary order on the evidence recorded by another Magistrate.[5]

(4) Where he drops the proceedings under this section without recording evidence as required by sub-S. (1).[6]

(5) Where he declines to take evidence because the objections were filed beyond the time allowed by the Court though filed before the case is actually taken up.[7]

(6) Where he refuses to issue summons to the witnesses of the party showing cause in order to compel their attendance.[8]

(7) Where he does not allow sufficient opportunity to the party to show cause by arbitrarily fixing the time-limit for the examination of his witnesses or otherwise.[9]

(8) Where an order absolute is made without reasonable and sufficient grounds.[10]

(9) Where the order contains no finding on the question of *bona fides* of the objection of the party showing cause.[11]

(10) Where he decides on the merits the question of title without leaving the same to the decision of a Civil Court.[12]

But where the Magistrate has dropped proceeding under sub-S. (2) the High Court will not interfere and consider the value of evidence on which the Magistrate decided so to act.[13]

(1927) 1927 Oudh 26 (27), *Ram Bahadur Singh* v. *Bhagwati Prasad* (Order solely on Thasildar's report).
(1904) 14 Mad. L. Jour. 207 (208), In re *Kolandaivelu Chetty* (Order on the report of Subordinate Magistrate).
(1924) 1924 Lah. 128 (128), *Bhedu* v. *The Crown* (Order due to a previous conviction under S. 341, I. P. C. in respect of same property).
(1925) 1925 All. 614 (614): 47 All. 341, *Bechan* v. *Emperor* (Order absolute without evidence on either side).
(4) (1909) 10 Cri. L. Jour. 297 (299): 31 All. 453, *Hingh* v. *Emperor*.
(1917) 18 Cri. L. Jour. 888 (888): 1917 Lah. 243: 1917 Pun. Re. No. 32, *Sita Ram* v. *Emperor*.
(1928) 1928 Cal. 96 (97), *Akhoy Sardar* v. *Lalchand Sardar*.
(1914) 15 Cri. L. Jour. 23 (23) (All.), *Indar* v. *Emperor* (But order was not set aside as it was found substantial justice had been done in the case).
(1901) 1901 Pun. L. R. 147, *Mulla Ram* v. *Karam Chand*.
(5) (1922) 1922 Bom. 384 (384, 385): 47 Bom. 89, *Kariappa Ningappa*, In re.
(6) (1921) 22 Cri. L. Jour. 239 (240) (Cal.), *Shew Khelaon Ram Kalwar* v. *Nayan Bepari*.
(7) (1868) 10 Suth. W. R. 27 (27), Case of *Bistoo Chunder Chuckrabutty*.
(8) (1901-02) 6 Cal. W. N. 548 (550), *Bhomar Munshi* v. *Digambar Das*.
(9) (1907) 5 Cri. L. Jour. 1 (2) (Lah.), *Ghasi* v. *Emperor*.
(1921) 1921 Cal. 118 (118), *Emperor* v. *Abed Ali*.
(1928) 1928 Cal. 879 (879), *Etraj Mandal* v. *Emperor*.
(10) (1923) 1923 Oudh 22 (23), *Ram Lacham* v. *Emperor*.
(1871) 7 Beng. L. R. 516, *Amanat Ali*.
(1923) 1923 Oudh 152 (153), *Bhagwan Das* v. *Emperor*.
(1911) 12 Cri. L. Jour. 146 (148) (Lah.), *Emperor* v. *Fazal Din*.
(11) (1923) 1923 Pat. 540 (541), *Rangisah* v. *B. N. W. Ry. Co*.
(1897-98) 2 Cal. W. N. 554 (556), In the matter of *Mukunda Lal* v. *Haribole Saha*.
(12) (1930) 1930 Cal. 486 (486): 57 Cal. 368, *Matabbar Molla* v. *Golam Panjaton*.
(1905) 2 Cri. L. Jour. 517 (518): 28 All. 99, *Emperor* v. *Dost Muhammad*.
(1902-03) 7 Cal. W. N. 117 (118), *Rakhal Chandra Shaha* v. *Kailash Chandra*.
(13) (1882) 8 Cal. 883 (884), In re *Issur Chunder Nath*.

S. 138.

Procedure where he claims jury.

138.* (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

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*(CODE OF 1882—S. 138.)

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(CODE OF 1872—S. 523, Paras. 2 and 5 and S. 524.)

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523. * * * * * * * * * *

Constitution of jury.

On receiving such application, such Magistrate shall forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

Report of jury and order thereon.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the jury, and may from time to time be extended by him. When the jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section 528.

Attendance of jury.

524. Such Magistrate may summon so many jurors as may be necessary, and such persons shall be bound to attend and make their inquiry and report.

Any juror failing to attend, or neglecting his duty as a juror, shall be liable to be dealt with under section 174 of the Indian Penal Code.

(CODE OF 1861—S. 310.)

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310. * * * * * * * * * *

Constitution of jury.

On receiving such petition, the Magistrate shall forthwith appoint a jury which shall consist of not less than five persons, whereof the President and one-half of the members shall be nominated by such Magistrate, and the remaining members by the party petitioning. The Magistrate shall suspend the execution of the order pending such enquiry,

S. 138, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
OBJECT OF THE SECTION	2
"FORTHWITH APPOINT"	3
"THE MAGISTRATE"	4
"FORTHWITH"	5
UNEVEN NUMBER OF PERSONS NOT LESS THAN FIVE ..	6
NOMINATION OF MEMBERS OF JURY, HOW MADE ..	7
DUTY OF JURORS	8
SUMMONS TO JURORS	9
DISOBEDIENCE OF SUMMONS BY JUROR	10
EXTENSION OF TIME	11
FRESH JURY	12
PENDENCY OF CIVIL SUITS	13
APPEAL AND REVISION	14

Other Topics.

Appointment obligatory. See Note 3, Pts. 1 and 2.

Appointment to be made in the presence of parties. See Note 7, Pt. 12.

Collective opinion of the jury should be delivered. See S. 139, Note 4.

Complainant and his witnesses cannot be jurymen. See Note 7, Pts. 6 and 7.

Effect of verdict. See S. 139.

Form for order appointing jury. See Sch. V, No. 17.

Jury must be legally constituted. See Note 6.

Magistrate cannot veto the applicant's appointment. See Note 7, Pt. 10.

Nominees of complainant—whether can be appointed. See Note 7, Pt. 9.

Power of appointment—delegation of. See Note 7, Pts. 2 and 3.

Power of jury to decide whether the road is public or private. See S. 139-A.

Procedure to be adopted by the jury. See S. 139, Note 4.

Verdict after time fixed. See Note 11, Note 12, Pt. 1, S. 141, Note 3, Pt. 6.

Whether jury bound to take evidence. See S. 139, Note 4.

1. Legislative Changes.—

Changes introduced in the Code of 1872—

A provision providing for the summoning of the jury to attend and make their report was newly added (S. 534, para. 1). There was no provision corresponding to this in the Code of 1861.

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and be guided by the decision of the jury, which shall be according to the opinion of the majority. If the petitioner shall, by neglect or in any other way, prevent the appointment of a jury, or if from any cause the jury so appointed shall not decide and report within a reasonable time to be fixed in the order for the appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate, and if from any of the above causes no decision be made by the jury, the order of the Magistrate shall be carried into effect as hereinafter provided.

Proceeding in case of neglect by jury.

S. 138, Notes 1—6.

Changes introduced in 1882—

The last paragraph of S. 523 of the Code of 1872 was enacted as a separate section, *viz.*, S. 141 in the Code of 1882. In other respects the changes were not material.

Changes introduced in 1898—

Sub-S. 2 was newly added.

Any juror failing to attend, or neglecting his duty as a juror shall be liable to be dealt with under S. 174 of the Indian Penal Code, have also been added in 1871 Code as S. 524, para. 2. There was no similar provision in the 1861 Code.[1]

2. **Object of the Section.**—The provisions for the appointment of a jury in cases of alleged public nuisances are intended to operate as a check to the exercise of summary and arbitrary dealing with the rights of property.[1]

3. "**Forthwith appoint**".—This section is imperative in its terms.[1] When a person applies under S. 135 for the appointment of a jury the Magistrate has no discretion to refuse to do so, but[2] is *bound* to appoint one. He cannot decide the matter by making a local inquiry himself.[3] Even where the Magistrate finds under S. 139-A, that the person has no reliable evidence in support of the denial of the public right, the Magistrate is bound to appoint a jury where the party applies for it.[4]

4. "**The Magistrate**".—It has been seen in Note 6 to S. 135, *ante*, that the application for the appointment of a jury should be made only to the Magistrate *who made the conditional order*. The "Magistrate" referred to in this section and who is to make the appointment is consequently the Magistrate who made the conditional order and not the Magistrate before whom the party may have been required to apply. Hence the Magistrate who passed the conditional order under S. 133 cannot refer the matter for disposal to another Magistrate if a jury is demanded.[1]

5. "**Forthwith**".—The word "*forthwith*" merely means that the Magistrate shall appoint a jury as soon as he reasonably can.[1]

6. **Uneven number of persons not less than five.**—The section requires that the jury shall consist of an uneven number of persons not less than five.

Section 138—Note 1.

(1) (1864-66) 2 Bom. H. C. R. Cr. 384, *Reg.* v. *Dalsukram Haribhai.*

Note 2.

(1) (1864-66) 2 Bom. H. C. R. 384 (386), *Reg.* v. *Dal Sukhram Haribhai.*

Note 3.

(1) (1909) 10 Cri. L. Jour. 494 (495) (Cal.), *Kishori Lal Panuri* v. *Emperor.*
(1867) 8 Suth W. R. 37 (37), *Queen* v. *Pitti.*
(2) (1883) 2 Weir 63.
(1885) 1885 Pun. Re. No. 42 Cr. p. 89, *Ram Kala* v. *Ganga.*
(1871) 16 Suth W. R. 23 (24), *Denonath Chunder* v. *Hargobind Pal.*
(1887) 1887 Pun. Re. 19 (Cr.) p. 39, *Gainde Rai* v. *Empress.*
(3) (1878) 2 Cal. L. R. 509 (510), *Mothoor Chunder.*
(4) (1933) 1933 Cal. 318 (319), *Shamji Tricumdas* v. *Rammoyi.*

Note 4.

(1) (1890) 17 Cal. 562 (565), *Empress* v. *Bissur Sahu.*
(1898) 25 Cal. 278 (280), *Preonath Dey* v. *Gobardhone Malo.*
(1914) 15 Cri. L. Jour. 698 (699): 1915 Cal. 168: 42 Cal. 158, *Manipur Dey* v. *Bidhu Bhusan Sarkar.*
(1927) 1927 Pat. 265 (266): 6 Pat. 428, *Jagroshan Bharat* v. *Madan Pande.*
(1920) 1920 Mad. 378 (379): 43 Mad. 316, *Angappa Mudali* v. *Rampuram Perumal Chetty.*

Note 5.

(1) (1923) 1923 Lah. 525 (527): 4 Lah. 224, *Khushi Ram* v. *The Crown* (Appointed 2 days later).

S. 138, Notes 6—7.

So a jury of only 3 persons, will not be a properly constituted one and an order based on the verdict of such a jury will be invalid.[1] Nor is it enough merely to have five persons in the jury; it is also necessary that *all* of them should *act together*. Thus if one out of the 5 jurors dies, or is ill or refuses to act or for some other cause remains absent, the decision of the jury will be wholly void and the Magistrate cannot act upon that finding.[2]

7. **Nomination of members of jury, how made.**—The nomination of jurors under this section is to be made partly by the *Magistrate* and partly by the *applicant*.[1] The irregularity in the appointment of the jury cannot be by itself a ground for setting aside the proceedings.[1-a]

Nomination by Magistrate.—In making nominations of the jurors and of the foreman, the following should be noted:—

Firstly.—The Magistrate *cannot delegate* the function to any one else.[2]

Secondly.—He cannot nominate less than half the number of jurors. If for instance he nominates only the foreman, or two of the jurors it will not be a legally constituted jury.[3]

Thirdly.—He should exercise his own discretion and judgment and should not merely accept the persons put forward by the complainant.[4]

Fourthly.—He should not select persons who will be interested in upholding his conditional order,[5] friends and supporters of the complainant[6] or the complainant and his witnesses[7] must not be appointed.

If there is any disregard of these principles in the selection of the jury, it will be illegal and the finding and further proceedings will be void, because, the nomination of a jury is a nomination of the *Court* which has to try the case, and irregularity with regard to that, is an irregularity which goes to the root of the proceedings[8] and S. 537, *infra*, will not cure such irregularity. Thus in *Re Kothari*[9] the Magistrate appointed the *nominees of the complainant* as jurors without exercising his own discretion. They were respectable and impartial men: and in fact they gave a finding partly favourable to the applicant who

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Note 6.

(1) (1922) 1922 Lah. 137, *Ajit* v. *Jamatulla*.
(2) (1910) 11 Cri. L. Jour. 402 (402) (Cal.), *Promotha Nath* v. *Basanta Kumar Bose* (One ill).
(1901) 1901 All. W. N. 30 (31): 23 All. 159, *Empress* v. *Kedarnath* (Absence of two jurors).
(1885) 11 Cal. 84 (85), *Umacharan Mundle* v. *Joshein Sheikh* (One absent).
(1886) 13 Cal. 275 (279), *Durga Churan* v. *Sashi Bhusan*.

Note 7.

(1) (1921) 62 Ind. Cas. 817 (817) (Cal.), *Sudhag Shudar Roy* v. *Rahim Pramanik*.
(1-a) (1933) 1933 Pat. 676 (677), *Digamber Ramsingh* v. *Emperor*.
(2) (1889) Rat. Un. Re. Cr. Cas. 460 (460), *Empress* v. *Vithu*.
(3) (1881) 10 Cal. L. R. 193 (196), *Bhyrub*.
(1928) 1928 Lah. 187 (188), *Khem Chand* v. *Emperor*.
(4) (1929) 1929 Bom. 79 (80), *Kothari*, In re.
(1896) 23 Cal. 499 (501), *Upendra* v. *Khitish*.
(5) (1899) 26 Cal. 869 (870), *Kailash Chandra Sen* v. *Ram Lal Mittra*.
(1931) 1931 All. 257 (258), *Abdul Shakur Khan* v. *Emperor*.
(6) (1914) 1914 All. 491 (492): 37 All. 26, *Farzand Ali* v. *Hakim Ali*.
(7) (1874) 22 Suth W. R. Cr. 47 (47, 48), *Brindabun Dutt* v. *Dwarkanath Sein*.
(8) (1930) 1930 Pat. 199 (200), *Mahadeo Lal* v. *Hossaini Panday*.
(9) (1929) 1929 Bom. 79 (80), In re *V. R. Kothari*.

applied for the appointment of the jury: still it was held that the constitution of the jury was illegal. S. 138, Notes 7—12.

Nomination by the applicant.—The other half of the jury is to be nominated by the *applicant*. It is an advantage given to him and not to his opponent. The Magistrate has no jurisdiction to veto the nomination by the applicant of any person as a juror.[10]

The appointment of the jury cannot be made by ballot from the ordinary list of jurors.[11]

Every appointment or cancelment of the jury should be made in the presence of parties.[12] For the form appointing a jury, *vide* Sch. V, Form No. 17.

8. Duty of jurors.—The jurors should act together and should give their verdict of deliberation; they should not act like partisans.[1] Also *see* Ss. 138 and 139-A.

9. Summons to jurors.—The Magistrate has the power to issue summons to a juror to attend at any particular place and time. The procedure laid down in S. 68 and the following sections should be observed in summoning the jurors. The time when and the place where the juror is to attend should be specifically mentioned in the summons.[1]

10. Disobedience of summons by juror.—*See* S. 174 of the Penal Code.

11. Extension of time.—Under the Code of 1861 there was no provision for the extension of the time fixed for the return of the verdict by the jury and it was held that a verdict submitted after the expiry of the period fixed, was invalid.[1] In the later Codes the power to extend the time has been given to the Magistrates. The granting of further time is a matter in the discretion of the Magistrate.[2]

12. Fresh jury.—When the jury appointed under this section perversely refuses to return a verdict[1] or for any other cause the jury fails to send the verdict within the time allowed[2] or if the report of the jury is defective and illegal because of the non-participation of any of the jurors[3] then the Magistrate may appoint a fresh jury or may proceed to pass such other order as he thinks fit under S. 141.

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(10) (1897) 1897 Pun. Re. No. 4, *Mir Imam Abdul Aziz* v. *Empress.*
(1874) 21 Suth W. R. 43 (43, 44), *Raja Shatyanundo* v. *Camperdown Pressing Co.*
(11) (1871) 7 Bom. L. R. 516 (532, 533), *Municipal Commissioner for the Suburb of Calcutta* v. *Amanat.*
(12) (1880) 5 Cal. 875 (876), In re *Chundra Nath.*

Note 8.

(1) (1896) 18 All. 158 (159), *Queen-Empress* v. *Khushali Ram.*
(1875) 25 Suth W. R. 4 (5), *Petembar Jugi* v. *Nassaruddin.*

Note 9.

(1) (1883) 5 All. 7 (8), *Empress* v. *Ram Saran.*

Note 11.

(1) (1871) 16 Suth W. R. 23 (24), *Dinonath Chuckerbutty* v. *Hurgobind Pal.*
(2) (1901) 1901 All. W. N. 30 (31): 23 All. 159, *Queen-Empress* v. *Kedarnath.*
(1875) 24 Suth. W. R. 68 (69), *Nundo Kumaree* v. *Anund.*
(1874) 21 Suth W. R. 54 (54), *Sheikh Nozmuddy* v. *Hasim Khan.*

Note 12.

(1) (1922) 1922 All. 297 (297): 44 All. 575, *Girwar Lal* v. *Bansidhar.*
(1885) 11 Cal. 84 (85), *Umachuran* v. *Jashein.*
(2) (1908) 8 Cri. L. Jour. 233 (235), *Shib Chandra Gossain* v. *Hriday Chandra Das.*
(3) (1920) 56 Ind. Cas. 240 (240): 1920 Cal. 161, *Srimathy Dassya and another* v. *Nibaran Chandra Ghosh.*

S. 138, Notes 13—14.

13. **Pendency of civil suits.**—The fact that a civil suit is pending with reference to the question whether the right claimed is a public one or not, will not preclude a Magistrate from continuing the proceedings under this section.[1] But when there is no proof of urgency or imminent danger to the public interests, it is improper for a Magistrate to make use of the exceptional powers given by this chapter as a criminal act in regard to a matter which is already the subject-matter of a civil suit.[2]

14. **Appeal and Revision.**—There is *no right of appeal* from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance is reasonable and proper.[1] The District Magistrate cannot refer the matter to the High Court under S. 435, *infra*, because the decision of the jury is not a proceeding in a Criminal Court which the District Magistrate can call for and examine.[2] But the High Court can in its revisional jurisdiction vested under S. 439 *infra*, call for the records and revise the orders passed under this section.[3]

S. 139.

139.* (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Procedure where jury finds Magistrate's order to be reasonable.

(2) In other cases no further proceedings shall be taken under this Chapter.

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*(CODE OF 1882—S. 139.)

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

(CODE OF 1872—S. 523, Paras. 3 and 5 and S. 526.)

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Suspension of order.

The execution of the order shall be suspended pending such inquiry, and the Magistrate who issued the order or before whom the applicant appears shall be guided by the decision of the jury, which shall be according to the opinion of the majority.

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Note 13.

(1) (1933) 1933 Cal. 318 (318), *Shamji Tricumdas Bhatia* v. *Ram Mye.*
(2) (1897) 1897 Pun. Re. No. 4, *Mir Imam Abdul.*

Note 14.

(1) (1871) 16 Suth. W. R. 66 (67), *Shitatram* v. *Ramnand.*
(2) (1887) Rat. 336 (336).
(3) (1874) 21 Suth. W. R. 43 (43), *Rajah Shatyanundo* v. *The Camperdown Pressing Co.*

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"MAJORITY OF THE JURORS"	3
PROCEDURE TO BE ADOPTED BY THE JURY	4
OBJECTION TO THE FINDING OF THE JURY	5
"MAGISTRATE *SHALL* MAKE THE ORDER ABSOLUTE" ..	6
"IN OTHER CASES"	7
BONA FIDE CLAIM OF RIGHT—WHETHER JURY CAN TRY ..	8
APPEAL, REVISION	9

Other Topics.

Acceptance without judgment. See Note 4, Pt. 4.

Evidence—Whether to be taken. See Note 4, Pts. 1 and 2.

Omission of some of the jurors to act. See Note 3, Pt. 1.

Remitting to another Magistrate. See Note 6, Pt. 1.

Verdict of the jury—Meaning of. See Note 3, Pt. 3.

"Which the Magistrate accepts." See Note 7, Pt. 1 and Note 6, Pt. 5.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872—

The differences between the corresponding sections of the Codes of 1861 and 1872, were only verbal.

Difference between the Codes of 1872 *and* 1882—

(1) Under the Code of 1872 the decision of the Magistrate had to be, in all cases according to the opinion of the majority of the jury.

Report of jury and order thereon.

The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the jury, and may from time to time be extended by him. When the jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under section 528.

Procedure where jury finds Magistrate's order to be reasonable.

526. If, in a case referred to a jury, the jury find that the order of the Magistrate is reasonable and proper, as originally made, or subject to a modification which the Magistrate accepts, the Magistrate who issued the order, or before whom cause was shown, shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order, within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by section 188 of the Indian Penal Code.

(CODE OF 1861—S. 312.)

If Jury find order of Magistrate to be reasonable and proper.

312. If in a case referred to a jury, the jury shall find that the order of the Magistrate is reasonable and proper, the Magistrate shall give notice thereof to the person to whom the order was issued, and shall add to such notice an order to obey the order first mentioned within a time to be fixed therein under the penalty provided by the Indian Penal Code as aforesaid.

If such latter order shall not be obeyed, the Magistrate may proceed as in the last preceding section.

S. 139, Notes 1—3.

Under the Code of 1882, where the jury found that the original order was reasonable and proper *subject to a modification* and the *Magistrate accepted it* then the order, subject to such modification had, to be made absolute.

(2) The words "In other cases, no further proceedings shall be taken" were newly added.

Difference between 1898 *and* 1882 *Codes*—

The words "under this chapter" in sub-S. (2) are new.

2. **Scope of the section.**—This section prescribes the procedure to be adopted by the Magistrate when a finding is submitted by the jury appointed by him under S. 138. Where the majority of jurors find his original order reasonable and proper the Magistrate "shall" make the order absolute. Where modifications are suggested by the majority of the jurors *and if the Magistrate accepts such modifications*, the original order shall be made absolute with those modifications. *In other cases* the Magistrate should not take further proceedings under this chapter.

3. **"Majority of the jurors".**—The word "majority" in this section means the majority of the persons *nominated* as jurors and not merely the persons *attending or acting* as jurors. Thus where five persons are nominated as jurors and one or more of them do not take part in the inquiry and report, the verdict of those who take part is not a finding of a "majority" and the Magistrate cannot make the order absolute.[1]

Only the persons appointed under S. 138 could act as jurors. Thus where 5 jurors are elected by the Magistrate and the applicant under S. 138, and one of them falls ill, his place cannot be filled up by the foreman. The finding submitted by the jury so constituted cannot be acted upon by the Magistrate and the original order cannot be made absolute. If it is made absolute and the order is disobeyed by the party, he cannot be convicted under S. 188 of the Penal Code.[2]

Where a number of jurors do not agree with one another in every respect but the majority agree that a certain order passed by a Magistrate taken as a whole is not necessary, it should be held that the majority considered the order not reasonable and proper.

Illustration.

7 persons were appointed as jurors in a proceeding under S. 133. 3 of them found that the order was reasonable and the other 3 that it was unreasonable. The remaining juror found that the order to remove the obstruction entirely was not necessary. It was held that that the majority of the jury must be deemed to be against the order of the Magistrate.[3]

Section 139—Note 3.

(1) (1910) 11 Cri. L. Jour. 402 (402) (Cal.), *Promothanath Bose* v. *Basanta Kumar Ghose* (One ill and did not act).
(1871) 16 Suth. W. R. 23 (24), *Dinonath* v. *Hur Gobind* (Two jurors did not act).
(1886) 13 Cal. 275 (279), *Durga Charan* v. *Sashi* (One did not act and two did not send in any opinion at all).
(1920) 1920 Cal. 161 (161), *Dassya* v. *Nibaran* (One juror absent).
(1883) 11 Cal. 84 (85), *Umachuran* v. *Joshein* (One absent, two taking one view and the other two another).
(1922) 1922 All. 297 (297): 44 All. 575, *Girwar Lal* v. *Bansidhar* (3 did not send verdict—Magistrate stayed proceedings).
(2) (1881) 10 Cal. L. R. 193 (196), *Bhoirub Chunder*.
(3) (1876) 25 Suth W. R. 31 (32), *Queen* v. *Nakori Paroee*.

S. 139, Notes 4—6.

4. Procedure to be adopted by the jury.—This chapter does not lay down any rules as to the procedure to be adopted by the jury before arriving at a finding. There is a conflict of opinion as to whether the jury is *bound* to take evidence in the matter. According to the High Court of Allahabad they are not so bound[1] while according to the High Court of Calcutta they are so bound.[2]

Where the jurors do not consult together but deliver separate and independent opinions[3] or where some of the jurors blindly follow the opinion of their fellow jurors,[4] the finding of the jury is illegal and cannot be acted upon.

The recommendations of the jury directing parties to do a certain thing can only be enforced under S. 140, sub-S. (2). They do not by themselves constitute a contract between the parties.[5]

5. Objection to the finding of the Jury.—Objections to the verdict of the jury should be made as specifically as possible. They should be of such a character as to justify the conclusion that the verdict was not a proper verdict because the jury did not in fact apply a judicial discretion to the case, or that the verdict was such as the jury could not have arrived at by a proper exercise of discretion upon the materials before them.[1]

6. "Magistrate shall make the order absolute".—The "Magistrate" in this section refers only to the Magistrate to whom an application under S. 135 is made and who appoints the jury under S. 138. He cannot transfer the case to any other Magistrate after appointing the jury.[1]

If the jury or the majority of the jurors find that the order of the Magistrate is reasonable and proper, the Magistrate *is bound* to make the order absolute.[2] He cannot refuse to make the order absolute on the ground that the verdict is inconsistent or for any other reason.[3] If on the other hand the jury or the majority of jurors do not find the order to be reasonable and proper, the order cannot be made absolute. Thus where a conditional order under S. 133 was to remove the houses of certain prostitutes, the jury appointed under S. 138, only recommends that the prostitutes should be asked to mend their habits, the Magistrate has no jurisdiction to order the removal of the houses.[4]

If modifications are suggested by the jury *and* the Magistrate accepts such modifications, the original order can be made absolute only with those modifications. The Magistrate cannot split up the finding of the jury and accept one part and reject the other.[5] *See also* Note 7.

Note 4.

(1) (1908) 8 Cri. L. Jour. 1 (3): 30 All. 364, *Emperor* v. *Ram Bilas.*

(2) (1899) 26 Cal. 869 (870), *Kailash Chunder Sen* v. *Ram Lal Mittra.*
(1902) 6 Cal. W. N. 886 (887), *Adhore Chandradey* v. *Ambika Churan Roy.*

(3) (1896) 18 All. 158 (159), *Queen-Empress* v. *Khushal Ram.*

(4) (1876) 25 Suth W. R. Cr. 4 (5), *Petambar Jugi* v. *Nasaruddy.*

(5) (1916) 38 Ind. Cas. 417 (418, 419): 1916 Pat. 264, *Sheonarain Tiwari* v. *Sakhi Chand Sahu.*

Note 5.

(1) (1875) 23 Suth. W. R. 15 (15), *Bindaban* v. *Dwarka.*

Note 6.

(1) (1920) 1920 Mad. 378 (379): 43 Mad. 316, *Angappa Mudali* v. *Ramapuram Perumal Chetty.*

(2) (1874) 22 Suth W. R. 86 (86), *Nyan* v. *Sher Ali.*
(1874) 21 Suth W. R. Cr. 54 (54), *Sheikh Nozumuddy* v. *Hasim Khan.*
(1877) 1 Shome 11 (12), Re *Puddo Lochan.*
(1882) 2 Weir 59 (59), In re *Sheikh Mohidin.*

(3) (1909) 10 Cri. L. Jour. 210 (211) (Cal.), *Hriday Chanda Das* v. *Shib Chandra Goswami.*
(1864-66) 2 Bom. H. C. 384 (388), *Rey* v. *Dalsukram Haribhai.*

(4) (1901) 5 Cal. W. N. 566 (567), *Basanta* v. *Emperor.*
(1906) 10 Cal. W. N. lxxxvii (N.), *Radha.*

(5) (1925) 1925 Cal. 399 (400), *Rahimaddi* v. *Sher Ali.*

S. 139, Notes 7—9.

7. **"In other cases".**—The other cases contemplated under this sub-clause are (*a*) where the jury or the majority of the jurors find that the order of the Magistrate is not reasonable and proper and (*b*) where the majority recommends certain modifications to the Magistrate's order, which are not accepted by him. In both these cases the Magistrate should stay his hands and not take further proceedings under this chapter.[1]

S. 141 provides for the case where the jury *fails* to return a finding.

8. **Bona fide claim of right—whether jury can try.**—*Vide* S. 139-A, *infra*.

9. **Appeal, Revision.**—No appeal lies from the decision of a jury appointed to consider whether the order of the Magistrate is reasonable and proper,[1] nor has the District Magistrate the jurisdiction to call for the records of the jury and examine the same under S. 435.[2]

S. 139-A.

139-A. (1) *Where an order is made under Section* 133 *for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section* 137 *or section* 138, *inquire into the matter.*

Procedure where existence of public right is denied.

(2) *If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section* 137 *or section* 138, *as the case may require.*

(3) *A person who has, on being questioned by the Magistrate under sub-section* (1), *failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section* 138.

Note 7.

(1) (1869) 12 Suth W. R. 28 (29), *Queen-* v. *Poholee Mullick.*
(1874) 21 Suth. W. R. (Cr.) 10 (10), *Kashi Chandur Chakrabutty* v. *Yar Mahomed.*
(1887) Rat. 336 (336), *Anon.*

Note 9.

(1) (1871) 16 Suth W. R. Cr. 56 (57), *Shitaram* v. *Ramanuna.*
(2) (1887) Rat. 336 (336), *Anon.*

SYNOPSIS.

	Note No.
SCOPE, OBJECT AND APPLICABILITY	1
THE MAGISTRATE SHALL QUESTION AS TO EXISTENCE OF PUBLIC RIGHT	2
CLAIM OF TITLE—TIME TO PLEAD	3
"SHALL ENQUIRE INTO THE MATTER"	4
DELEGATION OF ENQUIRY	5
RELIABLE EVIDENCE—SUB-S. (2)	6
"SHALL STAY PROCEEDINGS"	7
UNTIL DECIDED BY A COMPETENT CIVIL COURT	8
PROCEDURE WHERE THERE IS NO RELIABLE EVIDENCE ..	9
CONSEQUENCES OF FAILURE TO DENY THE PUBLIC RIGHT.	10
REVISION	11

Other Topics.

Dispute between Government and private individual. See Note 1, F. N. (1).
Inquiry by Subordinate Magistrate. See Note 5.
Procedure. See Note 4.
Question shall not be enquired into by jury. See Note 10, Pt. 1.

1. Scope, object and applicability.—This section was newly inserted in the Code by S. 26 of the Code of Criminal Procedure Amendment Act XVIII of 1923; prior thereto the Courts had by judicial decisions engrafted on the Code a law which may generally be stated as follows:—Where the party proceeded against set up a claim of title in respect of the way, river, channel or place in question, the Magistrate had to determine whether such claim was *bona fide* or *mala fide* and in the former case to refer the parties to a civil suit.[1] The legis-

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Section 139-A—Note 1.

(1) (1929) 1929 All. 220 (221), *Manohar Singh* v. *Emperor.*
(1905) 2 Cri. L. Jour. 517 (517, 518): 28 All. 99, *Emperor* v. *Dost Muhammad.*
(1920) 1920 Cal. 176 (177), *Peary Lal* v. *Sundara Kishore Mitter.*
(1888) 15 Cal. 564 (572), *Luckhee Narain* v. *Ram Kumar Mukerjee.*
(1898) 22 Bom. 988 (995), In re *Maharana Shri Jaswant Sanji.*
(1908) 8 Cri. L. Jour. 33 (34) (Bom.), In re *Musa Bagas Abheram.*
(1890) S. J. and R. (Low. Bur.) Vol. I, 530 (530), *Sutherland* v. *Singala Mahomed.*
(1902) 4 Bom. L. R. 687 (688), In re *Narayan Jivan Mestri.*
(1913) 14 Cri. L. Jour. 74 (74) (Bom.), In re *Dnyanoba Pandurang.*
(1921) 25 Cal. W. N. 52 (52), *Suraj Mulla* v. *Emperor.*
(1921) 22 Cri. L. Jour. 577 (577) (Cal.), *Sudhansudar* v. *Rahim.*
(1866) 12 Cal. 137 (138), *Askar Mca* v. *Sabdar.*
(1886) 12 Cal. 696 (696), *Lal Mian* v. *Nazir.*
(1887) 1887 Pun. Re. No. 6, p. 9, *Empress* v. *Prem Singh.*
(1923) 1923 Oudh 22 (23), *Ram Lakshan.*
(1921) 22 Cri. L. Jour. 351 (352) (Cal.), *Lakshan Chandra* v. *Bilas.*
(1908) 7 Cri. L. Jour. 105 (108): 35 Cal. 283, *Kamini Kumar* v. *Emperor.*
(1914) 15 Cri. L. Jour. 698 (699): 1915 Cal. 168: 42 Cal. 158, *Manipur Dey* v. *Bidhu Bhusan.*
(1898) 25 Cal. 278 (281), *Preonath Dey* v. *Gobordhone Malo.*
(1890) 17 Cal. 562 (566), *Queen* v. *Bissessur Sahu.*
(1904) 1 Cri. L. Jour. 70 (72) (Cal.), *Belat Ali* v. *Abdur Rahim.*
(1899) 3 Cal. W. N. 345 (347), *Nasaruddi* v. *Akiluddi.*
(1900) 4 Cal. W. N. 596 (596), *Budhainath* v. *Nil Mahanto.*
(1885) 11 Cal. 8 (10), *Basaruddin Bhuiah* v. *Baharali.*
(1880) 5 Cal. 875 (877), In the matter of *Chundernath Sen.*
(1923) 1923 Pat. 540 (541), *Ranji Sah* v. *B. N. W. Ry.*
(1921) 63 Ind. Cas. 828 (829) (Cal.), *Phalla* v. *Niaz Ahmad.*
(1920) 1920 Cal. 895 (895), *Lakshman Chandra* v. *Bilash Roy.*
(1914) 1914 L. B. 31 (31), *Ah Yaway* v. *Ma Gyi.*
(1921) 22 Cri. L. Jour. 389 (390) (Cal.), *Suraj Mull Agarwalla* v. *Emperor.*
(1897) 1897 Pun. Re. No. 4, p. 9, *Mir.*
(1903) 1903 Pun. Re. No. 2, p. 7, *Murad* v. *Emperor.*
(1905) 2 Cri. L. Jour. 349 (351) (Cal.), *Nundo Gopal* v. *Kusum Kumar.*

S. 139-A, Notes 1—2

lature has in the present section given legislative effect to the law, as so declared but with one important modification. It is not now necessary that the claim should be *bona fide*. Where the existence of the public right is denied, the Magistrate is to inquire into the matter and, if in such enquiry, *there is reliable evidence* in support of such denial, the proceeding should be stayed.[2] The object with which this section is enacted is to prevent the Magistrate from arrogating to himself the functions of a Civil Court and from instituting an elaborate enquiry with regard to the rights of the parties.[3]

This section applies only to those cases where the party served with the preliminary order *denies* the existence of the public right over the place obstructed and not to the cases where such party *admits* the public right but denies only the fact of obstruction.[4] Where an order under S. 133 has been made in respect of a way, river, channel or place, and the party proceeded against appears before the Magistrate in pursuance of such order, it is the procedure provided by this section that should *first* be followed, and then if necessary that provided in Ss. 137 and 138, *ante*.[5] In other words even after an inquiry under this section it is open to the person proceeded against to show cause under S. 137 or to claim an appointment of the jury under S. 138. The fact that the Magistrate found under S. 139-A, that there was no reliable evidence in support of the denial of the public right does not disentitle the party from claiming the inquiry under S. 137 or 138.[6]

2. The Magistrate shall question as to existence of public right.—The provisions of this section are mandatory and the first duty of the Magistrate, on the appearance of the party in pursuance of the notice under S. 133, is to

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(1890) 4 C. P. L. R. 142 (143), *Emperor* v. *Saligram*.
(1899) 2 Weir 61 (61), Re *Venkanna*.
(1888) Rat. 378 (379), In re *Jeysang* (In this case dispute as to title was between the Government and the party).
(1900) 2 Bom. L. R. 818 (818, 819), In re *Ran Singh* (Dispute between Government and party).
(1908) 8 Cri. L. Jour. 33 (35) (Bom.), In re *Musa Bagas Abheran*.
(1924) 1924 All. 1 (1, 3, 7): 45 All. 656, *Abdul Wahid Khan* v. *Abdullah Khan*.
(1918) 1918 Cal. 40 (41), *Fakir Mullick* v. *Emperor*.
(1922) 1922 Cal. 59 (63) (F.B.), *Ram Sagar Mondal* v. *Alek Naskar*.
(1901) 23 All. 159 (160), *Queen-Empress* v. *Kedarnath*.
(1913) 14 Cri. L. Jour. 74 (74) (Bom.), In re *Dnya Noba Pandurang*.
(1898) 2 Cal. W. N. 554 (556), *Mukunda* v. *Haribole*.
(1924) 1924 Pat. 418 (420), *Chandrika Koeri* v. *Budhu Dusadh*.
(1919) 1919 Pat. 528 (529), *Teni Prasad Singh* v. *Sarjoo Singh*.
(1880) 6 Cal. 291 (301), *Mutty Ram* v. *Mohi*.
(1888) 15 Cal. 564 (572), *Luckhee Narain Banerjee* v. *Ram Kumar Mukerjee*.
(1896) 23 Cal. 499 (501), *Upendranath Bhuttacharjee* v. *Khitish Chandra Bhuttacharjee*.
(1898) 25 Cal. 278 (281), *Preonath Dey* v. *Gobardhone Malo*.
(1902) 7 Cal. W. N. 117 (118), *Rakhal Chandra* v. *Kailash Chandra*.
(1906) 11 Cal. W. N. 26 (27), *Ajimuddi Mondal* v. *Chapdal Rahaman*.
(1906) 3 Cri. L. Jour. 331 (333) (Cal.), *Ramnath Laskar* v. *Jaladhar Shaha*.
(1906) 4 Cri. L. Jour. 42 (43) (Cal.), *Dularam Deb* v. *Baishnab Charan Deb*.
(1910) 11 Cri. L. Jour. 305 (305) (Cal.), *Dharam Mandal* v. *Gossain*.
(1915) 16 Cri. L. Jour. 160 (160): 1915 Cal. 402, *Bhagat* v. *Ramrup*.
(1923) 1923 Lah. 525 (526): 4 Lah. 224, *Khushi Ram* v. *The Crown*.
(1905) 2 Cri. L. Jour. 762 (763): 32 Cal. 930, *Adhore Chandra* v. *Ambika*.
(2) (1929) 1929 All. 220 (222), *Manohar Singh* v. *Emperor*.
(1926) 1926 All. 390 (391), *Manna Lal* v. *Emperor*.
(1926) 1926 Pat. 170 (171): 4 Pat. 783, *Thakur Sao* v. *Abdul Aziz*.
(1930) 1930 Cal. 486 (486): 57 Cal. 368, *Matabar Molla* v. *Golam Panjaton*.
(1933) 1933 Cal. 790 (791), *Uma Kanta* v. *Kalipada*.
(3) (1931) 1931 Cal. 2 (3), *Satish Chandra Sen* v. *Krishna Kumar Das*.
(4) (1926) 1926 All. 157 (157), *Ghurahu Das* v. *Shakalraj Das*.
(1929) 1929 Cal. 507 (508), *Rajani Kanta Roy* v. *Ibrahim Sarkar*.
(5) (1932) 1932 All. 366 (366), *Raghunandan* v. *Shew Nandan*.
(6) (1933) 1933 Cal. 318 (319), *Shamji Tricumdas* v. *Ram Moye*.

question him without waiting for the objection being raised by the party, as to whether he denies the existence of the public right over the place of obstruction.[1] Where however the party admits the public right but denies only the obstruction omission to question him in the manner stated above is only an irregularity within the meaning of S. 537, *infra*.[2] **S. 139-A, Notes 2—4.**

3. **Claim of title—Time to plead.**—Under the law as it stood before the introduction of this section, the claim of title had to be taken on or *before* the *hearing* and, if the party claimed a jury without raising the question of title he could not subsequently raise that question.[1] It was also held that when a party, in ignorance of his rights or for some other reason asks for the appointment of a jury he could not be said thereby to have admitted existence of a public right.[2] Under sub-S. (3) of this section the question of title should be raised *at the time of and in answer to the question by the Magistrate* when the party first appears before him.

4. **"Shall enquire into the matter".**—Even prior to the passing of this section it had been held that, where the party proceeded against denied the existence of a public right and claimed a title in himself the Magistrate should enquire into the matter, but that the enquiry should be, to find out if the claim of title was made *bona fide* or merely to oust his jurisdiction.[1-a] Under the present section the Magistrate should inquire into the matter to find out if there is a *reliable evidence* in support of the denial of public right.[1]

This enquiry is clearly something to be kept quite distinct from the enquiry which may be held later under S. 137, if the Magistrate finds that there is no *prima facie* reliable evidence in support of the denial of the public right. There is no particular form prescribed in which this enquiry should be conducted. The Magistrate is left an absolute discretion as to how far he will

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Note 2.

(1) (1925) 1925 Cal. 736 (736), *Sadir* v. *Sabar Ali*.
(1926) 1926 All. 390 (391), *Munna Lal* v. *Emperor*.
(1932) 1932 All. 366 (366), *Raghunandan* v. *Shew Nandan*.
(1933) 1933 All. 615 (616), *Mt. Ram Kali* v. *Kripa Shankar*.
(1930) 1930 Cal. 486 (486): 57 Cal. 368, *Matabhar Molla* v. *Golam Panjaton*.
(1931) 1931 Cal. 2 (2), *Satischandra Sen* v. *Krishna Kumar Das*.
(1930) 1930 Pat. 199 (200), *Mahadeo Lal* v. *Hossaini Pandey*.
(1928) 1928 Lah. 856 (857), *Ude Singh* v. *Mohammada*.
(1931) 1931 Lah. 62 (63), *Manohar Lal* v. *Emperor*.
(1931) 1931 Oudh 397 (397), *Emperor* v. *Mulchand*.
(2) (1929) 1929 Cal. 507 (508), *Rajani Kanta Roy* v. *Ibrahim Sarkar*.

Note 3.

(1) (1900) 22 All. 267 (268), In the matter of *Lachman*.
(1908) 8 Cri. L. Jour. 1 (3): 30 All. 364, *Emperor* v. *Ram Bilas*.
(1881) 8 Cal. L. R. 399 (400), Re *Imandi*.
(1888) 15 Cal. 564 (572), *Luckhee Narain* v. *Ram Kumar*.
(1914) 1914 Low. Bur. 31 (32), *Ah Yway* v. *Ma Gyi*.
(2) (1881) 6 Cal. 291 (301), *Mutty Ram Sahoo* v. *Mohi Lall*.
(1905) 3 Cri. L. Jour. 331 (333) (Cal.), *Ramanath Laskar* v. *Jaladhar Shaha*.

Note 4.

(1-a) (1921) 22 Cri. L. Jour. 459 (459) (Cal.).
(1921) 25 Cal. W. N. xcvi (xcvi), *Priyanath* v. *Parasulla*.
(1909) 6 All. L. J. (N.) 79 (79), *Ganga Prasad* v. *Emperor*.
(1914) 1914 Low. Bur. 31 (31), *Ah Yway* v. *Ma Gyi*.
(1917) 18 Cri. L. Jour. 738 (738): 1917 Cal. 800, *Chandra* v. *Ram Mandal*.
(1) (1933) 1933 Cal. 790 (791), *Uma Kanta Chatterjee* v. *Kalipada Chowdhury*.
(1926) 1926 Jour. 98 (2) (98), *Rahanaddy Patwary* v. *Hasan Ali Jamadar*.
(1931) 1931 Lah. 62 (63), *Manohar Lal* v. *Emperor*.
(1928) 1928 Lah. 856 (857): 10 Lah. 151, *Ude Singh* v. *Mohamed*.
(1928) 1928 Lah. 664 (665), *Hari Kishan* v. *Malik Kanshi*.
(1933) 1933 All. 615 (616): 55 All. 866. *Mt. Ram Kali* v. *Kripa Shankar*.
(1930) 1930 Cal. 144 (144), *Dhananjoy Pal* v. *Nogendra Shankar Roy*.
(1930) 1930 Lah. 1046 (1047), *Hamid Ali* v. *Emperor*.
(1925) 1925 All. 311 (311), *Raghunath Upadia* v. *Emperor*.
(1928) 1928 Cal. 879 (879), *Etraj Mandal* v. *Emperor*.
(1933) 1933 Pat. 676 (676), *Digambar Ram Singh* v. *Emperor*.

S. 139-A, Notes 4—6.

go or upon what materials he will act in considering whether the defendant seems likely to have such a case in support of his denial as may make it seem unfitting for the Criminal Court to proceed.[2] There does not seem to be any obligation on the part of the Magistrate to examine *witnesses* produced in such an enquiry. He is to enquire into the matter of existence of a public right and if it appears that there is reliable evidence in support of the denial he must stay proceedings. The section only requires that the Magistrate should see whether there is *reliable evidence* in support of the denial and not that the non-existence of the public right should be *proved*. It is therefore not the duty of the Magistrate to satisfy himself if the opposite party has succeeded in proving the non-existence of the public right.[3] Since the enquiry is to find out if there is reliable evidence in support of the denial, the party denying the public right must be *called upon to produce evidence* in support of such denial and such evidence must be *legal evidence*.[4] In order to satisfy himself if there is legal evidence, the Magistrate may allow the cross-examination of witnesses adduced in support of the denial.[5] The enquiry being of a summary character it is not intended that the party complaining of obstruction should be required to adduce evidence to counteract the evidence sought to be made out by the other party.[6] There is however nothing in this section excluding the inherent powers of the Magistrate under S. 540, *infra*, to allow such evidence to be given.[7]

The provisions of this section are mandatory and cannot be waived by the party. The Magistrate is bound to hold the enquiry as required by this section.[8]

5. **Delegation of enquiry.**—The enquiry should be held only by the Magistrate before whom the party appears in pursuance of an order under S. 133 and cannot be delegated to a Magistrate subordinate to him. The reason is that it is on the result of the enquiry that the subsequent procedure either to stay proceedings or proceed further rests. The question being whether there is or is not reliable evidence in support of the denial of the right, the value of evidence is better determined by the Magistrate who hears it himself.[1]

6. **Reliable evidence—Sub-S. (2).**—It has been seen in Note 4, *ante*, that in coming to a decision as to whether there is reliable evidence in support of the denial set up, the Magistrate should not consider whether the claim was *established* to his satisfaction but only whether it was supported by *prima facie* evidence. It is not, therefore, necessary to weigh the evidence produced on both sides and come to the conclusion. The Magistrate should only take the evidence in support of the denial and see whether as it stands he could

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(2) (1929) 1929 All. 220 (221), *Manohar Singh* v. *Emperor*.
(3) (1928) 1928 Lah. 856 (857), *Uda Singh* v. *Mohammadi*.
(1931) 1931 Cal. 2 (3), *Satish Chandra Sen* v. *Krishna Das*.
(1933) 1933 Nag. 267 (268), *Mahabir Prasad* v. *Pitambar Prasad*.
(1926) 1926 All. 390 (391), *Munna Lal* v. *Emperor*.
(4) (1931) 1931 Cal. 527 (527): 58 Cal. 461, *Kishori Mohan Pramanick* v. *Krishna Behari Basak*.
(5) (1931) 1931 Cal. 527 (527): 58 Cal. 461, *Kishori Mohan Pramanik* v. *Krishna Bihari Basak*.
(6) (1931) 1931 Cal. 527 (527): 58 Cal. 461, *Kishori Mohan Pramanik* v. *Krishna Bihari Basak*.
(7) (1931) 1931 Cal. 527 (528): 58 Cal. 461, *Kishori Mohan Pramanik* v. *Krishna Bihari Basak*.
(8) (1930) 1930 Lah. 1046 (1047), *Hamid Ali* v. *Emperor*.

Note 5.

(1) (1929) 1929 Cal. 813 (813), *Masaddar Ali* v. *Isamulla*.

S. 139-A. Notes 6—8.

come to the conclusion that the evidence was reliable.[1] Public records such as settlement registers revenue records and survey maps which support the person denying the existence of public right are 'reliable evidence' within the meaning of this section.[2] A long user of the property claimed to be public, by the person denying the public right was held to be reliable evidence in support of such denial so as to oust the jurisdiction of the Magistrate.[3]

7. **"Shall stay proceedings".**—The section as has been seen already is imperative and the Magistrate is bound to stay the proceedings if there is *reliable evidence* in support of the denial. He has no discretion in the matter.[1] The Court is not, however, directed to quash the proceedings altogether but only to *stay* the same until the adjudication by a Civil Court.[2] The proceedings need not be stayed indefinitely and the Magistrate can fix a time for establishing the right in a Civil Court.[3] If the party does not, within a reasonable time, have recourse to the Civil Court the Magistrate can proceed to make the order absolute.[4] There is nothing in law to prevent the Magistrate from drawing up fresh proceeding on proper materials even though proceedings may have been stayed previously under this section.[5]

8. **Until decided by a competent Civil Court.**—This section is silent as to which party should go first to the Civil Court to establish title. In decisions decided prior to the enactment of this section in 1923 it was held that the Magistrate had power, while staying proceedings, to direct a particular party to establish his title in a Civil Court[1] provided he passed such order after

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Note 6.

(1) (1928) 1928 Lah. 664 (665), *Hari Kishan* v. *Kanshi Ram*.
(1926) 1926 Pat. 170 (171): 4 Pat. 782. *Thakur Sao* v. *Abdul Aziz*.
(1934) 1934 Cal. 545 (546): 61 Cal. 390. *Kusha Mondal* v. *Emperor*.
(1934) 1934 Pat. 438 (439), *Harisadhan Chaudhuri* v. *Tek Narain Singh*.
(2) (1925) 1925 Cal. 268 (268), *Debendranath Chowdhury* v. *Chairman, Local Board, Asansol*.
(1927) 1927 Lah. 745 (746), *Nur Ali Shah* v. *Natha*.
(1931) 1931 Cal. 2 (2), *Satish Chandra* v. *Krishna Kumar*.
(1932) 1932 Oudh 118 (120): 7 Luck. 583, *Bishunath Singh* v. *Khurshed Ahmed*.
(1935) 1935 Pat. 218 (219), *Sitaram Roy* v. *Badri Rai* (Record of rights is "reliable evidence").
(3) (1928) 1928 Pat. 268 (269), *Janki Ram* v. *Sankhi Panjara*.

Note 7.

(1) (1926) 1926 All. 390 (391), *Manna Lal* v. *Emperor*.
(1928) 1928 All. 627 (629): 50 All. 871, *Munna Tewari* v. *Chandarbali*.
(1932) 1932 All. 366 (367), *Raghunandan* v. *Shew Nandan*.
(1933) 1933 All. 615 (616): 55 All. 866, *Mt. Ram Kali* v. *Kripa Shankar*.
(1925) 1925 Cal. 268 (268), *Debendranath* v. *Chairman, Local Board, Asansol*.
(1927) 1927 Lah. 227 (228), *Harichand* v. *Durga Datt*.
(1927) 1927 Lah. 745 (746), *Nur Ali Shah* v. *Natha*.
(1928) 1928 Lah. 856 (857), *Ude Singh* v. *Mohammada*.
(1930) 1930 Lah. 1046 (1047), *Hamid Ali* v. *Emperor*.
(1931) 1931 Lah. 62 (63), *Manohar Lal* v. *Emperor*.
(1927) 1927 Oudh 632 (632), *Debi Dayal* v. *Manga*.
(1929) 1929 Oudh 85 (86), *Ram Chetan Dass* v. *Jasbir Singh*.
(1932) 1932 Oudh 118 (119, 120): 7 Luck. 583, *Bishunath* v. *Khurshed Ahmed*.
(1932) 1932 Oudh 120 (120, 121), *Sohan Lal* v. *District Board, Lucknow*.
9 L. R. A. Cr. 118.
(1924) 1924 Pat. 418 (420), *Chandrika Koeri* v. *Budhu Dusadh*.
(1934) 1934 All. 131 (131).
(1934) 1934 Pat. 145 (145).
(1933) 1933 Pat. 676 (676, 677), *Digambar Ram Singh* v. *Emperor*.
(1933) 1933 Cal. 790 (791), *Uma Kanta Chatterjee* v. *Kalipada Chowdhury* (He can proceed further only if he comes to the conclusion that there is *no* reliable evidence).
(1935) 1935 Pat. 138 (139), *Abu Sayeed* v. *Damodar Prasad* (Do.).
(2) (1929) 1929 All. 220 (222), *Manohar Singh* v. *Emperor*.
(1935) 1935 All. 79 (80), *Ram Sahai* v. *Uttama Debi*.
(3) (1929) 1929 All. 709 (709): 51 All. 890, *Ch. Resal Singh* v. *Baijit Singh*.
(1922) 1922 Cal. 59 (67): 49 Cal. 682, *Ram Sagar* v. *Alek Naskar*.
(1929) 1929 Oudh 85 (86), *Ram Chetan* v. *Jasbir Singh*.
(1904) 1 Cri. L. Jour. 70 (72) (Cal.), *Belat Ali* v. *Abdur Rahim*.
(4) (1914) 15 Cri. L. Jour. 698 (699): 1915 Cal. 168: 42 Cal. 158, *Manipur Dey* v. *Bidhu Bhusan*.
(5) (1931) 1931 Cal. 2 (3), *Satish Chandra Sen* v. *Krishna Kumar*.

Note 8.

(1) (1914) 15 Cri. L. Jour. 698 (698): 1915

S 139-A, Notes 8—10.

consideration of the evidence adduced by the parties.[2] But under the present section it has been held that there is nothing in the section which entitles the Magistrate to say which party should file the suit. By this stay the Magistrate as it were ousts his own jurisdiction to decide anything including the question of *onus* of proof.[3]

9. **Procedure where there is no reliable evidence.**—Where the Magistrate finds on enquiry that there is *no reliable evidence* in support of the denial of the existence of a public right, he should record his reason for his decision and proceed to decide the case under S. 137 or S. 138, *ante* as the case may be without further reference to the claim.[1] In such a case, the mere fact that the party has filed a civil suit to establish his right is no ground for staying the criminal proceedings.[2]

10. **Consequences of failure to deny the public right.**—Sub-S. 3 of this section provides that a failure to deny at the proper time the existence of the public right will disentitle the person to make any such denial at any subsequent stage of the proceedings and that the existence of such public right cannot be enquired into by any jury appointed under S. 138, *ante*. Even before the introduction of this section it had been held that it was no part of the duty of the jury to determine the rights of parties in the property but that they could decide only the reasonableness or otherwise of the order passed by the Magistrate. *See* the following cases.[1]

Cal. 168: 42 Cal. 158, *Sagarman v. Emperor*.

(1922) 1922 Cal. 59 (67): 49 Cal. 682, *Ram Sagar Mondal v. Alek Naskar*.

(2) (1919) 1919 Cal. 182 (183), *Peary Lal v. Surendra Krishna*.

(3) (1930) 1930 All. 658 (658): 52 All. 592, *Rozan v. Emperor*.

(1927) 1927 Lah. 227 (228), *Hari Chand v. Durga Datt*.

(1929) 1929 All. 220 (222), *Manohar Singh v. Emperor*.

(1935) 1935 All. 79 (80), *Ram Sahai v. Uttam Debi*.

[See also (1934) 1934 Cal. 545 (546): 61 Cal. 390, *Kusha Mandal v. President, Gopalnagar Union Board* (Under the law as it is, it is the party moving for proceedings under S. 133 or somebody interested in asserting such right who has got to go to the Civil Court to establish its existence and not for the second party to go to the Civil Court to disprove its existence).]

[But see (1929) 1929 All. 709 (709), *Resal Singh v. Baljit Singh* (In the circumstances of this case compainant was directed to file the suit).]

Note 9.

(1) (1933) 1933 All. 615 (616): 55 All. 866, *Mt. Ram Kali v. Kripa Shanker*.

(1933) 1933 Cal. 790 (791), *Uma Kanta Chatterji v. Kalipada Chowdhury*.

(1928) 1928 Lah. 856 (857), *Ude Singh v. Mohammada*.

(1930) 1930 Lah. 1046 (1047), *Hamid Ali v. Emperor*.

(1926) 1926 All. 390 (391), *Munna Lal v. Emperor*.

(1932) 1932 All. 366 (366), *Raghunandan v. Shew Nandan*.

(1934) 1934 All. 131 (131), *Kalka Prasad v. Shiam Kishore Singh*.

(1934) 1934 Pat. 145 (145), *Nirsu Pande v. Emperor* (Proceedings to be stayed only if Magistrate finds that there is reliable evidence).

(2) (1934) 1934 All. 131 (132), *Kalika Prasad v. Shiam Kishore Singh*.

Note 10.

(1) (1914) 15 Cri. L. Jour. 515 (515): 1915 Cal. 113, *Mohammad v. Kareem*.

(1871) 15 Suth. W. R. 67 (68), Re *Becharam*.

(1871) 1 Shome 11 (12), Re *Puddo Lochan*.

(1880) 5 Cal. 875 (876, 877), In the matter of *Chandranath Sen*.

(1899) 26 Cal. 869 (870), *Kailash Chander Sen v. Ram Lall*.

(1904) 31 Cal. 979 (982), *Mathuk Dhari Tewari v. Hari Madhab Das*.

(1871) 15 Suth. W. R. 67 (68), *Becharam Bhuttacharjee v. Baloo Khettar Mohan*.

(1874) 21 Suth. W. R. 64 (65), *Roy Omesh v. Ichanath*.

(1900) 5 Cal. W. N. 173 (174), *Ishan Chandra v. Prasanna*.

(1880) 5 Cal. 875 (877), In the matter of *Chandranath Sen*.

(1881) 6 Cal. 291 (301), *Mutty Ram Sahoo v. Mohi Lall*.

(1899) 26 Cal. 869 (870), *Kailash Chander Sen v. Ram Lall*.

(1917) 18 Cri. L. Jour. 452 (452): 1916 Pat. 171, *Sheikh Imrat Ali v. Sheikh Amjad Ali*.

(1890) 2 Weir 64 (64), *Khaja*.

(1898-1900) 3 Cal. W. N. 345 (347), *Nasaruddi v. Akiluddi*.

(1899-1900) 4 Cal. W. N. 596 (596), *Budhainath v. Nil Mahanto*.

(1905-06) 10 Cal. W. N. 845 (846), *Dulabram v. Baisnab Charan*.

(1906) 3 Cri. L. Jour. 331 (333) (Cal.), *Ramanatha Laskar v. Jaladhar Shaha*.

(1906) 4 Cri. L. Jour. 42 (44) (Cal.), *Dulalram v. Baishnab Charan*.

(1923) 1923 Lah. 525 (526): 4 Lah. 224, *Khushi Ram v. The Crown*.

11. Revision.—A non-compliance with the mandatory provisions of this section will afford a valid ground for revision. Thus the High Court will revise the order of the Lower Court in the following cases:— **S. 139-A, Note 11.**

(1) Where the Magistrate weighs the evidence and comes to a conclusion on the merits instead of staying proceedings where there is reliable evidence in support of denial.[1]

(2) Where he proceeds to take evidence under S. 137 without holding the enquiry referred to in this section[2] and passes final orders under those sections.[3]

(3) Where he overlooks the provisions of this section and passes orders on the test of *bona fides* of the claim and not on the existence or non-existence of reliable evidence.[4]

(4) Where he makes over the enquiry contemplated under this section to a Subordinate Magistrate.[5]

(5) Where the order negatives the rights given under S. 138 by reason of not finding reliable evidence in support of the denial during the enquiry.[6]

(6) Where the Magistrate fails to question the party proceeded against if he denies the existence of the public right and fails to ask him to produce evidence in support of denial.[7]

As to cases before the introduction of the section see the follwing cases.[8]

(1900) 1900 All. W. N. 80 (80), *In re Lachman*.
(1914) 1914 Low. Bur. 31 (31), *Ah Yway* v. *Ma Gyi*.

Note 11.

(1) (1926) 1926 Pat. 170 (171): 4 Pat. 783, *Thakur Sao* v. *Abdul Aziz*.
(1927) 1927 Lah. 745 (746), *Nur Ali Shah* v. *Natha*.
(1932) 1932 Oudh 118 (120): 7 Luck. 583, *Bishunath* v. *Khurshed Ahmad*.
(2) (1925) 1925 All. 311 (311), *Raghunath Upadhia* v. *Emperor*.
(1928) 1928 All. 627 (629): 50 All. 871, *Manna Tewari* v. *Chandurbali*.
(1930) 1930 Lah. 1046 (1047), *Hamid Ali* v. *Emperor*.
(1930) 1930 Pat. 199 (200), *Mahadeo Lal* v. *Hossaini Panday* (Even waiver cannot cure the illegality).
(1933) 1933 All. 615 (616): 55 All. 866, *Mt. Ram Kali* v. *Kripa Shankar*.
(3) (1926) 1926 All. 390 (392), *Munna Lal* v. *Emperor*.
(1930) 1930 Cal. 486 (486): 57 Cal. 368, *Matabhar* v. *Golam Panjaton*.
(1933) 1933 Cal. 790 (791), *Umakanta* v. *Kalipada Chowdhury*.
(4) (1930) 1930 Cal. 144 (144), *Dhanjoy Pal* v. *Nogendra Shankar Roy*.
(1932) 1932 All. 366 (367), *Raghunandan* v. *Shew Nandan*.
(5) (1929) 1929 Cal. 813 (813), *Masaddar Ali* v. *Isimulla*.
(6) (1933) 1933 Cal. 318 (319), *Shamji Tricumdas* v. *Ram Moyi*.
(7) (1931) 1931 Oudh 397 (397), *Emperor* v. *Mulchand*.
(1931) 1931 Lah. 62 (62), *Manohar Lal* v. *Emperor*.
(8) (1899) 3 Cal. W. N. 345 (347), *Nasaruddi* v. *Akiluddi*.
(1906) 4 Cri. L. Jour. 42 (44) (Cal.), *Dulalram* v. *Baishnab Charan*.
(1906) 11 Cal. W. N. xxvi (xxvii), *Mclaughten* v. *Wertgarth*.
(1906) 10 Cal. W. N. 845 (847): 29 Mad. 194: 33 Ind. App. 67 (P.C.), *Dulalram Deb* v. *Baishnab Charan*.
(1915) 16 Cri. L. Jour. 160 (160): 1915 Cal. 402, *Bhagat Pershad* v. *Ramrup Karmokar*.
(1921) 1921 Cal. 118 (118), *Emperor* v. *Abed Ali*.
(1914) 15 Cri. L. Jour. 698 (699): 1915 Cal. 168: 42 Cal. 158, *Manipur Dey* v. *Bidhu Bhusan*.
(1905) 2 Cri. L. Jour. 517 (518): 28 All. 99, *Emperor* v. *Dost Muhammad*.
(1890) 17 Cal. 562 (565), *Empress* v. *Bissesur Sahu*.
(1908) 8 Cri. L. Jour. 33 (35) (Bom.), In re *Muse Bagas Abheram*.
(1913) 14 Cri. L. Jour. 74 (74) (Bom.), In re *Dnyanoba Pandurang*.
(1902) 4 Bom. L. R. 687 (688), In re *Narayan Jivan*.
(1902-03) 7 Cal. W. N. 117 (118), *Shaha* v. *Kallash*.
(1889) 4 C. P. L. R. 142 (143), *Empress* v. *Saligram Sukul*.

S. 140.

140.* (1) When an order has been made absolute under Section 136, Section 137 or Section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by Section 188 of the Indian Penal Code.

Procedure on order being made absolute.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

(3) No suit shall lie in respect of anything done in good faith under this section.

***(CODE OF 1882—S. 140.)**

140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Procedure on order being made absolute.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

No suit shall lie in respect of anything done in good faith under this section.

(CODE OF 1872—Ss. 525 and 526.)

525. If the person to whom the order mentioned in section 521 is issued appears to show cause against the same as hereinafter provided, the Magistrate shall take evidence in the matter, but if he does not appear, or does not obey the order,

Procedure in case of disobedience or neglect by person ordered.

SYNOPSIS.

S 140.

	Note No.
LEGISLATIVE CHANGES	1
NOTICE	2
FORM OF NOTICE	3
NOTICE OF ORDER ABSOLUTE UNDER S. 137, BY WHOM TO BE GIVEN	4
NON-COMPLIANCE WITH NOTICE—EFFECT OF ..	5
"IS NOT PERFORMED WITHIN THE TIME FIXED" ..	6
DEATH OF PERSON AGAINST WHOM CONDITIONAL ORDER IS MADE	7
COSTS	8
TITLE TO PROPERTY REMOVED	9
"MOVEABLE PROPERTY"—MEANING OF	10
SUIT IN RESPECT OF ACTS DONE UNDER THE SECTION ..	11

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or apply for a jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code;

and the Magistrate who issued such order may proceed to carry it into execution at the expense of such person, and may realise such expenses, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of such moveable property of such person within or without his jurisdiction. If such property is without his jurisdiction, the order shall authorize its attachment and sale when endorsed by the Magistrate in whose jurisdiction the goods are attached.

No suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of this section.

Procedure where jury finds Magistrate's order to be reasonable.

526. If, in a case referred to a jury, the jury find that the order of the Magistrate is reasonable and proper, as originally made, or subject to a modification which the Magistrate accepts, the Magistrate who issued the order, or before whom cause was shown, shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order, within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by section 188 of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as in section 525.

(CODE OF 1861—S. 311.)

Procedure in case of disobedience or neglect by party ordered.

311. If the person to whom the order mentioned in section 308 is issued shall not obey such order, or show cause against the same as hereinafter provided, or petition for a jury within the time specified in such order, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the Magistrate who issued such order may proceed to carry such order into execution at the expense of such person, and may realize such expenses either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of personal property of the person aforesaid, and no suit or action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to such order.

S. 140, Notes 1—5.

1. Legislative changes.—

1. *Difference between* 1861 *and* 1872 *Codes*:

The words "such moveable property of such person" which occurred in the Code of 1861 were substituted by the words "the personal property of the person."

2. *Difference between* 1872 *and* 1882 *Codes*:

The words "anything necessarily done in carrying out the provisions of this section" which occurred in the last paragraph of S. 525 of the Code of 1872 were substituted by the words "anything done in good faith under this section."

2. Notice.—The provisions of the section as to the issue of notice are mandatory and the Magistrate has no discretion to refuse to issue such notice. Thus he cannot refuse to issue it on the ground that a civil suit has been filed against the person proceeded against and a temporary injunction obtained restraining him from doing the act ordered to be done by the order absolute.[1]

The notice must however, direct only the *removal of the nuisance*. The Magistrate cannot direct the *manner* in which the nuisance is to be removed.[2]

3. Form of Notice.—*See* Schedule V, Form XVIII, *infra*.

4. Notice of order absolute under S. 137, by whom to be given.—Where a conditional order directs a person to appear before a Magistrate other than the Magistrate issuing the order, and the former, after enquiry under S. 137 makes the order absolute, it is he who is entitled to issue the notice under this section and not the Magistrate who originally issued the conditional order.[1]

5. Non-compliance with notice—Effect of.—Non-compliance with the notice will render the person against whom it is issued liable to a prosecution under S. 188 of the Penal Code. The Magistrate may also proceed against him in the manner prescribed by sub-S. (2) of the section.

The question, however, whether and what action should be taken on the failure to comply with the notice, is a matter of judicial discretion to be exercised by the Court after taking into consideration the whole of the circumstances of the case.[1] Thus, where after a notice was issued under this section to a party a temporary injunction was issued in a civil suit restraining him from performing the acts ordered to be done by the notice, it was observed by the High Court of Calcutta that the Court can, under such circumstances, desist from any further proceedings against him under this section until the conclusion of the civil suit.[2] But a Magistrate has no power to refuse to enforce the orders of his predecessor merely on the ground that it was not legal or valid[3] though a refusal to enforce an order on the ground that such

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Section 140—Note 2.

(1) (1931) 1931 Cal. 787 (787): 58 Cal. 1088, *Banku Behari* v. *Emperor*.
(2) (1897) 25 Cal. 425 (431), *Indra Nath* v. *Queen-Empress*.

Note 4.

(1) (1899) 2 Weir 61 (61), *Venkanna*.
(1886) 9 Mad. 201 (202), In re *Narasimha*.

Note 5.

(1) (1931) 1931 Cal. 787 (787): 58 Cal. 1088, *Banku Behari* v. *Emperor*.
(2) (1931) 1931 Cal. 787 (787): 58 Cal. 1088, *Banku Behari* v. *Emperor*.
(3) (1923) 1923 Cal. 589 (589), *Kiran Chandra Chowdhury* v. *Ramesh Chandra*.

enforcement has become unnecessary is not *ultra vires*.[4] So also the question as to the validity of an order passed under S. 133 cannot be raised in a trial for an offence under S. 188, I. P. C. for disobedience of the order.[5]

6. "Is not performed within the time fixed".—The time to be allowed for removing the nuisance is entirely within the discretion of the Magistrate who should exercise such discretion after taking into consideration the danger and inconvenience to the public.[1] Where the Court fixes a time for the removal of the nuisance, no action can be taken by the Magistrate for non-compliance with the notice before the expiry of the period so fixed.[2]

7. Death of person against whom conditional order is made.—Where the person against whom an order for removal of nuisance is made dies, the order ceases to have any force, and no further steps as provided by this section can be taken against his legal representatives.[1]

8. Costs.—Where the Court itself proceeds to carry out the order under the provisions of this section only the *actual* costs incurred for that purpose can be charged to the party. If, in so carrying out the work the Court undertakes to combine some other work also and the actual costs could not therefore be ascertained, the party could not be made liable for any approximate amount.[1]

The question as to who is liable for the costs of the removal of a nuisance where more than one person is proceeded against under S. 133 is to be determined on a consideration of the question as to who was *actually served* with notice of the proceedings and it would obviously be unjust for the Magistrate to make an order for recovery of the costs from a party who was not actually served with notice of the proceedings.[2]

9. Title to property removed.—The party against whom the order is enforced is entitled to the property gathered as a consequence of the removal. The Court has no right to dispose it of as it thinks most beneficial to the general public and if any of it is so utilised by the Court the party is entitled to claim a deduction of its value from the costs.[1]

10. "Moveable property"—Meaning of.—The words "by the *distress* and sale of any other moveable property" shows that the words "moveable property" in this section mean *tangible* moveable property.[1]

11. Suit in respect of acts done under the section.—Sub-S. 3 provides that no suit shall lie in respect of *anything done* in good faith under this section. Thus a suit for *damages* will not lie in respect of anything so done.[1] It

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(4) (1917) 18 Cri. L. Jour. 305 (307): 1916 Pat. 264, *Seonarain Tewari* v. *Sakhi Chund Sahu*.

(5) (1934) 1934 Cal. 242 (242): 60 Cal. 1336, *Remembrancer of Legal Affairs, Bengal* v. *Khodabaksha Shah*.

[But see (1881) 10 C.L.R. 193, *Empress* v. *Bhorub Chunder Datta* (Irregularity in constitution of Jury on whose report order was based—Disobedience of order—Conviction quashed).

(1883) 12 Cal. L. R. 231 (232), In re *Komul Kristo Bonick* (Conviction for disobedience of illegal order).]

Note 6.

(1) (1882) 2 Weir 59 (59), In re *Sheikh Mohidin*.

(2) (1882) 1882 All. W. N. 232 (233), *Empress* v. *Beni Kishen*.

Note 7.

(1) (1928) 1928 All. 300 (301), *Bohray Jugal* v. *Emperor*.

Note 8.

(1) (1873) 10 Suth. W. R. (Cr.) 51 (52), *Paul Dass*.

(2) (1927) 1927 Cal. 70 (71), *Shahabuddin Ahmed* v. *Abdul Kader*.

Note 9.

(1) (1868) 10 Suth. W. R. (Cr.) 51 (52), *Paul Dass*.

Note 10.

(1) (1917) 18 Cri. L. Jour. 1 (2): 1917 Mad. 748, *Secretary of State* v. *Sengammal*.

Note 11.

(1) (1888) 15 Cal. 460 (469), *Chuni Lal* v. *Ram Kishen Sahu* (No 'suit' presumably refers to a suit for damages).

S. 140, Note 11.

has been held by the Full Bench of the High Court of Calcutta that a suit to *set aside* the order of the Magistrate or to *prevent* him from carrying his order into effect, is also barred.[2] Sir Barnes Peacock, C. J. in delivering the judgment of the Full Bench said:—

"The object of the Act was to enable the Magistrate to make an order speedily, and speedily to carry that order into execution. S. 311 provides that no suit or action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to such order. It would, as it appears to me, be mere trifling with the Act, if when it says that no action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to an order of this nature, we should hold that the Civil Courts could interfere to restrain the Magistrate from giving effect to his order at all."

But this section does not bar a suit for a *declaration* that the property treated as a public thoroughfare is the private property of the plaintiff.[3] Nor does a failure to resort to the remedies provided for in this chapter for the removal of a public nuisance, debar a person from instituting a civil suit to abate such nuisance where he suffers special damage thereby.[4]

A person who is not a party to the proceedings under this chapter and who is dispossessed under colour of an order passed in such proceedings can bring an ejectment suit in a Civil Court on the basis of such dispossession.[4-a]

Independent of this section a Magistrate acting judicially is, under S. 1 of the Judicial Officer's Protection Act (XVIII of 1850), not liable to be sued in a Civil Court for any act done or ordered to be done by him in good faith in the discharge of his judicial duty.[5]

S. 141.

141*. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or

Procedure on failure to appoint jury or omission to return verdict.

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*(CODE OF 1882—S. 141.)

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as

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(1873) 19 Suth. W. R. 345 (346), *Meechu Chunder Sircar* v. *Ravenshaw*.

(2) (1870) 12 Suth. W. R. 18 (19) (F.B.), *Queen* v. *Chunder Seekur Roy* (7 W. R. 95 overruled).

[See also (1880) 6 Cal. 291 (299, 300): 3 Shom. L. R. 254, *Mutty Ram Sahoo* v. *Mohi Lall Roy*.

(1916) 1916 Pat. 264 (266), *Seonarain Tiwari* v. *Sakhi Chand Sahu* (Suit to set aside an order of refund of amount deposited in pursuance of a previous order).

(1868) 2 Ben. L. R. (S. N.) 15 (15), *Chinta Monee* v. *Digambor Mitter*.]

(3) (1888) 15 Cal. 460 (468, 470), *Chuni Lal* v. *Ram Kishen Sahu*.

(1881) 6 Cal. 291 (299, 300), *Mutty Ram Sahoo* v. *Mohi Lall Roy*.

(1867) 8 Suth. W. R. 269 (269), *Gooroo Churn Goon* v. *Gunga Gobind Chatterjee*.

(1866-67) 8 Bom. H. C. R. A. C. 94 (96), *Lalji Vkhela* v. *Jowba Dowbha*.

(4) See Note 5 to S. 91 in Chitaley and Annaji Rao's commentary on the Civil Procedure Code.

(1877-78) 3 Cal. 20 (23), *Raj Koomar Singh* v. *Sahebzada Roy*.

(1895) 22 Cal. 551 (556), *Abzul Miah* v. *Nasir Mahommad*.

(1886) 9 Mad. 463 (465), *Adamson* v. *Arumugam*.

(4-a) (1874) 22 Suth. W. R. 461 (462), *Deb Chunder Doss* v. *Joy Chunder Pal*.

(5) See (1871) 16 Suth. W. R. 63 (64, 74), *The Collector of Hooghly* v. *Taruck-nath Mookerjee* (Reviewing and overruling 13 Suth. W. R. 13).

(1869-70) 5 Mad. H. C. R. 345 (354), *Seshaiyangar* v. *R. Raghunatha Row*.

within such further time as the Magistrate, may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by Section 140. S. 141.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"WITHIN SUCH FURTHER TIME AS THE MAGISTRATE, MAY, IN HIS DISCRETION ALLOW"	2
"THE MAGISTRATE MAY PASS ORDER AS HE THINKS FIT".	3

Other Topics.

Considerations of equity and justice should guide the order. See Note 3, Pt. 1.
If jury fails to give verdict Magistrate could pass order under S. 137. See Note 3, Pt. 5.
Omission to deliver verdict—Fresh jury. See Note 3, Pt 2.

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he thinks fit, and such order shall be executed in the manner provided by section 140.

(CODE OF 1872, S. 523, Para. 4.)

523. * * * * * * * * *

When order may be made absolute.

If the applicant by neglect or otherwise prevents, or if he does not claim, the appointment of a jury, or if from any cause the jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks proper, which order shall be carried out in the manner hereinafter provided.

(CODE OF 1861—S. 310.)

310. The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same or to appear before the Magistrate to show cause as aforesaid, or he may apply to the Magistrate by petition for an order for a jury to be appointed to try whether the order is reasonable and proper.

Person ordered shall obey the order, or may claim a jury.

On receiving such petition, the Magistrate shall forthwith appoint a jury which shall consist of not less than five persons whereof the President and one-half of the members shall be nominated by such Magistrate, and the remaining members by the party petitioning. The Magistrate shall suspend the execution of the order pending such enquiry, and be guided by the decision of the jury, which shall be according to the opinion of the majority.

Constitution of jury.

Proceeding in case of neglect by jury.

If the petitioner shall, by neglect or in any other way, prevent the appointment of a jury, or if from any cause the jury so appointed shall not decide and report within a reasonable time to be fixed in the order for the appointment, their functions shall cease from the date of the expiration of such period, unless they be continued by special order of the Magistrate, and if from any of the above causes no decision be made by the jury, the order of the Magistrate shall be carried into effect as hereinafter provided.

S. 141, Notes 1—3.

1. Legislative Changes.—

(1) *Difference between the Code of* 1861 *and that of* 1872—

It was expressly provided in the Code of 1861 that the time within which the jury were to report, should be *fixed in the order* of appointment and that the Magistrate was empowered to extend the time by means of a "Special order". S. 523 of the Code of 1872 did not provide for the *fixing* of such period, but the jury had to decide and report "within a reasonable time."

(2) *Difference between the Code of* 1872 *and those of* 1882 *and* 1898—

The Code of 1882. provided for the *fixing* of a time for the decision of the jury and for *extending* the time when necessary. This provision is repeated in the present Code.

2. "Within such further time as the Magistrate, may, in his direction allow".—Where a reasonable application is made for extension of time the Court should grant it.[1] Where it so grants further time it should fix the date by which the verdict is to be returned. It was held in the undermentioned case decided under S. 310 of the Code of 1861, that the *fixing of a time* for the return of the verdict is a *condition precedent* to the exercise by the Magistrate of the power to decide the case himself and that where the Magistrate granted further time, directing the jury to report "*as soon as possible*", without fixing a time, and passed an order before the receipt of the report, it was held that the order was illegal and contrary to law.[2]

Where an application is made for extension of time for return of the verdict, it should be disposed of before any further proceedings are taken in the matter. No proceedings taken before it is so disposed of will be valid.[3]

3. "The Magistrate may pass order as he thinks fit".—The words "may pass such order as he thinks fit" show that the Court has *discretion* as to what order should be passed in the matter. The discretion however is a judicial one to be exercised on considerations of justice and equity.[1] Thus where, owing to no fault of person proceeded against, the jury perversly refuse to act or fail to return their verdict within the time fixed therefor, the Court may on a proper application by the party concerned appoint a fresh jury[2] or allow him to show cause by evidence against the conditional order as he could have done originally under S. 135, *ante*.[3] Even if there is no application, the Magistrate cannot straightaway make the order absolute without any attempt to investigate the rights and circumstances which surround the affair; the words "pass such order as he thinks fit" must mean that if the jury for any reason does not return his

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Section 141—Note 2.

(1) (1901) 23 All. 159 (161), *Queen* v. *Kedar Nath*.
(2) (1870) 14 Suth. W. R. (Cr.) 69, In the matter of *Shama Kant*.
(3) (1901) 23 All. 159 (161), *Queen* v. *Kedar Nath*.

Note 3.

(1) (1889) Rat. 460, *Queen-Empress* v. *Vithu*.
(2) (1922) 1922 All. 297 (297): 44 All. 575, *Shyam Sunder* v. *Emperor*.
(1864-66) 2 Bom. H. C. R. 384 (387), *Reg.* v. *Dalsukaram Hari Bhai*.
(1908) 8 Cri. L. Jour. 233 (235) (Cal.), *Sahib Chandra Gossain* v. *Hriday Chandra Das*.
(3) (1923) 1923 Pat. 229 (230), *Jipal Teli* v. *Gena Sahu*.
(1909) 10 Cri. L. Jour. 494 (495, 496) (Cal.), *Kishori Lal Panuri* v. *Emperor*.

verdict the Magistrate must inquire into the matter before he passes an order.[4] Where a jury failed to return a verdict within the time allowed, whereupon the Court gave the parties an opportunity to adduce evidence and, on their failure to do so, inspected the locality and made the order absolute, it was held that the procedure adopted was quite proper.[5] S. 141, Note 3.

Where the jury sent in their verdict after the expiry of the time allowed therefor but before the Magistrate actually passed orders under this section it was held that the Magistrate should duly consider the verdict given and not appoint a fresh jury discarding such verdict.[6]

142*. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter. S. 142.

Injunction pending inquiry.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

***(CODE OF 1882—S. 142.)**

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

(CODE OF 1872—S. 528.)

528. If the Magistrate who issued the order considers that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person to whom the

Injunction pending inquiry by jury.

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(4) (1923) 1923 Pat. 131 (132), *Ajodhya.*
(5) (1926) 1926 All. 658 (660), *Shiam Sundar* v. *King-Emperor.*
(6) (1864-66) 2 Bom. H. C. R. 384 (388), *Reg.* v. *Dalsukam Hari Bhai.*
(1874) 21 Suth. W. R. Cr. 54 (54), *Sheikh Nozummuddy* v. *Hasim Khan.*

S. 142, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
INJUNCTION—WHEN CAN BE ISSUED AND EXECUTED ..	2

1. **Legislative Changes.**—

(1) *Difference between the Codes of* 1861 *and* 1872—

The words "*pending* the enquiry by a jury" were replaced by the words "whether a jury is to be or has been appointed or not".

(2) *Difference between the Codes of* 1872 *and* 1882—

The words "who issued the order" and "to whom the order under S. 521 was issued," in S. 528 of the Code of 1872 were omitted and the words "making an order under S. 133" and "to the person against whom the order was made" were substituted.

(3) *Difference between the Codes of* 1882 *and* 1898—

The words "pending determination of the matter" have been newly added at the end of clause (1).

2. **Injunction—When can be issued and executed.**—Under S. 314 of 1861 an injunction could be issued only "pending the enquiry by a jury" and hence where the Magistrate had not appointed a jury, though asked to do so, the order of injunction was held to be irregular and set aside.[1] This is no longer law in view of the change in the wording of the section. *Vide* Note 1.

Under this section immediate measures may be taken only *to prevent* imminent danger or injury of a serious kind to the public.[2] If the measures

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order under section 521 was issued, as is required to obviate or prevent such danger or injury, whether a jury is to be or has been, appointed or not.

In default of such person forthwith taking all necessary measures ordered to be taken by such injunction, the Magistrate may himself use, or cause to be used, such means as may be necessary to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably done for that purpose.

(CODE OF 1861—S. 314.)

Issue and enforcement of injunction.

314. If, pending the enquiry by a jury, the Magistrate shall consider that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, it shall be lawful for such Magistrate to issue such an injunction and order to the person mentioned in that behalf in section 308, as shall be required to obviate or prevent such danger or injury, and in default of such person forthwith taking all necessary measures ordered to be taken by such injunction or order, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury, and no suit or action shall be entertained in respect of anything necessarily or resonably done for that purpose.

Section 142—Note 2.

(1) (1864) 1 Suth. W. R. 8 (9), *Queen* v. *Rajah Indu Booshun Deb Roy.*

(2) (1864) 1 Suth. W. R. 8 (9), *Queen* v. *Rajah Indo Booshun Deb Roy.*

(1874) 21 Suth. W. R. 86 (88), *Queen* v. *Brojendra.*

were taken after the danger had passed away the procedure is irregular.[3] Likewise, where after the order of injunction to remove in two days certain alleged obstructions to a road-way, passed on the 23rd August, 1873, nothing further was done till the 4th September, 1873, on which date on a petition presented to the District Magistrate, he made over the matter for enquiry to the Joint Magistrate, it was held that the Magistrate must be held to have abandoned the proceedings, under this section.[4] S. 142, Note, 2.

143*. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law. S. 143.

Magistrate may prohibit repetition or continuance of public nuisance.

SYNOPSIS.

	Note No.
SCOPE	1
"MAY ORDER ANY PERSON"	2
"PUBLIC NUISANCE"	3
REVISION	4

"Other Topics".

Form of order. See Note 2, Sch. V Form 20.

Not to repeat or continue. See Note 1, Pt. 2.

Orders by Magistrates not empowered. See S. 530.

Punishment for repeating continuing offence. See Note 1.

***(CODE OF 1882—S. 143.)**

Magistrate may prohibit repetition or continuance of public nuisances.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

(CODE OF 1872—S. 519.)

Magistrate may prohibit repetition or continuance of public nuisances.

519. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered, may enjoin any person not to repeat or continue a public nuisance, as defined in section 268 of the Indian Penal Code or under any local or special law.

(CODE OF 1861—S. 63.)

Magistrate may prohibit the repetition or continuance of public nuisances.

63. Any Magistrate may enjoin any person not to repeat or continue a public nuisance.

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(3) (1864) 1 Suth. W. R. 8 (9), *Queen* v. *Rajah Indoo Bhooshun Deb Roy.*

(4) (1874) 21 Suth. W. R. 86 (88), *Queen* v. *Brojendra.*

S. 143, Notes 1—4.

1. **Scope.**—This section contemplates that where a nuisance has been ascertained to be a 'public nuisance' after a trial under the foregoing provisions the Magistrate empowered in that behalf may prohibit its repetition.[1] A summary order under this section should not be passed without giving the party affected an opportunity to defend himself.[1-a] The Magistrate cannot prohibit what was lawful before his order and thereby make such a legal act punishable under the Indian Penal Code.[2] S. 291 of the Indian Penal Code provides the punishment for disobedience of an order under this section.

2. **'May order any person'.**—The order under this section must be addressed to a particular person in the form prescribed in Sch. V, Form No. 20. Unless such an order is served on an individual he would not render himself liable under S. 291 of the Penal Code.[1]

3. **'Public nuisance'.**—As to what is meant by a "Public nuisance" *See* S. 268 of the Indian Penal Code and the undermentioned cases.[1]

See also S. 133 *ante*.

4. **Revision.**—*See* S. 435, *infra*.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

S. 144.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144*. (1) In cases, where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

***(CODE OF 1882—S. 144.)**

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

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Section 143—Note 1.

(1) (1903) 1903 Pun. L. R. 34, p. 146 (148), *Pharayamal* v. *Emperor*.
(1934) 1934 Pat. 305 (306), *Jagadish Narain* v. *Dhanukhdhari Prasad* (The act must have been already forbidden by a competent tribunal—Section is not for *original* use).
(1935) 1935 Cal. 108 (108), *Jogendra Lal Pal* v. *Sheikh Anju*.
(1935) 1935 All. 79 (80), *Ram Sahai* v. *Uttama Debi* (Order under S. 143 cannot be passed against person not party to prior proceedings under S. 133).
(1-a) (1934) 1934 Pat. 305 (306), *Jagadish Narain* v. *Dhanukhdhari Prasad*.
(1935) 1935 Cal. 108 (108), *Jogendralal Pal* v. *Sheikh Anju*.
(2) (1896) 19 Mad. 464 (469), *Queen-Empress* v. *Saminadha Pillai*.

Note 2.

(1) (1886) 8 All. 99 (101), *Queen* v. *Jokhu*. [See also (1917) 1917 Bom. 45 (46), *Abdul Hamid Rajabali* v. *Emperor*.

Note 3.

(1) (1865) 2 Suth. W. R. (Cr.) 32 (32), *Queen* v. *Shabuckram Bukkolee*.
(1878) 2 Cal. 383 (383), *Empress* v. *Halodhur Poroe and others* (Strewing branches in a river for fishing purposes is not a public nuisance).

divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate, or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

divisional Magistrate, or of any other Magistrate *not being a Magistrate of the third class* specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, *there is sufficient ground for proceeding under this section and* immediate prevention or speedy remedy is desirable,

S. 144.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

(4) Any Magistrate may, *either on his own motion or on the application of any person aggrieved*, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) *Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing*

S. 144. *before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.*

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such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

(CODE OF 1872—S. 518.)

CHAPTER XXXIX.

LOCAL NUISANCES.

518. A Magistrate of the District, or a Magistrate of a Division of a District, or any Magistrate specially empowered may, by written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

Magistrate may issue orders to prevent obstructions, danger to human life, or riots.

obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed,

or danger to human life, health or safety,

or a riot or an affray.

Explanation I.—This section is intended to provide for cases where a speedy remedy is desirable, and where the delay which would be occasioned by a resort to the procedure contained in section 521 and the next following sections would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

Explanation II.—An order may, in cases of emergency or in cases where the circumstances do not admit of the serving of notice, be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

Explanation III.—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Explanation IV.—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the Official Gazette, otherwise directs. S. 144.

SYNOPSIS.

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Order as to processions in public street. See Note 10.

(CODE OF 1861—S. 62.)

Magistrate may issue orders to prevent obstructions, etc.

62. It shall be lawful for any Magistrate, by a written order, to direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate shall consider that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or is likely to prevent, or tends to prevent, danger to human life, health, or safety, or is likely to prevent, or tends to prevent, a riot or an affray.

S. 144, Note 1.

Order contrary to civil decree. See Note 2, F.N. 10 and Note 2, Pt. 5.
"Particular place." See Note 10, Pt. 2 (a).
Questions of title. See Note 1, Pt. 8 and Note 8, Pt. 1.
Service of order how to be made. See Note 4, Pt. 7.

1. Scope of the section.—This section provides for temporary orders being passed in urgent cases of nuisance or apprehended danger. Two conditions are necessary to be satisfied before a Magistrate can act under this section.

(1) The Magistrate must be satisfied that *immediate prevention or speedy remedy* is necessary.[1] It is in fact, the *urgency* of the case that vests the Magistrate with jurisdiction to exercise the powers conferred by this section.[2] A mere statement that he considers the case to be urgent is not sufficient if the facts show that, in reality, there is no urgent necessity for action.[3]

(2) The Magistrate must be satisfied that the direction to abstain from a certain act or to take certain order with property is likely to prevent or tends to prevent obstruction, etc., as specified in the section.[4]

Injury to *property* as distinguished from injury to person or danger to human life is not one of the objects for the prevention of which order can be passed under this section.[4-a]

The power conferred by this section is a *discretionary* one and being large and extraordinary, should be used sparingly and only where all the conditions prescribed are strictly fulfilled.[5]

Where the Magistrate has satisfied himself as to the existence of the conditions necessary for taking action under the section, he should pass a written order stating the *material* facts therein.[6]

The section does not empower a Magistrate to decide disputes of a civil nature between private individuals and thereby usurp the functions of a Civil

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Section 144—Note 1.

(1) (1931) 1931 Bom. 513 (513), *Emperor* v. *Moti Lal Gangadar*.
(1924) 1924 Pat. 145 (146), *Akal Mahtan* v. *Mahabir Mahton*.
(2) (1928) 1928 All. 14 (15): 50 All. 414, *Hafizuddin* v. *C. Laborde*.
(1919) 1919 Cal. 584 (584), *Chandranath Mukerjee* v. *Emperor*.
(1900) 27 Cal. 918 (920), *Daimulla Talukdar* v. *Moharulla*.
(1931) 1931 Mad. 242 (246), *Sri Ramamurthi* v. *Emperor*.
(1925) 1925 All. 678 (679), *Haji Ali* v. *Emperor*.
(1886) 8 All. 99 (101), *Queen-Empress* v. *Jokhu*.
(1920) 1920 Bom. 367 (368), *Cawasjee Jehangir Readymoney*, In re.
(1933) 1933 Cal. 348 (350), *Francis Duke Cobridge* v. *Jogendra Kumar Roy*.
(1880) 5 Cal. 132 (134), In the matter of *Abdool* v. *Luckey Narain Mundal*.
(1914) 1914 Mad. 697 (697), *Gobinda Chetty* v. *Emperor*.
(1924) 1924 Oudh 338 (340), *Jang Bahadur* v. *Emperor*.
1 J. G. 11, In re *Doyaram*.
(1912) 13 Cri. L. Jour. 126 (127): 38 Cal. 876, *Kamini Mohan Das Gupta* v. *Harendra Kumar Sarkar* (No emergency—S. 144 cannot be resorted to).
(1867) 8 Suth. W. R. (Cr.) 37 (37), *Queen* v. *Pitti Singh* (Do.).
(1922) 1922 Pat. 435 (438): 2 Pat. 94 (F.B.), *Shebalak Singh* v. *Kamaruddin Mandal* (Per Mullick, J.).
(3) (1919) 1919 Cal. 584 (585), *Chandranath Mukerjee* v. *Emperor*.
(4) (1929) 1929 Pat. 714 (716), *Radhe Das* v. *Jairam Mahto*.
(1874) 6 N.-W. P. 104 (108, 109), *Kedarnath* v. *Rughonath*.
(1870) 14 W. R. Cr. 3 (4), *Luchmiput Singh* v. *Rautmul*.
(1875) 23 Suth. W. R. 34 (34), *Sreenath* v. *Unnoda Churn*.
(1909) 13 Cal. W. N. cxix (cxix).
(1876) 3 Bom. P. J. 181 (181), *Kaladgi* v. *Maktum Saheb*.
(4-a) (1934) 1934 Cal. 513 (514), *Gonesh Chandra Khan* v. *Lalit Mohan Nayak*.
(5) (1928) 1928 All. 14 (15): 50 All. 414, *Hafizuddin* v. *C. Laborde*.
(1933) 1933 Cal. 348 (351), *Francis Duke Cobridge* v. *Jogendra Kumar Roy*.
(6) (1928) 1928 All. 14 (15): 50 All. 414, *Hafizuddin* v. *C. Laborde*.
(1931) 1931 Bom. 513 (513), *Motilal Gangadhar Kabre* v. *Emperor*.
(1905) 32 Cal. 935 (940), *Karoolal Sajawal* v. *Shyam Lal*.

Court which alone has jurisdiction to decide such disputes.[7] It is not within the province of a Magistrate acting under this section to adjudicate upon questions of title or possession,[8] although for the purposes of passing a proper and reasonable order he can take into consideration the nature of the claims set up by the parties in order to see whether or not it is possible to afford protection to those who seek only the lawful exercise of any legal and natural rights.[9] The Magistrate cannot also question the legality or propriety of a Civil Court's decree nor interfere with the execution of a Civil Court decree.[10] He is bound to respect the findings and directions given by a Civil Court.[11] Where the party applying has a proper and appropriate remedy in a Civil Court, the Criminal Court should not assume jurisdiction under this section.[12] Thus where there was a *bona fide* dispute as regards the possession and management of a temple between two persons, one claiming to be a hereditary trustee and the other claiming to be a trustee appointed by the Hindu Religious Endowments Board, it was held that it was not a case for interference under this section and that the proper remedy was to apply to the Civil Court.[13] It is not also permissible for a Magistrate under cover of an order under this section to dispossess a particular individual from certain property or to direct delivery of possession of the property where the object of the order is not to prevent obstruction, annoyance, or injury to any person lawfully employed.[14] Where the matter is likely to be decided by the Civil Court shortly and there is no apprehension of any imminent breach of the peace, there is also no necessity for action under this section.[15]

S. 144, Notes 1—2.

2. Section 144 and Ss. 145 and 107 compared.—This section is a larger and more general section than S. 145 which is limited in scope and applies only to cases of disputes relating to *land or water*, where there is a danger of the breach of the peace. Again this is *discretionary* while S. 145 is *mandatory*. The latter section further provides for a thorough enquiry into the disputes as to possession of the parties which tends to a breach of the peace.[1]

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(7) (1928) 1928 All. 14 (15): 50 All. 414, *Hafizuddin* v. *C. Laborde*.
(1932) 1932 Mad. 294 (296), *Ramnad Zamin Devasthanam* v. *Kadarmeera Ambalam*.
(1924) 1924 Cal. 996 (997, 998), *Abdul Jalil* v. *Emperor*.
(1873) 19 Suth. W. R. 6 (7), *Nilkomul* v. *Aund Chunder*.
(1921) 1921 Pat. 392 (394), *Madan Lal* v. *Fulchand Ram* (A Magistrate has no jurisdiction to pass an order which is virtually one of ejectment in a civil suit).

(8) (1901) 11 Mad. L. Jour. 122 (123), *Appala Narasimhulu* v. *Mahant*.
(1900) 2 Weir 93 (94), *Appala Narasimhulu* v. *Mahant Hari Narayan Das*.
(1925) 1925 Pat. 33 (34): 3 Pat. 809, *H. V. Low & Co., Ltd.* v. *Maharaja Sir Manindra Chandra*.
(1904) 1 Cri. L. Jour. 251 (253) (Cal.), *Kamal Narain Adhikar* v. *Raja Jotindra Mohan Roy* (Right by custom or usage can't be decided).
(1935) 1935 Pat. 145 (146), *Chhaka Ram* v. *Raghunath Ram*.

(9) (1932) 1932 Mad. 294 (296), *Ramnad Zamin Devasthanam Tahsildar* v. *Kadarmeera Ambalan*.

(10) (1895) 17 All. 485 (489) (F.B.), In the matter of the petition of *Rahmat Ullah*.
(1902) 6 Cal. W. N. 466 (467, 468), *Gobind Sahai* v. *Messrs. Sims & Carruthers* (An order under S. 144, Cr. P. Code, made or affirmed contrary to an existing decree of the Civil Court in respect of the same lands, is illegal).

(11) (1905) 2 Cri. L. Jour. 168 (169): 32 Cal. 154, *Umatal Fatima* v. *Nemai Charan*.
(1923) 1923 Mad. 15 (16), *K. Murari Naicken* v. *Aiyaswami Naicken*.

(12) (1925) 1925 All. 678 (679), *Haji Ali* v. *Emperor*.

(13) (1929) 1929 Mad. 845 (846), *Vythilinga Mudaliar* v. *Ramanuja Mudaliar*.

(14) (1928) 1928 All. 14 (16): 50 All. 414, *Fafizuddin* v. *Laborde*.
[See aso (1872) 17 Suth. W. R. Cr. 37 (37), *Sheikh Laloo* v. *Adam Sukar*.
(1898) 2 Cal. W. N. 572 (573), *Roop Lall Das* v. *David Manook*.]

(15) (1914) 1914 Mad. 239 (240), *Subramania Iyer* v. *Muthu Ambalan*.

Note 2.

(1) (1922) 1922 Pat. 435 (441): 2 Pat. 94 (F.B.), *Shebalak Singh* v. *Kamaruddin*.

S. 144, Note 2.

Ordinarily when there is a *dispute* relating to the possession of land or water and there is no *emergency*, action should be taken under S. 145, which would in a proper inquiry determine once for all the right to possession of either party claiming the property in dispute.[2] The provisions of this section should not be resorted to in such cases and an enquiry into possession thus evaded.[3] Where however there is in reality no dispute as to possession of land or water, as for instance, where it is clear upon the materials before a *Magistrate* that one party is in actual possession and that another whose claim to possession is a mere pretence is threatening to interfere with that possession the Magistrate is clearly entitled to resort to the special and summary procedure under this section provided the conditions prescribed by this section are fulfilled.[4] Similarly, where the Civil Court has put one of the parties in possession there is in law no dispute as to possession and action under this section is justified in such cases.[5]

It has been held in a number of cases[6] that where the Magistrate finds that there is a *bona fide* dispute relating to the possession of land or water, he should take action under S. 145 and not under this section; and that even in cases where he takes action under this section he should convert the proceedings into one under S. 145.[7] This however is only a rule of propriety and convenience, and does not affect the question of jurisdiction of a Magistrate to act under this section, for there is nothing in S. 144 to oust the jurisdiction of a Magistrate in cases of *bona fide* disputes as to possession. In cases of *emergency* where immediate prevention or speedy remedy is desirable and there are sufficient grounds for proceeding under this section a Magistrate can take action under this section even though there is a dispute or even a *bona fide* dispute relating to possession.[8] Thus, where there are crops on the land which if not

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(2) (1919) 1919 Pat. 228 (229), *Bansi Singh* v. *Emperor*.
(1917) 18 Cri. L. Jour. 967 (968): 3 U. B. R. 17: 1917 U. B. 5, *Nga Po Hmi* v. *Mi Shwe Tha*.
(1907) 5 Cri. L. Jour. 76 (78) (Cal.), *Parkar Mahton* v. *Ram Khelwan*.
(1918) 19 Cri. L. Jour. 1002 (1002): 1918 Pat. 300, *Lachman Ram* v. *Dhim Dusadh*.
(1920) 1920 Pat. 176 (176, 177), *Tarapada Bhattacharjee* v. *Emperor*.
(1920) 1920 Pat. 215 (216), *Bhairo Gope* v. *Emperor*.
(1920) 1920 Pat. 219 (219), *Jhaman Mahton* v. *Thakurai Mahton*.
(1920) 1920 Pat. 496 (498), *Gouri Dutt* v. *Gobind Singh*.
(1921) 1921 Pat. 410 (411), *Tiloki Rai* v. *Emperor*.
(1921) 1921 Pat. 392 (393), *Madan Lal* v. *Fulchand Ram*.
(1924) 1924 Pat. 145 (147), *Akal Mahton* v. *Mahabir Mahton*.
(1927) 1927 Pat. 432 (432), *Latifan* v. *Mohammad Ibrahim*.
(1930) 1930 Pat. 162 (163), *Kishori Jha* v. *Anand Kishore Jha*.
(1935) 1935 Pat. 224 (225), *Puran Singh* v. *Ramghari Koer*.
[See also (1869) 12 Suth. W. R. 66 (68), *Rajbullab Addhya* v. *Gobind Chunder*.]

(3) (1918) 1918 Pat. 663 (665), *Kaniz Amina* v. *Emperor*.

(4) (1922) 1922 Pat. 435 (438): 2 Pat. 94 (F.B.), *Shebalak Singh* v. *Kamaruddin Mandal* (*Per* Mullick, J.).
(1918) 1918 Pat. 672 (673), *Ganpat Singh* v. *Emperor*.
(1925) 1925 Pat. 514 (515), *Munni Lal* v. *Gatli Ahir*.

(5) (1920) 1920 Pat. 210 (210), *Sukhan Singh* v. *Prayag Singh*.
(1922) 1922 Pat. 197 (199), *Ram Krishna Singh* v. *King-Emperor*.
(1922) 1922 Pat. 13 (16), ***Kamla Prasad Singh* v. *Gobind Sahay*** (Where factum of delivery of possession by writ of Civil Court is disputed, *held*, no order under S. 144 can be passed until that is decided).

(6) (1933) 1933 Pat. 584 (585), *Jagernath Singh* v. *Ramjas Singh*.
(1929) 1929 Pat. 415 (416), *Luchman Das* v. *Ram Chhabilal*.
(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal Marwari*.
(1925) 1925 Pat. 514 (516), *Manni Lal* v. *Gatti Ahir*.

(7) (1922) 1922 Pat. 557 (558), *Nand Kishore Sao* v. *Bikan Singh*.
(1920) 1920 Pat. 219 (219), *Jhaman Mahton* v. *Thakuri Mahton*.
(1919) 1919 Cal. 465 (465), *Abinash Chandra Mandal*.
(1918) 1918 Pat. 481 (482), *Chadhari Ahir* v. *Raja Ram Singh*.
[See however (1868) 10 Suth. W. R. 1 (1), Re *Luteef*.]

(8) (1929) 1929 Pat. 714 (716), ***Radhe Das***

harvested by the party in actual possession would be ruined, and there is a likelihood of a riot or an affray it has been held, that the Magistrate is justified in passing an order under this section restraining the opposite party from interfering with the harvest of crops even though there is a *bona fide* dispute as to the possession of the land.[9]

It has been held that where the Magistrate finds one of the rival parties in actual possession of the land and there is a likelihood of the breach of the peace, he has a discretion to proceed either under S. 144 or S. 145 or S. 107.[10] Except in cases where the exclusive possession of one of the parties is undisputed or admitted or is concluded by some decisions of a competent Court, it has been held, that the Magistrate cannot pass a final order under either of these sections without an enquiry into possession. Where as a result of the enquiry, the Magistrate finds possession is not exclusive with one party but both parties have a joint right to possession the proper course is to bind over both the parties under S. 107 in order to avert a breach of the peace. Where however the Magistrate finds exclusive possession with one party then he can restrain the other party by an order under this section or S. 145. Where the question of possession is disputed and the case is one of *emergency*, the proper course is to pass a temporary order under this section and then to institute an enquiry into possession, or straightaway take the proceedings under S. 145 by attaching the property in dispute.[11] Where owing to ill-feelings prevailing between certain persons likely to attend a meeting a breach of the peace was expected, it was held that the Magistrate should proceed under this section and not institute proceedings under S. 107 and arrest the persons.[12]

Where a breach of peace is apprehended as a consequence of a person exercising his legal rights the proper course is to bind over the person likely to cause the breach of peace, under S. 107, and not to restrain under this section the person seeking to exercise his legal rights.[12-a]

When a Magistrate has several courses open to him to meet the emergency before him and he adopts any of these courses, the propriety of his action is not to be judged in the light of the fact that at a later stage when the emergency can be viewed on a different basis it may be considered that another course might have been followed more properly.[12-b]

A Magistrate should state distinctly in his order under what section he is proceeding, and it should not be left to the High Court to speculate as to whether S. 144 or S. 145 applies.[13]

3. Power of Magistrate under the section to override private rights.—Courts Civil as well as Criminal *exist* for the protection of the rights

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v. *Jairam Mahto.*

(1922) 1922 Pat. 435 (438): 2 Pat. 94, *Sheoba'ak* v. *Kamaruddin Mandal* (*Per* Mullick, J.).

(9) (1917) 18 Cri. L. Jour. 967 (968): 1917 U. B. 5: 1917 U. B. R. 2nd. Ed. 17, *Nga Po Hmi* v. *Mi Shwe Tha.*

(10) (1903) 26 Mad. 471 (472), *Belagal Ramacharlu* v. *Emperor.*

(1908) 8 Cri. L. Jour. 170 (176): 1 S. L. R. 50, *Balmukand Jaganath* v. *Emperor.*

(1905) 2 Cri. L. Jour. 769 (770): 32 Cal. 966, *Sheoraj Roy* v. *Chattar Roy.*

(11) (1922) 1922 Pat. 228 (230), *Ratan Chand* v. *Mohan Lal Sahu.*

[See also (1900) 27 Cal. 918 (920), *Daimulla Talukdar* v. *Maharulla Talukdar.*]

(12) (1918) 1918 U. B. 53 (55): 2 U. B. R. 157, *Nga Ti* v. *Maung Kyaw Yan.*

(12-a) (1934) 1934 Pat. 104 (105), *Saligram Singh* v. *Baijnath Singh.*

(12-b) (1934) 1934 Pat. 308 (309): 13 Pat. 76, *Harihar Singh* v. *Upendranath Banarji.*

(13) (1918) 1918 Mad. 503 (503), *Srinivasa Iyengar* v. *Ranganatham Chettiar.*

S. 144, Note 3.

of private individuals, and therefore the authority of a Magistrate under this section should ordinarily be exercised in *defence* of such rights rather than in their suppression.[1] But the powers under this section are not confined to the protection of the private rights, they are intended to be exercised also for the protection of the *public* including private individuals and for the preservation of the *public tranquillity*.[2] The preservation of the public peace is a paramount function of the Government, and in the performance of such function it may be necessary to override temporarily private rights. Where there is a conflict between public interest and private interest, the former must prevail and a Magistrate can under this section override temporarily private rights *although such rights have been declared or upheld by a Civil Court*.[3] Thus, although a person has an absolute right to use his property as he pleases, yet if the mode of enjoyment of the property, innocent and lawful as it may be, results or tends to result in a breach of the public peace the Magistrate has power to restrain him temporarily from so using the property.[4] In such a case regard for the public welfare is allowed to override temporarily the private right and the Magistrate is authorised to interdict its exercise.[4a]

An order in suppression of legal rights ought not, however, to be made unless the Magistrate considers that such action is absolutely necessary and that the powers vested in him under the other provisions of the Code to avert a breach of the peace are not likely to prove adequate or sufficient.[5] The Magistrate should try as far as possible to uphold the rights declared by Civil Courts[5a] and should resort to the provisions of this section only when there is no time or opportunity for any other course.[6] An order under this section, if made, should never be disproportionate but should always be commensurate to the emergencies of any

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Note 3.

(1) (1933) 1933 Cal. 348 (351), *Francis Duke* v. *Jogendra Kumar Roy.*
(1883) 6 Mad. 203 (220) (F. B.), *Sundaram Chetty* v. *Empress.*
(1921) 1921 Pat. 415 (420), *Moinuddin* v. *Emperor* (Magistrate without enquiry as to who actually grew crop has no right to direct a particular person to take possession).
(1935) 1935 All. 575 (577), *Jafar Husain* v. *Pearey Lal* (Right to celebrate Ram Lila and to take out procession, even though not exercised before should not be disallowed merely because another section of people who have no manner of right or interest object to it).
(1934) 1934 Pat. 104 (105), *Saligram Singh* v. *Baijnath Singh* (Order restraining party from holding *hat* on his own land on same day as that on which another person was holding *hat* is improper).
(2) (1895) 17 All. 485 (489, 490), In re *Rahmat Ullah.*
(3) (1928) 1928 Mad. 1049 (1050): 51 Mad. 1006, In re *Viswanada Rao.*
(1833) 6 Mad. 203 (220) (F. B.), *Sundaram Chetty* v. *Empress.*
(1914) 1914 Mad. 138 (138), *Arumuga Mudali* v. *S. E. K. Perumalswamy Chetty* (Order stopping a procession).
(1885) Weir 3rd Edn. 766 (767), *M. Patcha Saheb.*
(1902) 30 Cal. 155 (184), *Krishna Kamini* v. *Abdul.*
(1901) 5 Cal. W. N. 329 (330), *Stanley Deo* v. *Bhiko Singh.*
(1880) 5 Cal. 132 (134), *Abdul* v. *Lucky Narain Mundal.*
[See however (1927) 1927 Mad. 611 (612), *S. Venkatasubbaya* v. *Muhammad Fala Uddin Khaji* (Submitted not good law in view of 1928 Mad. 1049 F. B.).]
(4) (1928) 1928 Cal. 446 (447): 55 Cal. 1077, *Ram Gopal Goenka* v. *Narayan Das Chandra.*
(4-a) (1880) 2 Mad. 140 (142), *Muthialu Chetti* v. *Bapan Saib.*
(5) (1933) 1933 Cal. 348 (351), *Francis Duke Cobridge Sumner* v. *Jogendra Kumar Roy.*
(5-a) (1934) 1934 Pat. 565 (569), *Mahabir Singh* v. *Emperor* (It is the duty of the Criminal Court to respect, maintain and preserve possession given by the Civil Court).
(6) (1927) 1927 Mad. 368 (368), *G. Venkatsubbareddi* v. *Emperor.*
(1934) 1934 Cal. 513 (515), *Ganesh Chandra* v. *Lalit Mohan Nayak.*

particular situation[7] and it is incumbent on the Magistrate to hold a full and sufficient enquiry as to the circumstances which make it likely that a breach of the peace will occur.[8] The authority of the Magistrate to override temporarily private rights in cases of emergency is co-extensive with the emergency and when it ceases he should secure to every person the enjoyment of his legal rights and by means of proper precautions deter those who seek to invade the rights of others.[9]

Where however there is no apprehension of a breach of the public peace a Magistrate should not restrain the liberty of a private individual by means of an order under this section. Thus where it is found that a person is doing a thing which he is legally entitled to do and his neighbour chooses to take offence and threatens to create a disturbance in consequence, it is clearly the duty of the Magistrate not to deprive the former of the exercise of the legal rights but restrain the latter from illegally interfering with the exercise of such legal rights.[10] Where, *A*, *mutwalli* of a mosque appointed one *H* as leader of prayers in the mosque and most of the members of the congregation were dissatisfied with the appointment of *H*, and the Magistrate directed that no person of either party should be allowed to read the prayers in the mosque, it was held that the order was misconceived and that the proper course for the Magistrate was to ascertain which party was in the wrong and was interfering unnecessarily with the legal exercise of the rights of the other party and to restrain that party from committing any act which may lead to a breach of the peace.[11]

When a breach of the peace is anticipated, action is to be taken against the potential law-breakers and not against the peaceful citizens whom it is expected that the law-breakers will molest.[12]

4. **"Written order stating the material facts".**—Where the Magistrate is satisfied that there are sufficient grounds for proceeding under this section and that immediate prevention or speedy remedy is desirable, he should pass a preliminary order stating the *material facts* of the case[1] and such order should be a *written* order.[2] Before a Magistrate passes such an order there ought to be evidence or information before the Magistrate that the act prohibited is likely to cause a riot or affray or danger to human life, etc.[3] The informa-

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(7) (1933) 1933 Cal. 348 (351), *Francis Duke Cobridge* v. *Jogendra Kumar.*
(8) (1880) 5 Cal. 132 (134), *Abdul* v. *Lucky Narain.*
(1924) 1924 Pat. 767 (768, 769), *R. E. Blong* v. *The King-Emperor* (Following 5 Cal. 132).
(9) (1881) 2 Weir 74 (76), In re *Peddachari.*
(10) (1924) 1924 Pat. 767 (768, 769), *R. E. Blong* v. *Emperor.*
(1880) 5 Cal. 132 (134, 135), *Abdool* v. *Lucky Narain.*
1 Sind 61, *Niku.*
1 Sind 120, *Sayad Khudadino.*
Oudh S. C. 77, *Empress* v. *Saiyid Muhammed Askari.*
(1873) 3 Bom. P. J. 385 (386), *Basapa* v. *Gurusangapa* (Right to conduct religious procession).
(1882) Weir 3rd Ed. 762 (762), *Chidambara Nadan* (Right to conduct marriage procession).
(11) (1922) 1922 Cal. 483 (484), *Mohammad Ismail* v. *Barkat Ali.*
(12) (1927) 1927 Lah. 430 (430), *Kazan Chand* v. *The Crown.*
(1923) 1923 Mad. 15 (16), *Murari Naicken* v. *Aiyaswami.*

Note 4.

(1) (1924) 1924 Pat. 767 (768), *R. E. Blong* v. *Emperor.*
(1924) 1924 Pat. 703 (704), *Dhanraj Bhagat* v. *Bharat Narain.*
(1905) 9 Cal. W. N. ccxxiii (ccxxiii), *Denomoni* v. *Emperor.*
(1869) 12 Suth W. R. 40 (41), *Kalidas Bhuttacharjee* v. *Mohendranath Chaterjee.*
[See also cases cited in Note 1, point 2.]
(2) (1870) Rat. Un. Re. Cr. C. 30 (30), *Reg.* v. *Mardan Husen.*
(1872) 17 Suth. W. R. 57 (57), *Pitamburday.*
(3) (1875) 24 Suth W. R. Cr. 30 (31), *Goshain Luchmun Pershad Pooree* v. *Pohoop Narain.*
(1906) 10 Cal. W. N. cliv (cliv), *Mahommed Umar* v. *Syed.*

S. 144, Notes 4—6.

tion may, however, be *oral*[4] or may be in a police report.[5] But a Magistrate cannot act solely on the report of an interested person, as for instance, the manager of the factory in which the accused persons are employed.[6]

The order should be served upon the persons proceeded against in the manner provided for by S. 134 of the Code.[7] The notice issued to the party must follow the terms of the order in pursuance of which it is issued.[7-a]

It is desirable that the order should show in clear and unmistakeable terms the authority under which the Magistrate takes action under this section and professes to act.[8]

An order under the section should be clear and definite.[8-a]

Omission to state material facts in the order—Effect of.—It has been held that a mere omission to set out in the order the material facts, where there are as a matter of fact grounds justifying the order, will not justify interference with the order.[9] But where there are no such materials[10] and the order does not show any emergency[11] it has been held that the order is one passed without jurisdiction, and can be set aside.

4-A. Who can pass order under section.—Where a Sub-divisional Magistrate to whom an application had been made for an order under this section fixed a certain day for enquiring into the necessity for the order but did not attend Court on that day it was held that another Magistrate who was in charge of the current file of his Court and who was not otherwise disqualified to pass an order under the section could dispose of the matter and pass orders thereon.[1]

5. Nature of orders that can be passed under the section.—The section contemplates two kinds of orders:—

(1) Order directing a person to abstain from a certain act (*See* Note 6, *infra*) and

(2) Order directing a person to take certain order with property in his possession or management (*See* Note 7, *infra*).

6. Order to abstain from certain acts.—An order of this description in order to be valid should fulfil the following requirements:—

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(4) (1881) 3 Mad. 354 (357), *Elavarasu.*

(5) (1924) 1924 Oudh 338 (340), *Jang Bahadur* v. *Emperor.*

(6) (1915) 16 Cri. L. Jour. 320 (320): 1915 Cal. 733, *Emperor* v. *Rabbi Raut.*

(7) (1923) 1923 Rang. 146 (147): 1 Rang. 49, *Thudamavara* v. *Emperor.*

(1935) 1935 Cal. 251 (252), *Abdul Jabbar Sarkar* v. *Emperor* (Proclamation not to be resorted to unless service in manner of summons is not possible).

(7-a) (1934) 1934 Cal. 393 (396), *Abdul Majid Basunia* v. *Nripendranath Mazumdar.*

(8) (1923) 1923 Rang. 146 (146): 1 Rang. 49, *Thudamavara* v. *Emperor.*

(8-a) (1935) 1935 Bom. 33 (33, 34), *Sorab Shavaksha Batlivala* v. *Emperor* (Order directed to public when frequenting public or private streets in particular city is sufficiently definite as to place).

(1934) 1934 Oudh 162 (163): 9 Luck. 543, *Emperor* v. *Niazu Khan* (The fact that an order passed under S. 144 relative to taking out processions contains reference to customary rules and customary timings in the matter of taking out tazias does not make the order indefinite. It is for the accused to find out what the customary rules and timings are).

(9) (1917) 18 Cri. L. Jour. 892 (893): 1917 Cal. 6, *Brojendra Mohan Pal Chauduri* v. *Chairman of Madaripur Municipality.*

(10) (1929) 1929 Pat. 714 (716), *Radhe Das* v. *Jairam Mahto.*

(1933) 1933 Cal. 348 (353), *Francis Duke* v. *Jogendra Kumar.*

(1916) 17 Cri. L. Jour. 464 (464): 1916 Cal. 69, *Chandrakanta Kanji Lal* v. *Emperor.*

(11) (1924) 1924 Pat. 145 (146), *Akal Mahton* v. *Mahabir Mahton.*

(1914) 1914 Mad. 697 (697), *Gobinda Chetty* v. *Emperor.*

Note 4-A.

(1) (1934) 1934 Cal. 393 (394), *Abdul Majid Basunia* v. *Nripendranath Mazumdar.*

S. 144, Note 6.

(*i*) *The order should be addressed to a definite person.*—Thus an order addressed to the crews, lessees, proprietors or any other persons having control over the movements of boats regulating the boat traffic at a certain landing,[1] or an order forbidding the "owners of cattle" from allowing their animals to stray,[2] or an order directing a person not to go to a certain village or allow "any of his servants, relations, or friends" to go there,[3] has been held to be indefinite and not authorized by the section. Similarly, an order addressed to "A.B. and all other persons who may be concerned in the project" is vague and bad in Law.[3-a]

(*ii*) *The order should be addressed to a party to the proceedings and not to a third person.*—On this principle, it has been held that an order directing a village munsif to take possession of the property in dispute[4] or directing the police to see that a person is allowed to go to a particular land and cut the crops[5] is *ultra vires.*

(*iii*) *The act prohibited should be a certain and definite act.*—On this ground the following orders have been held to be not valid:—

(1) An order directing a person not to do any illegal act that is likely to cause a breach of the peace.[6]

(2) An order directing a person not to collect rents from the ryots generally without mentioning any particular ryot.[7]

(3) An order in general terms forbidding two persons to use any musical instrument in the neighbourhood of each other's house.[8]

(4) An order directing certain persons not to commit any act that may be likely to induce a breach of the peace and not to take forcible possession of certain property.[9]

(5) An order intimating that the tenants will be liable for a *patwari* cess.[10]

It has been held in the undermentioned case[11] that an order should direct a person to abstain from a *certain act* and not a *series of acts* done at certain intervals and spreading over a period of time.

(*iv*) ***The order should be to abstain from a certain act and not to do*** *a certain act.*—The section permits only a *restrictive* order and does not authorize a Magistrate to make a *mandatory* or

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Note 6.

(1) (1898) 25 Cal. 852 (856), *Empress* v. *Pratab Chunder* (Order of Magistrate was passed on the ground that the overcrowding of boats was dangerous to the health of the residents of the town).

(2) (1872) 18 Suth W. R. 21 (21), *Mozuffer Khalifa.*

(3) (1898) 2 Cal. W. N. 422 (423), *Goolam Mahammad* v. *Bhuban Mohan Moitra.*

(3-a) (1931) 1931 Bom. 135 (138): 55 Bom. 322, *Emperor* v. *Ganesh Vasudev.*

(4) (1916) 17 Cri. L. Jour. 190 (191): 1917 Mad. 629, *Bhagantha Servai* v. *Valayee.*

(5) (1921) 1921 Pat. 415 (420), *Moinuddin* v. *Emperor.*

(6) (1906) 10 Cal. W. N. clxxvi (clxxvi), *Ishad* v. *Mohanta.*

(7) (1889) 16 Cal. 80 (84, 85), *Abayeswari Debi* v. *Sidheswari Debi.*

(1892) 19 Cal. 127 (131, 132), *Ananda Chandra Bhuttacharjee* v. *Carstephen.*

(8) (1866) 6 Suth W. R. 40 (40), *Ram Chandur Geer Gossain.*

(9) (1906) 4 Cri. L. Jour. 456 (460) (Cal.).

(10) Oudh Ses. Cas. 65, *Empress* v. *Kandhaia Lal.*

(11) (1867) 2 Weir 67 (68).

S. 144, Note6.

positive order directing a person to do a particular act.[12] Thus it has been held that the Magistrate has no power to pass the following orders:—

(1) Directing the *removal* of a bund already put up.[13]

(2) Directing an owner to rebuild a building which had fallen down[14] or to fill up certain excavations already made.[14-a]

(3) Directing a party to open a channel in his land.[15]

(4) Directing the removal of an embankment.[16]

(5) Directing the demolition of a sluice.[17]

(6) Directing the removal of a granary on the ground that it has been improperly built.[18]

(7) Directing the removal of an obstruction.[19]

(8) Directing certain trees to be cut down.[20]

(9) Directing the owner of a tank in a dry bed of the river to destroy the banks of the tank on the ground that they are an obstruction to the public in the lawful enjoyment of the river.[21]

(10) Directing a well to be repaired.[22]

(11) Directing a party to vacate his house and take his quarters in a different place.[23]

(12) Directing a person to remove an obstruction to a culvert through which the drainage of certain railway quarters flows into a tank on the ground that rainfall in an hour would flood the quarters and compel evacuation.[24]

(13) Directing the restoration of a child to the custody of the parents.[25]

(14) Directing a person to remove himself from the district and to do so by the next available train.[26]

(15) Directing the division of crops between the tenants and a rival zamindar.[26-a]

(16) An order directing a person to abstain from residing in any place where he is at the time is virtually a *mandatory order*

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(12) (1933) 1933 Cal. 724 (725), *Kusum Kumari Debi* v. *Hem Nalini Debi.*
(1931) 1931 Cal. 263 (263): 58 Cal. 1037, *Emperor* v. *Sasmal.*
[But see (1869) 6 Bom. H. C. 36 (41, 42), *Ramchandra Eknath* (Held order to widen and heighten the doorway legal).]

(13) (1929) 1929 Pat. 523 (525), *Tilak Kohar* v. *Emperor.*
[See however (1907) 11 Cal. W. N. cvii (cvii), *Gopal Ghosal.*]

(14) (1895) 17 All. 485 (489) (F. B.), In re *Rahmat Ullah.*

(14-a) (1933) 1933 Cal. 724 (725), *Kusum Kumari Debi* v. *Hem Nalina Debi.*

(15) (1914) 15 Cri. L. Jour. 291 (291): 1914 Mad. 239, *Subramania Iyer* v. *Muthu Ambalam.*

(16) (1870) 5 Mad. H. C. App. 19 (19).

(17) (1867) 2 Weir 65 (65).

(18) (1869) 4 Mad. H. C. R. App. 34 (34).

(19) (1874) 21 Suth W. R. 24 (25), *Brindaban Dutt.*

(20) (1870) 13 Suth W. R. 72 (73), *Uttam Chunder* v. *Ram Chunder Chatterjee.*

(21) (1868) 10 Suth W. R. 36 (37), *Gholam Darbesh.*

(22) [See also (1871) Rat. Un. Re. Cr. C. 50 (50), *Reg.* v. *Tatya.*]

(23) (1898) 2 Cal. W. N. 70 (71), In re *Bineswar Basu Majumdar.*

(24) (1919) 1919 Cal. 584 (584), *Chandranath Mukerji* v. *E. I. Ry. Co.*

(25) (1872) 2 Weir 66 (67).

(26) (1931) 1931 Cal. 263 (263): 58 Cal. 1037, *Sarmal* v. *Emperor.*

(26-a) (1905) 2 Cri. L. Jour. 168 (169): 32 Cal. 154, *Umatal Fatima* v. *Nemai Charan Benerji.*

directing him to remove himself from such place and hence is not warranted by the section.[26-b]

S. 144, Note 6.

(v) *The object of the order should be one of those specified in sub-section.*—An order under this section ought not to be passed on the mere ground that pecuniary loss would be caused to one party.[27] Thus an order preventing the ryots from reaping the crops they have sown owing to an apprehension that if they are allowed to reap them, the Government or other landlord might lose rent, is not justified.[28] Similarly the loss arising from the establishment of a rival *hat* is not an injury within the meaning of the section.[29] An order cannot also be passed for the mere protection of one's own property. Thus, an order directing the removal of a certain dam obstructing flood is not competent.[30]

An act prohibited under the section must only be so prohibited if it is likely to prevent obstruction, annoyance, etc., and this likelihood or tendency must be a *reasonable* or *proximate* one. It is not enough to say that by stretching several possibilities one after the other that it is possible to establish a connection of cause and effect between the act prohibited and likelihood of a disturbance of the public tranquillity. Thus an order prohibiting the public from wearing Gandhi caps in the absence of any evidence to show that it was necessary to pass such an order in the interests of the public peace was set aside by the Madras High Court.[31]

The word "annoyance" in the section has been held to include mental as well as physical annoyance.[31-a]

The following orders have been held to be competent and valid under this section as being orders to abstain from certain acts:—

(1) An order directing a person to abstain from interfering with a certain *mutt* and the property appertaining to it.[32]

(2) An order directing a person not to interfere with the management of a certain temple.[33]

(3) An order directing a trustee requiring him to abstain from, in any way, interfering with the conduct of the *adayapakam service* in a temple.[34]

(4) An order directing certain persons not to interfere with the *Badves* in the performance of the daily pooja of God *Vithoba* at Pandharpur.[35]

(26-b) (1934) 1934 Rang. 124 (125): 12 Rang. 283, *Thakin Ba Thoung* v. *Emperor.*

(27) (1908) 13 Cal. W. N. 188 (190-191), *Ramautar Sahu* v. *Kishunput Ramchaubey* (Following 9 Cal. 103 and 8 Cal. W. N. 373).

(1910) 11 Cri. L. Jour. 11 (11) (Cal.), *Ramautar Sahu* v. *Kishunput* (Order to stop erection of an embankment).

(28) (1904) 1 Cri. L. Jour. 248 (250) (Cal.), *Isab Mondal* v. *Emperor.*

(29) (1872) 18 Suth W. R. Cr. Lett. 2 (2).

(1874) 21 Suth W. R. Cr. 26 (27), *Banee Madhub Ghose* v. *Woomanath Roy.*

(1905) 2 Cal. L. Jour. 64 n. (64 n.), *Chandi Sarkar* v. *Emperor.*

(30) (1883) 9 Cal. 103 (104), *Empress* v. *Prayag Singh.*

(31) (1931) 1931 Mad. 236 (239), *Satyanarayana Choudhari* v. *Emperor.*

(31-a) (1931) 1931 Bom. 135 (138): 55 Bom. 322, *Emperor* v. *Ganesh Vasudev.*

(32) (1881) 3 Mad. 354 (357), *Elavarasu Vanamamalai Ramanuja Jeeyarswami* v. *Vanamamalai Ramanuja Jeeyar.*

(33) (1901) 24 Mad. 45 (46), *Ramnandan Chetty* v. *Murugappa Chetty.*

(34) (1918) 1918 Mad. 18 (19), In re *Srinivasa Thathachariar.*

(35) (1902) 4 Bom. L. R. 582 (584), In re *Vasudeo Apaji.*

S. 144, Notes 6—7.

(5) An order directing a particular time to be observed by the *Hanafi* and *Shafi* sects for daily worship in a mosque and directing either sect to abstain from worshipping during the time fixed for the other.[36]

(6) An order prohibiting the slaughter of votive animals except in the slaughter house in order to prevent a breach of the peace between Hindus and Muhammadans.[37]

(7) An order directing a person to refrain from interfering with the crops on the land.[38]

(8) An order directing the *Melvaramdar* to abstain from exercising his rights as *Melvaramdar*.[39]

7. Direction to take certain order with property.—The word "property" refers only to and is restricted to *immovable property* and the Magistrate cannot make an order with regard to the custody of *moveable* property, such as money, on the ground that there is a likelihood of a breach of the peace with regard to the same.[1] Further an order of this description should relate to an interference of some kind to the *property* itself.[2]

The property in respect of which the order is made should be in the *possession or management* of the person restrained by the order. Thus the section does not apply to a subletting owner not in actual possession or management of the property.[3]

The section does not however authorise the *attachment* of properties.[4] Nor can the Magistrate direct that a list be prepared of articles concerning which the parties are in dispute and that the same should be removed to the Court and should remain there for two months or until the decision of a pending civil suit.[5]

A common class of cases relating to property in respect of which action is sought for under this clause are *Hat* disputes or disputes relating to the holding of a market. Every person is ordinarily entitled to exercise all rights of ownership on his property and the holding of a *Hat* on one's own property in the exercise of such a right is not *per se* a wrongful act. The law as regards the preservation of the public peace is based upon an apprehension that either a certain person or certain persons are likely to commit a breach of the peace by their own acts or that they are likely to do *wrongful* acts which may occasion other people to commit a breach of the peace and there is a clear distinction between interfering with the rights of private proprietors with whatever ulterior motives they may do acts which they have a right to do and the perpetration of wrongful acts by such proprietors. Hence it has been held that a Magistrate cannot restrain a person under this section from holding a

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(36) (1901) 24 Mad. 262 (265), *Empress* v. *Abdullah Saheb.*
[See however (1876) 1876 Pun. Re. No. 10, page 16 (16), *Shahab Uddin.*]

(37) (1885) 1885 All. W. N. 258 (258), *Abdullah* v. *Nanak Chand.*

(38) (1917) 1917 Pat. 217 (219), *Punit Mahton* v. *Sirajulhaq.*

(39) (1914) 1914 Mad. 150 (151), In re *Meyyayaru Ammal.*

Note 7.

(1) (1869) 12 Suth. W. R. 38 (38), *Queen* v. *Goluck Chunder.*

(2) (1892) 19 Cal. 127 (130), *Ananda Chandra Bhattacharjee* v. *Corr Stephen.*

(3) (1878) 1 Shome 30, *Emperor* v. *Sreenath.*

(4) (1908) 13 Cal. W. N. cxix (cxix), *Nawab Syed Mohiuddin Mirza.*

(5) (1908) 8 Cri. L. Jour. 230 (232) (Cal.), *Leong Mow* v. *Tchun Chyn.*

Hat altogether on his land.[6] In India the right to hold a market cannot be conferred by grant from the Crown or acquired by prescription and the proprietor of an old *Hat* has therefore no monopoly or privilege which is entitled to protection and immunity from competition.[7] Where a breach of the peace is anticipated in such cases the proper course, is to take action under S. 107 and to bind over both the parties.[8] Although it is not open to a Magistrate to restrain a person altogether from holding a *Hat* on his property he can where there is a likelihood of a breach of public peace, impose restrictions as to the holding of *Hats* by, for instance, directing him not to hold it on certain specific days in the week.[9] But he cannot direct that a person *should hold* his *Hat*, only on a particular day and not on other days. Such an order is not within the scope of the section.[10]

8. **Effect of order under the section.**—An order under this section has not the effect of disturbing either title or possession, though it may prevent and does prevent the exercise of the rights which a person in possession would otherwise be entitled to exercise, during the continuance of the said order.[1] Nor can the order be treated as substantive evidence of possession in subsequent proceedings.[2] Where the Magistrate, while passing an order under this section makes an incidental observation as to possession of a certain property, the observation cannot have the force or effect of an order under S. 145.[3]

An order under this section does not bind a person who was not a party to the proceedings under it.[4]

9. **Ex parte order—Sub-S. (2).**—It is permissible for a Magistrate to pass an *ex parte* order under this section but that can be done only in cases of *emergency*[1] or where the circumstances of the case are such that they do not admit of the serving in due time of a notice upon the person against whom the order is passed.[2] Thus the Magistrate can pass an *ex parte* order immediately

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(6) (1922) 1922 Cal. 569 (570), *Benowari Lal Ram* v. *Probat Krishna Mujumdar.*
(1912) 13 Cri. L. Jour. 511 (511) (Cal.), *Rakhal Das Singh* v. *Emperor.*
(1907) 5 Cri. L. Jour. 43 (44) (Cal.), *Bidhu Ranjan Majundar* v. *Ramesh Chandur Rai.*
(1897) 4 Cal. L. R. 410 (412, 413), *Sharut Chunder* v. *Bamacharan.*
(1882) 5 Cal. 7 (20), *Gopi Mohun Mullick* v. *Taramoni Chowdhrani.*
(1865) 4 Suth W. R. 12 (13), *Sheebchandur* v. *Sadut Ally.*
(1879) Weir 3rd Ed. 736 (737).
(1934) 1934 Pat. 104 (105), *Saligram Singh* v. *Baijnath Singh.*

(7) (1933) 1933 Cal. 348 (351), *Francis Duke Cobridge* v. *Jogendra Kumar Roy.*

(8) (1922) 1922 Cal. 569 (571), *Benowari Lal Ram* v. *Pronab Krishna.*
(1907) 5 Cri. L. Jour. 43 (44) (Cal.), *Bidhu Ranjan Majumdar* v. *Ramesh Chandra Roy.*
(1906) 4 Cri. L. Jour. 433 (435, 436) (Cal.), *Satish Chandra Roy* v. *Emperor.*
(1934) 1934 Pat. 104 (105), *Saligram Singh* v. *Baijnath Singh.*

(9) (1919) 1919 Cal. 108 (109), *Nagendranath Biswas* v. *Rakhal Das Sinha.*
(1872) 18 Suth. W. R. 47 (53), *Bykunt Ram* v. *Meajan.*
(1872) 18 Suth. W. R. Cr. 22 (23), *Lalla Mitterjit Singh* v. *Rajcoomar Sircar.*
(1869) 11 Suth. W. R. 5 (5), *Kalikapreshad.*
1 J. G. 23, *Abidurriju* v. *Dolgobind.*
(1922) 1922 Pat. 84 (86), *Parmeshwar Rai* v. *Emperor.*

(10) (1904) 1 Cri. L. Jour. 778 (780): 31 Cal. 990, *Shamanand Das Paharaj* v. *Emperor.*

Note 8.

(1) (1921) 64 Ind. Cas. 572 (573) (Cal.), *Nasiram Bibi* v. *Salim Akanda.*
(2) (1925) 1925 Pat. 17 (20), *Gita Prasad Singh* v. *King-Emperor.*
(1930) 1930 Pat. 556 (557), *Saddique* v. *Sheikh Mohind.*
(3) (1925) 1925 Pat. 514 (516), *Munni Lal* v. *Gatti Ahir.*
[See also (1903) 7 Cal. W. N. 142 (143), *Saroda Prosad* v. *Emperor.*
(1931) 1931 Cal. 262 (263), *Aswini Kumar Dhara* v. *Emperor.*]
(4) (1921) 1921 Pat. 415 (420), *Moinuddin* v. *Emperor.*

Note 9.

(1) (1900) 27 Cal. 785 (787), *Joyanti Kumar Mookerji* v. *Middleton.*
(1916) 14 All. L. J. (N.) 39 (39), *Asa* v. *Emperor.*
(2) (1898) 2 Cal. W. N. 747 (749), *Mahamaddi Mollah* v. *Empress.*

S. 144, Notes 9—10.

on the receipt of a police report where he is satisfied therefrom that immediate action is necessary[3] or where he apprehends that unless immediate action is taken, he cannot with the force at his disposal prevent a breach of the peace.[4] He should, however, in such cases record his reasons for considering the occasion to be one of emergency and the materials on which he considered immediate-action necessary[5] where the record does not show that either of the two conditions justifying an *ex parte* order exists, the order is liable to be set aside.[6]

It is open to a person aggrieved by an *ex parte* order under this sub-section to apply under sub-S. (4) to rescind or alter the order.[7] Where the legality and propriety of an *ex parte* order is challenged, it is not proper to postpone the hearing until about the termination of the order; such matters ought to be disposed of quickly in order to avoid unnecessarily encroaching on the civil rights and liberties of the subject.[8]

10. **Order against the general public—Sub-S. (3).**—A Magistrate has no power, under the section to pass an order directed against the general public *simpliciter*.[1] The order can only be directed to the general public *when frequenting or visiting a particular place*.[2] The expression "particular place" implies that the place to which the restriction applies should be sufficiently particularised, *i.e.*, specified in the order, so that the public might feel no vagueness or uncertainty about it. It has not so much to do with the *area* of the place as to its description. Whether a place is properly particularised or not would depend upon its description in the order but the mere mention of a municipal unit cannot be regarded as sufficient specification for a penal provision. The area and boundaries of such a unit may shift from time to time and the general public will have only a vague and rough idea as to their outlines. Hence, the mere reference to a municipal town or a municipal ward without any further description cannot be regarded as sufficient. But the expression "particular place" need not be confined to a *restricted* area such as a park or market but may also apply to a municipal town or municipal ward provided that the boundaries of the area to which the order is intended to relate are clearly defined therein so that the general public may be reasonably expected to know what they are.[2-a] A Magistrate can thus validly issue a general order

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(1910) 11 Cri. L. Jour. 449 (449) (Mad.), *Venkatroya Gownden* v. *Very Rev. N. Rondy.*

(3) (1924) 1924 Oudh 338 (340), *Jang Bahadur* v. *Emperor.*

(4) (1914) 1914 Mad. 138 (138), *Arumuga Mudali* v. *S. E. K. Perumalswamy Chetty.*

(5) (1919) 1919 Mad. 1004 (1007), *Venkataramana Iyer* v. *Emperor* (*Per* Sadashiva Iyer, J.).

(6) (1898) 2 Cal. W. N. 747 (748), *Mahamaddi Mollah.*

(1910) 11 Cri. L. Jour. 449 (449) (Mad.), *Venkatroya Gowndan* v. *The Very Rev. N. Rondy.*

(7) (1934) 1934 Cal. 139 (139), *Surendranath Kabashi* v. *Gostha Behari Kabashi.*

(1934) 1934 Cal. 393 (395), *Abdul Majid Basuria* v. *Nripendra Nath Mazumdar.*

(8) (1922) 1922 Cal. 569 (571), *Benowari Lal Ram* v. *Pronab Kushna Majumdar.*

Note 10.

(1) (1931) 1931 Bom. 513 (513), *Emperor* v. *Motilal Gangadhar.*

[See also (1875) 8 Mad. H. C. App. 9 (9) (Case decided under 1861 Code).

(1869) 12 Suth. W. R. 36 (37), *Ameeruddin.*]

(2) (1931) 1931 Bom. 513 (513), *Motilal Gangadar Kabre* v. *Emperor.*

(1920) 1920 Mad. 847 (848), *R. Ponappa Iyengar* v. *Vanamamalai Ramanujar Jeer.*

(1934) 1934 Cal. 393 (396), *Abdul Majid Basunia* v. *Nripendra Nath Majumdar* (Order directing public in general to abstain from attending a particular *hat* held illegal).

(2-a) (1935) 1935 Lah. 679 (680), *Qamar-uddin* v. *Emperor.*

(1934) 1934 Bom. 375 (377, 378): 59 Bom. 27, *Vasant B. Khale* v. *Emperor.*

directing that no person should sacrifice or cause to be sacrificed any cow or bullock within a *specified boundary*.[3] Similarly, an order directed against all and sundry persons attending the Audinatha Swami temple on the occasion of the Vaikasi festival is valid.[4] But an order directing the public to *refrain* from taking "Prabhat Pheris" (morning processions) in the city and cantonment of Belgaum[5] or prohibiting the taking part in any processions within the Municipal limits of Erandol city and all public places within such limits, was held to be too wide and did not conform to the requirements of the section.[6] So also, an order prohibiting meetings to be held in any "place of public resort" in a city is much too vague to come within the terms of the section.[6-a] But an order directed to the public when frequenting public streets in a particular city was held to be sufficiently definite as to place to comply with the requirements of this section.[6-b]

It is essential that the "particular place" should be one which is frequented or visited by the public or in other words, the place must be one which is open to the public as such. Hence it has been held that the public cannot be prohibited from putting up national flags in a *private house* not frequented by the public.[7] Similarly where an order under this section forbade the public in general to give caste dinners in the city owing to the prevalence of cholera and a dinner was given in a private house to about four hundred or five hundred persons, it was held that the conviction for disobedience of the order was illegal.[8]

It has been held that an order under this section cannot be made until it is shown that the public actually attend or frequent the particular place. Thus an order directing the public to abstain from attending a *hat* was held to be bad since it was not until the public attended the *hat* that the order could be binding on them.[9]

Where an order was addressed to a portion of the community and had no concern with the public generally frequenting or visiting a particular place, and there was also nothing to show that the Magistrate considered that immediate action was necessary it was held that the order was not competent under the section.[10] Where an order under this section is directed neither to a particular individual nor to the public generally when frequenting or visiting a particular place, the order is one made without jurisdiction.[11]

11. Rescission or alteration of order—Sub-S. (4).—An order under this section is liable under sub-S. (4) to be rescinded or altered on cause being shown. The jurisdiction conferred by that sub-section is however, not appellate or revisional, but is a special one whereunder the Magistrate is empowered

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(3) (1915) 16 Cri. L. Jour. 190 (191): 1915 Oudh 188: 18 Oudh Cas. 70, *Abdul Gafoor* v. *Emperor*.
(4) (1920) 1920 Mad. 847 (848), *Ponnappa Aiyangar* v. *Sri Vanamamalai*.
(5) (1931) 1931 Bom. 325 (326), *D. V. Belvi* v. *Emperor*.
(6) (1931) 1931 Bom. 513 (514), *Motilal Gangadhar Kabre* v. *Emperor*.
(6-a) (1935) 1935 Bom. 33 (33), *Sorab Shavaksha Ballivala* v. *Emperor*.
(6-b) (1935) 1935 Bom. 33 (34), *Sorab Shavaksha Ballivala* v. *Emperor*.
(7) (1931) 1931 Mad. 242 (245), In re *Sri-Ramamurthy*.
(8) (1890) 14 Bom. 165 (167), *Empress* v. *Lakshmi Das Makandas*.
(9) (1925) 1925 Cal. 625 (626), *Ashutosh Roy* v. *Harish Chandra Chattopadhya*.
(10) (1886) 8 All. 99 (101), *Empress* v. *Jokhu*.
(11) (1914) 1914 Bom. 198 (198), *Emperor* v. *Bhagubai Dwarkadas*.

S. 144, Notes 11—12.

to *rescind or alter* the original order,[1] but not substitute an entirely new order of his own. Thus, where the Deputy Magistrate prohibits the second party from doing a certain act, the District Magistrate could not substitute a new order forbiding the *first party* from doing the act.[2] Similarly, a District Magistrate cannot under this sub-section, prohibit the counter-petitioners from doing a certain act which they were permitted to do by the order passed by the Subordinate Magistrate. The word "alter", it has been observed, cannot mean the substitution of the names of one party for the other. The sub-section contemplates only a change in the nature of the order and not a change in the party against whom it has been made.[3] On the same principle, it has been held that the District Magistrate cannot, while setting aside an order under this section direct that proceedings under S. 145 should be drawn up,[4] although there is nothing improper in his merely suggesting such a course for the guidance of the Subordinate Magistrate.[5]

A rescission or alteration under the sub-section is justified where the reasons for the order no longer exist, or has varied in such a manner as to make an alteration a necessary corollary, or where the order is one that ought not to have been made.[6]

The mere fact that a Magistrate is interested in the matter to which the order under the section relates does not disqualify him from exercising his powers under this sub-section.[6-a]

The section contemplates the passing of only one order rescinding or altering the original order and not intermediate or interlocutory orders pending final orders.[7]

"Or by his predecessor in office".—An order passed by the Acting District Magistrate who has subsequently reverted can be altered or rescinded only by the then District Magistrate and the latter cannot therefore transfer an application under this sub-section for disposal by the former.[8]

12. Enquiry into application to rescind or alter the order—Sub-S. (5).—Where the Magistrate acts under this section it is his duty to give an early opportunity to any person or persons aggrieved by his order to show cause against it and to hold an enquiry into the circumstances of the case to see if that order has to be rescinded or altered.[1] He should consider whether the

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Note 11.

(1) (1921) 1921 Pat. 468 (468), *Mahanta Satruhan Das* v. *Makhan Das.*
(1932) 1932 Mad. 720 (722), *Pitchai* v. *Muna Muna Ohena Muhammad* (Following 1921 Pat. 468).
(2) (1918) 1918 Pat. 672 (673), *Gaupat Singh* v. *Emperor.*
(1928) 29 Cri. L. Jour. 478 (478) (Pat.), *Ram Krishin* v. *Qamruddin* (Held, that there was no attempt to substitute an order of his own but merely rescinding an order of Sub-Divisional Magistrate).
(3) (1922) 1922 Mad. 76 (77, 78), *Muthu Kumaraswami Nadar* v. *Mahomed Rowther.*
(4) (1929) 1929 Cal. 751 (752), *Kedarnath Sikdur* v. *Bijoymandal.*
(1921) 1921 Pat. 445 (446), *Chhedi Lal Marwari* v. *Mahabir Prasad* (Following 24 Cal. 391).
(1922) 68 Ind. Cas. 34 (35) (Pat.), *Tiloki Rai* v. *Emperor.*
(5) (1921) 1921 Pat. 468 (469), *Saturhan Das* v. *Mukhan Das.*
(1921) 1921 Pat. 410 (411), *Tiloki Roy* v. *Emperor.*
(1921) 1921 Pat. 445 (446), *Cheddi Lall Marwari* v. *Mahabir Prasad Sukul.*
(6) (1922) 1922 Pat. 435 (436, 437): 2 Pat. 94, *Shebalak* v. *Kamarudeen.*
(1934) 1934 Pat. 313 (315), *Manukhan* v. *Sundar Singh.*
(6-a) (1934) 1934 Pat. 313 (315), *Manukhan* v. *Sundar Singh.*
(7) (1906) 4 Cri. L. Jour. 433 (436) (Cal.), *Satish Chandra Roy* v. *Emperor.*
(8) (1915) 16 Cri. L. Jour. 74 (75): 1916 Mad. 533, *Sudarsanam Aiyangar* v. *Elayavalli Srinivasachari.*

Note 12.

(1) (1924) 1924 Pat. 767 (769), *Blong* v. *Emperor.*
(1869) 4 Mad. H. C. App. 67 (67).
(1932) 1932 Mad. 294 (296), *Ramnad Zamin Devastanam* v. *Kadar Meera Ambalam.*

claims advanced by one or other of the parties are within, or in excess of, their legal and natural rights and whether any alterations or restrictions to the order already passed are reasonably necessary in order to obviate undue hardship to one or other of the parties and to see that protection is given to the persons who act within the bounds of their legal and natural rights without being molested by the breakers of law, having at the same time due regard to the paramount necessity of preserving public tranquillity.[2] S. 144, Notes 12—14.

An enquiry under the section is a *judicial* enquiry[3] and the Magistrate is bound to take evidence in the usual way by examination and cross-examination of witnesses.[4] He is bound to consider the evidence and arguments submitted to him and cannot act solely on the evidence recorded by him *ex parte* and behind the back of the parties.[5] The accused is also entitled to a copy of the information upon which the Magistrate acted to enable him to show that it is unfounded or insufficient.[6]

It has been observed in the case cited below[7] that a Magistrate can depute another Magistrate subordinate to him to hold an enquiry but that he must come to his own independent conclusion on the materials as to the necessity for action under the section.

13. Proceedings are judicial.—As already seen in Note 12, *supra*, the proceedings under this section are *judicial*. A person who applies to a Magistrate for an order under this section institutes criminal proceedings against that person within the meaning of S. 211 of the Penal Code.[1]

14. Duration of the order—Sub-S. (6).—An order under the section can remain in force only for two months from the date of such order. It should not be in its nature irrevocable and must be such that can be recalled at the expiry of two months.[1] The section does not authorise a Magistrate to pass an order the effect of which would be the granting of a perpetual injunction.[2] Thus, an order prohibiting the rival disputants from collecting rent until such

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(1934) 1934 Cal. 393 (395), *Abdul Majid Basunia* v. *Nripendra Nath Mazumdar.*

(2) [See (1898) Rat. Un. Re. Cr. C. 967 (968), *Empress* v. *Kazi Fajloddin.*

(3) (1931) 1931 Bom. 325 (326), *D. V. Belvi* v. *Emperor* (Following 14-B, 165, 16 Cri. L. Jour. 98 and 1931 Bom. 135).

(1930) 1930 Mad. 242 (244): 53 Mad. 320, *Muthuswami Servaigaran* v. *Thangammal.*

(1931) 1931 Mad. 242 (244), *Sriramamurthy, Petitioner.*

(1931) 1931 Mad. 236 (238), *Satyanarayana Choudhari* v. *Emperor.*

(1919) 1919 Mad. 610 (611): 42 Mad. 64, *Arunachalam Pillai* v. *Ponnuswami Pillai.*

(1896) 19 Mad. 18 (20, 21), *Empress* v. *Tirunarasimhachari.*

(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal Marwari.*

[See however (1923) 1923 Mad. 473 (474): 47 Mad. 56, *Nataraja Pillai* v. *Rangaswami Pillai* (Submitted not good law).]

(4) (1931) 1931 Mad. 236 (238), *Satyanarayana Choudari* v. *Emperor.*

(1931) 1931 Bom. 325 (326), *D. V. Belvi* v. *Emperor.*

(1869) 11 Suth. W. R. 46 (46), *Bhyroo Dyal Singh.*

(1870) 14 Suth. W. R. Cr. 17 (18), *Queen* v. *Rai Lachmipat.*

(1870) 13 Suth. W. R. 19 (20), *Radha Kishore* v. *Giridharee Sahee* (Police report is not evidence).

(5) (1929) 1929 Pat. 46 (49): 7 Pat. 269, *Gobind Ram* v. *Basantilal.*

(1924) 1924 Pat. 717 (718), *Narendranath Sarkar* v. *E. I. Ry.*

[See also (1872) 17 Suth. W. R. 37 (38), *Dengoo Sheikh* v. *Adam Sirkar.*]

(6) (1931) 1931 Mad. 242 (244), *Sriramamurthy* v. *Emperor.*

(7) (1933) 1933 Cal. 348 (352), *Francis Duke Cobridge* v. *Jogendra Kumar Roy.*

Note 13.

(1) (1933) 1933 Mad. W. N. 1263, *Venkatramanjulu Chetty* v. *Kanniah Chetty.*

Note 14.

(1) (1928) 1928 All. 14 (16): 50 All. 414, *Hafizuddin* v. *Laborde.*

(2) (1888) 10 All. 115 (118), *Empress* v. *Sheodin.*

(1897) 1897 All. W. N. 59 (60), *Muhammad Bakar Ali* v. *Hanwant Singh.*

(1932) 1932 Cal. 288 (288), *Ambika Nanda Maitra* v. *Benode Behari Sarkar.*

(1903) 7 Cal. W. N. 140 (141), *Remjit Singh* v. *Luchman Prasad.*

S. 144, Notes 14—15.

time as the rights of both the parties are established by a competent Court,[3] or directing a person to abstain from taking any part in the management of a temple until another person should be evicted from the management in due course of law[4] is illegal and without jurisdiction. The section does not also authorize a Magistrate to enlarge the duration of the order beyond the period of two months by passing *successive* orders or renewing the order at the end of every two months. Such a procedure is illegal and amounts to an evasion of the law.[5] Where an order does not prove sufficient for the purpose, the proper course is to take action under S. 107[6] or move the Local Government to extend the duration of the order.[7] The Local Government unlike a Magistrate, is empowered under the section to extend the duration of the order even for an indefinite period as for instance that it should remain in force until cancelled by a notification in the official Gazette. It is not necessary that the Local Government should state the reasons for extending the duration of the order.[8]

The order of the Magistrate remains in force for two months from the date of the making of the order and not from the date of the *confirmation* of the order on a subsequent date.[9]

It is not necessary that an order under this section should *state* expressly that its operation is confined to two months or some shorter period.[10]

15. Revision.—Under the Code of 1861, it was held by a Full Bench of the High Court of Calcutta,[1] that the proceedings under S. 62 of that Code (corresponding to the present section) were not judicial proceedings and therefore not subject to the revisional jurisdiction of the High Court under S. 404 (now 435). Under the Code of 1872 the Legislature obviously with a view to give effect to the aforesaid Full Bench decision enacted a new provision in S. 520 of that Code which expressly declared that proceedings under S. 518 (now 144) were not judicial proceedings, and consequently it was held that the High Court's powers of revision were excluded.[2] Under the Codes of 1882 and 1898

(1885) 5 Cal. 7 (19), *Gopi Mohun Mullick* v. *Taramoni Chowdhrani.*
(1882) 8 Cal. 580 (582), *Bradley* v. *Jameson.*
(1932) 1932 Mad. 294 (296), *Ramnad Zamin Devasthanam* v. *Kadar Meera Ambalam.*
(3) (1905) 2 Cri. L. Jour. 166 (168) (Cal.), *Premchand Singh Roy* v. *Dharmadas Singh Roy.*
(1881) 8 Cal. L. R. 231 (232), *Prosunno Coomar.*
(4) (1901) 24 Mad. 45 (46), *Ramanandan Chetty* v. *Murugappa Chetty.*
(5) (1916) 17 Cri. L. Jour. 200 (200, 201): 1916 Cal. 472, *Bishesswar* v. *Emperor.*
(1906) 4 Cri. L. Jour. 433 (436) (Cal.), *Satish Chandra Roy* v. *Emperor.*
(1925) 1925 Cal. 625 (625), *Ashutosh Roy* v. *Harischandra Chattopadhya* (Mere addition of parties does not empower the Magistrate to extend beyond two months).
(1903) 7 Cal. W. N. 140 (141), *Remjit Singh* v. *Luchman Prosad.*
(1914) 1914 Mad. 697 (697), *Govinda Chetty* v. *Emperor.*
(1923) 1923 Mad. 15 (16), *Murari Naicken* v. *Aiyaswami Naicken.*
(1920) 1920 Pat. 496 (498), *Gouri Dutt* v. *Gobind Singh.*
(1917) 1917 Pat. 154 (155), *Rash Behari Singh* v. *Jagnarain Rai.*
(6) (1916) 17 Cri. L. Jour. 209 (201): 1916 Cal. 472, *Bishessur Chuckrabutty* v. *Emperor.*
(1917) 1917 Pat. 154 (155), *Rashbehari Singh* v. *Jagnarain Rai.*
(7) (1915) 16 Cri. L. Jour. 592 (592): 1916 Mad. 1106, *Swaminatha Mudaliar* v. *Gopalakrishna Mudaliar.*
(8) (1923) 1923 All. 606 (607): 46 All. 526, *Emperor* v. *Bhivee Mal.*
(9) (1910) 11 Cri. L. Jour. 12 (13) (Cal.), *Thomson* v. *Emperor.*
(1935) 1935 Pat. 224 (225), *Puran Singh* v. *Ramjhari Koer* (60 days period begins to run from the date on which notices are issued).
(10) (1907) 6 Cri. L. Jour. 194 (195, 197): 34 Cal. 897, *Ramnath Choudhury* v. *Emperor.*
(1920) 1920 Mad. 847 (848), *Ponnappa* v. *Sri Vanamamalai.*

Note 15.

(1) (1870) 14 Suth. W. R. 46 (49), *Queen* v. *Abbas Ali Chowdhry* (Phear, J., Dissenting).
(2) (1881) 3 Mad. 354 (357), *E. V. R. Jeeyarswami* v. *V. R. Jeeyar.*

S. 520 of the 1872 Code was omitted by the Legislature, but a new sub-S. (3) was added to S. 435 which declared that orders under S. 144 were not proceedings within the meaning of S. 435. The effect of this change was also to exclude the revisional jurisdiction of the High Court.[3] Although the Old Codes thus forbade revision, it was held that the High Court could, by virtue of its powers of superintendence under S. 15 of the Charter Act (S. 107 of the Government of India Act) interfere with the orders of Magistrates under this section where they were in excess of jurisdiction or resulted in grave miscarriage of justice.[4] **S. 144, Note 15.**

Under the present Code as amended in 1923 the legislature has omitted sub-S. (3) to S. 435, and there is also no corresponding provision as in S. 520 of the Code of 1872. The effect of this change is that the ban which has been placed on the High Court's powers of revision by the Legislature from 1872 to 1923 with regard to orders under this section has been removed, and that such orders are now subject to revision under S. 435.[5] The provisions of sub-S. (4) are no bar to the entertainment of a revision application by the High Court Where the order of the Magistrate is one made without jurisdiction the fact that the petitioner has not availed himself of the remedy provided for by sub-S. (4) has been held to be no ground for refusing to interfere in revision.[6]

It is *prima facie* for the Magistrate who knows the local conditions to say whether an emergency exists or not and the High Court will not ordinarily interfere with his findings unless there be clear evidence that no reasonable man

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(1883) 6 Mad. 203 (222), *Sundaram Chetti* v. *Ponuswami Chetty.*
(1876) Weir 3rd Ed. 735 (736).
(1879) Weir 3rd Edn. 761 (762).
(1883) 1883 All. W. N. 25 (25), *Petition of Shere Ali.*
(1874) 6 N. W. P. 16 (18), In re *Mokut Singh.*
(1876-77) 2 Cal. 293 (295), In re *Chandranath Sen.*
(1872) 18 Suth. W. R. 22 (22), *Lala Mitterjeet* v. *Raj Coomar.*
(1873) 20 Suth. W. R. 53 (54), *Bholanath* v. *Komuruddin.*
(1874) 21 Suth. W. R. 22 (23), *Arzamul'a* v. *Nazir Mullick.*
(1874) 22 Suth. W. R. 52 (54), *Afzoo.*
(1875) 1875 Pun. Re. No. 17, page 23 (24), *Abdul Kadir.*
(1878) 1878 Pun. Re. No. 33, page 79 (81), *Mussamat Faizulnissa* v. *Faiz Mahomed.*
(1880) 1880 Pun. Re. No. 2, page 3 (7), *Harriamal and Muthra Das* v. *Emperor.*
(1877) Kat. 129 (129), *Anon.*
(1920) 1920 Bom. 367 (367), *Cawasjee Jehangir Ready Money*, In re .
(3) (1902) 4 Bom. L. R. 582 (584), In re *Vasudeo.*
(1890) Rat. 516 (516), In re *Vithal Annaji Utpat.*
(1891) 1891 All. W. N. 178 (178), In re *Bhagdu.*
(1895) 18 Mad. 402 (404), *Palaniappa Chetty* v. *Doraisami Iyyar.*
(4) (1920) 1920 Mad. 847 (847), *Ponnappa* v. *Sri Vanamamalai.*
(1913) 14 Cri. L. Jour. 589 (589) (Mad.), *Govinda Chetty* v. *Perumal Chetty.*
(1910) 11 Cri. L. Jour. 449 (449) (Mad.), *Venkatroya Gownden* v. *The Very Rev. N. Rondey.*
(1902) 2 Weir 94 (95), *Strinivasa Raghavachari.*
(1921) 1921 Pat. 392 (394), *Madan Lal* v. *Fulchand Ram.*
(1889) 16 Cal. 80 (85), *Abayeswari Debi* v. *Sidheswar Debi.*
(1882) 8 Cal. 580 (582), *Bradley* v. *Jameson.*
(1874) 22 Suth. W. R. 78 (78), *Chunder Coomar* v. *Omesh.*
(1874) 22 Suth. W. R. Cr. 24 (24), *Kali Narain Roy Chowdhry* v. *Abdool Gufoor Khan.*
(1909) 13 Cal. W. N. cclxviii (cclxviii), *Ganesh* v. *Nadar Ali.*
[See also (1872) 17 Suth. W. R. 37 (38), *Laloo* v. *Adam Sircar.*]
(5) (1930) 1930 Mad. 242 (246): 53 Mad. 320, *Muthuswami Servaigaran* v. *Thangammal* (Decisions of Single Judge in 1928 Mad. 1108 and 30 Cri. L. Jour. 629 not followed).
(1931) 1931 Mad. 242 (244), *Sriramamurthy* v. *Petitioner.*
(1932) 1932 Mad. 720 (721), *Pitchai* v. *Muna Muna Chena Muhammad.*
(1931) 1931 Bom. 135 (137): 55 Bom. 322, *Emperor* v. *Ganesh Vasudeo Mavlankar.*
(1933) 1933 Cal. 348 (351), *Francis Duke Cobridge* v. *Jogendra Kumar Roy.*
(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basanti Lal Marwari.*
(1934) 1934 Rang. 124 (125): 12 Rang. 283, *Thakin Ba Thoung* v. *Emperor* (Order passed without jurisdiction—High Court can interfere in revision).
(6) (1932) 1932 Mad. 720 (722), *Pitchai* v. *Mahomed Atham Sammatti.*
(1934) 1934 Cal. 139 (140), *Surendranath Kabashi* v. *Gostha Behari Kabashi.*
(1924) 1924 Pat. 145 (147), *Akal Mahton* v. *Mahabir Mahton.*
(1921) 1921 Pat. 392 (394), *Madan Lal* v.

S. 144, Note 15.

could have held that there was an emergency.[7] Where the elements necessary for action under the section are shown to exist upon materials legally before the Court the High Court will, in exercising its powers, respect the opinion of the local authorities as to the gravity of the danger and as to the steps necessary for the maintenance of the peace.[8]

The High Court will interfere in revision in the following cases:—

(*a*) Where there are no materials justifying the issue of order.[9]

(*b*) Where the grounds of action as stated in the order are either unfounded in fact or insufficient in law[10] or where it is shown that the order violates the conditions laid down by the section.[11]

(*c*) Where the order is beyond the scope of the section[12] as for instance when it purports to decide the rights of parties which is not necessary for the order.[12-a]

(*d*) Where the order is passed without preliminary notice to the persons proceeded against and without hearing them.[13]

(*e*) Where the order is based upon no legal evidence.[14]

Where the order of the Magistrate has spent itself, or in other words the two months' period has elapsed at the time of revision, the High Court will not generally interfere in revision[15] save in exceptional cases[15-a] involving questions of jurisdiction[16] or where the party against whom the order was passed

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Fulchand Ram.

(7) (1931) 1931 Bom. 135 (137): 55 Bom. 322, *Emperor* v. *Ganesh Vasudev.*
(1934) 1934 Pat. 313 (315), *Manukhan* v. *Sundar Singh* (District Magistrate rescinding order under section by Sub-Divisional Magistrate—High Court will not reimpose order).

(8) (1931) 1931 Mad. 242 (244), *Sri Ramamurthi*, In re.
(1910) 11 Cri. L. Jour. 194 (194) (Mad.). *Bandalapalli Peda* v. *Moka Subbarayadu.*
(1934) 1934 Pat. 463 (465), *Harihar Singh* v. *Emperor* (High Court slow to interfere with discretion of District Magistrate as to which of his powers under the statute he should exercise in a particular case).

(9) (1929) 1929 Pat. 714 (716), *Radhe Das* v. *Jairam Mahto.*
(1922) 1922 Pat. 239 (240), *Panchi Ram* v. *Sheikh Muhammad Abdullah.*
(1919) 1919 Mad. 1004 (1008), *Venkataramana Iyer* v. *Emperor.*

(10) (1931) 1931 Mad. 242 (245), *Sriramamurthy*, In re.

(11) (1898) 2 Cal. W. N. 747 (748), *Mahamaddi Mollah* v. *Empress.*
(1931) 1931 Mad. 242 (245), *Sriramamurthy*, In re.
(1914) 1914 Mad. 697 (697), *Gobinda Chetty* v. *Emperor.*
(1910) 11 Cri. L. Jour. 449 (449) (Mad.), *Venkatroya Gownden* v. *The Very Rev. N. Rondey.*
(1924) 1924 Pat. 145 (146), *Akal Mahton* v. *Mahabir Mahton.*
(1904) 1 Cri. L. Jour. 248 (251) (Cal.), *Isab Mondal* v. *Emperor.*

(12) (1898) 25 Cal. 852 (856), *Queen-Empress* v. *Pratap Chunder Ghose.*
(1878) 1 Cal. L. R. 58 (61), In re *Krishna Mohun Bysack.*
(1920) 1920 Pat. 155 (155), *Mainavathi* v. *Dulla Manji.*

(12-a) (1933) 1933 Pat. 185 (187), *R. S. N. Co., Ltd. Digha* v. *Chandra Ketu Narain Singh.*

(13) (1924) 1924 Pat. 703 (704), *Dhanraj Bhagat* v. *Bharat Narain Singh.*
(1920) 1920 Pat. 496 (499), *Gouri Dutt* v. *Govind Singh.*

(14) (1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gouri Dutt* v. *Govind Singh.*

(15) (1924) 1924 Mad. 896 (896), *Kuppu Odayar* v. *Poomalai Goundan.*
(1928) 1928 Pat. 480 (480), *Karan Singh* v. *Ram Kishun.*
(1928) 109 Ind. Cas. 113 (113) (Pat.), *Karan Singh* v. *Ram Kishun Lal.*
(1934) 1934 Oudh 87 (87), *Abdul Samad* v. *Emperor.*
(1898) Rat. Un. Re. Cr. C. 967 (968), *Empress* v. *Kazi Fazloddin.*
(1915) 16 Cri. L. Jour. 272 (272) (Mad.), 1916 Mad. 534, *Swaminatha Mudaliar* v. *Gopalakrishna Naidu.*
(1935) 1935 Pat. 145 (146), *Chhakan Ram* v. *Raghunath Ram.*
(1935) 1935 Pat. 224 (225), *Puran Singh* v. *Ramjhari Koer.*

(15-a) [See (1935) 1935 Lah. 679 (680), *Qamaruddin* v. *Emperor* (In this case High Court decided to consider validity of order).]

(16) (1919) 1919 Cal. 584 (585), *Chandranath Mukerjee* v. *E. I. Ry.*
(1930) 1930 Cal. 131 (132), *Dabiruddin Mohammad* v. *Emperor.*
(1922) 1922 Mad. 76 (77), *Muthu Kumaraswami Nadar* v. *Muhammad Rowther.*
(1930) 1930 Mad. 242 (242, 243): 53 Mad. 320, *Muthuswami Servaigaran* v. *Thangammal Ayyar.*
(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal*

has been seriously prejudiced.[17]

16. Disobedience of order under the section.—A person disobeying an order under this section is liable to be punished under S. 188 of the Penal Code. The prosecution in such a case has to be launched under the provisions of S. 195 or S. 476 of the Code.[1]

In order to punish a person under S. 188, I.P.C., the following conditions should be fulfilled:—

(1) The order under this section should be a valid order. Where the order is one not warranted by the section, or the requirements of the section are not duly complied with a prosecution cannot stand.[2] The legality of the order is liable to be questioned in proceedings under S. 188, I.P.Code.[3]

(2) The accused should be proved to have had actual knowledge of the order. The knowledge cannot be presumed.[4]

(3) The accused should be proved to have disobeyed the order[5] and that too at the time of the continuance of the order.[6]

(4) The disobedience should have caused or tended to cause obstruction, annoyance or injury or the risk of obstruction, annoyance or injury to any person lawfully employed or danger to human life, health, safety, or riot or an affray.[7]

Marwari.

(1927) 1927 Pat. 432 (432), *Latifan* v. *Mohammad Ibrahim.*

(1927) 1927 Lah. 430 (430), *Khazan Chand* v. *The Crown.*

(17) (1935) 1935 Pat. 224 (225), *Puran Singh* v. *Ramjhari Koer.*

Note 16.

(1) (1922) 1922 Pat. 84 (86), *Parameswar Rai* v. *Emperor.*

(1916) 17 Cri. L. Jour. 464 (464): 1916 Cal. 69, *Chandra Kanta Kanji Lal* v. *Emperor.*

(1919) 20 Cri. L. Jour. 113 (113): 1919 Cal. 108, *Nagendranath Biswas* v. *Rakhal Das Sinha.*

[See also (1867) 2 Agra Cr. 23 (23, 24), *Government* v. *Mohd. Baksh.*

(1919) 1919 Cal. 336 (337), *Mritunjoygon* v. *Emperor* (Magistrate who made the order is not competent to try a change under S. 188, I. P. Code).

(1901) 24 Mad. 262 (264), *Empress* v. *Abdulla Saheb* (Do.).

(1873) 10 Bom. H. C. R. 424 (424), *Reg.* v. *Ranchod Dayal.*

(1897) Rat. Un. Re. Cr. Cas. 904 (905), *Empress* v. *Langaday Babu Koli* (Do.).]

(2) (1905) 2 Cri. L. Jour. 166 (168) (Cal.), *Premchand Singh* v. *Dharmdas Singh Roy.*

(1898) 2 Cal. W. N. 70 (71), *Bireshwar Basu* (Order directing prostitutes and their zamindars, under whom they held the land to remove the houses of the former from a particular site and to take up their quarters on the opposite side of a Railway lines, on the ground that visitors to the prostitutes have to cross the Railway lines and thereby their lives, would be endangered—Held, order was *ultra vires*).

(1870) 13 Suth. W. R. Cr. 72 (73), *Uttam Chunder Chatterjee* v. *Ram Chunder Chatterjee.*

(1893) 1 U. B. R. 174 (175), *Empress* v. *Nawab Khan.*

(1894) 1 U. B. R. 183 (185, 186), *Empress* v. *Nga Shwe Maung.*

(1870) 1870 Rat. Un. Cr. Cas. 30 (30), *Reg.* v. *Mardan Husen* (No written order).

(1872) 17 Suth. W. R. Cr. 57 (57), In re *Pitamber Day* (Do.).

(3) (1921) 1921 Cal. 258 (259), *Jiaratdin* v. *Emperor.*

(4) (1927) 1927 Cal. 28 (28): 54 Cal. 152, *Ram Das Singh* v. *Emperor.*

(1927) 1927 Cal. 306 (307), *Sheikh Abdul* v. *Emperor.*

(1899) 1 Bom. L. R. 524 (524), *Empress* v. *Anant Shitaram Kulkarni.*

(1905) 2 Cri. L. Jour. 719 (720): 1905 Pun. Re. No. 36, *Mulraj* v. *Emperor.*

(1935) 1935 All. 552 (553), *Shander* v. *Emperor* (Whether person has knowledge of order promulgated is matter of evidence).

[See also (1875) Suth. W. R. Cr. 57 (58), *Queen* v. *Subban Singh.*]

(5) (1932) 1932 Mad. W. N. 1073 (1073), *Veeraragavudu* v. *Emperor.*

(1889) 16 Cal. 9 (13), *Parbutty Churn Aich.*

(6) (1920) 1920 All. 223 (224), *Ram Das* v. *Emperor* (Disobedience 50 years later—No offence).

(1888) 10 All. 115 (118), *Sheodin.*

(7) (1930) 1930 Cal. 131 (132), *Dabruddin Mohammad* v. *Emperor.*

S. 144, Notes 16—17.

Parties are entitled to resist the execution of an order under this section which is *ultra vires* and no offence would be constituted by such resistance provided the limits of the right of private defence are not exceeded.[8]

17. Suit to establish civil rights infringed by an order under this section.—An order of a Magistrate under this section which interferes with the legal rights of a person furnishes that person with a cause of action to file a suit in a Civil Court for the establishment of such rights. The existence of the order is no bar to the maintainability of such a suit.[1]

Thus where an order under this section forbids a person or a body of persons from using a highway for the purpose of procession, it furnishes that person or persons with a cause of action for bringing declaratory suit for the establishment of that right where it is alleged to be an infringement of legal right, although such order is *intra vires*. No proof of *special damage* is necessary to succeed in such an action.[2] Similarly where the order of the Magistrate was that all music should cease when any procession is passing a place of worship (a mosque), it was held that a suit lies to declare the right to take procession with music.[3]

The Civil Court has no power to cancel or set aside such an order in a suit to which the Government is not a party; the proper way to question or set aside such an order is by a revision petition to the High Court. However as already seen the existence of the order is no bar to the Civil Court's adjudicating upon the rights of the parties which are infringed by the order and where the Civil Court declares the rights it is open to the parties to approach the Local Government to modify or cancel the order in the light of the Civil Court's declaration.[4]

(1920) 1920 Cal. 520 (521), *Kumudnath Chakravarthy* v. *Ajoo Bamanik*.
(1919) 1919 Cal. 996 (996), *Sujal Biswas* v. *Samiruddin Mandal*.
(1900) 4 Cal. W. N. 226 (228), *Brojonath Ghose*.
(1910) 11 Cri. L. Jour. 49 (50) (Cal.), *Projapat Jha* v. *Emperor*.
(1904) 1 Cri. L. Jour. 778 (780): 31 Cal. 990, *Shamananda Das Paharaj* v. *Emperor*.
(1905) 2 Cri. L. Jour. 760 (760): 32 Cal. 796, *Ram Gopal Daw* v. *Emperor*.
(1932) 1932 Cal. 868 (869), *Chuni Lall Moti Lal* v. *Emperor*.
(1922) 1922 Pat. 84 (86), *Parameswar Rai* v. *Emperor*.
(1868) 4 Mad. H. C. R. App. V (VI),
(1886) 1886 All. W. N. 251 (252), *Empress* v. *Habibullah*.
(1908) 8 Cri. L. Jour. 431 (433, 434) (Bom.), *Emperor* v. *Govind*.
(1916) 18 Bom. L. R. 554 (556), In re *Mukundrai Atmaram Desai*.
(1874) Rat. Un. Re. Cr. Cas. 81 (82), *Reg.* v. *Bapuji Bechar*.
(8) (1921) 1921 Pat. 415 (420), *Moimuddin* v. *Emperor*.

Note 17.

(1) (1919) 1919 Mad. 674 (675): 42 Mad. 271, *Valan Pakkiri Taragan* v. *Subbayya Samban* (1928 Mad. 448 overruled).
(1922) 1922 Mad. 123 (125), *P. Baba Sha* v. *K. G. Mahomed Husain*.
(1909) 1 Ind. Cas. 716 (718, 719): 32 Mad. 478, *Kandaswamy Mudali* v. *Subraya Mudali*.
(1884) 2 Weir 89 (90), In re *Ramanuja Aiyangar*.
(1873) 5 N.-W. P. 8 (9), *Thakoor Singh* v. *Sheo Pershad*.
(1877) 3 Cal. 20 (23) (F.B.), *Raj Koomar Singh* v. *Sahebzada Roy*.
(1903) 5 Cal. 7 (20), *Gopi Mohun Mullic* v. *Taramoni Chowdhrane*.
(2) (1919) 1919 Mad. 674 (675, 676): 42 Mad. 271 (F.B.), *Valan Pakkiri Taragan* v. *Subbayan Samban*.
(1910) 5 Ind. Cas. 902 (902) (Mad.), *Muthia* v. *Sudalai Muthu* (Following 1 Ind. Cas. 716).
[But see (1878) 2 Bom. 457 (468), *Satku Valad Kadir* v. *Ibrahim Aga Valad* (Held, proof of special damages necessary. This decision was not followed in 34 Bom. 571).]
(3) (1880) 2 Mad. 140 (142), *Muthialu Chetty* v. *Banpun Saib*.
(4) (1922) 1922 Mad. 123 (124), *Baba Sah* v. *K. G. Mohammad Hussain*
[See also (1874) 6 N.-W. P. 104 (108, 109), *Kedarnath* v. *Rughonath* (Held, such portion of the order as is beyond the scope of the section can be cancelled by civil order).]

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

145.* (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties,

Inquiry as to possession.

*(CODE OF 1882—S. 145.)

CHAPTER XII.

DISPUTES AS TO IMMOVABLE PROPERTY.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the First Class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immovable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate,

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties,

Inquiry as to possession.

S. 145.

ies, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:	receive *all such evidence as may be* produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case, the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

Party in possession to retain possession until legally evicted.

(6) If the Magistrate decides that one of the parties was in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding	(6) If the Magistrate decides that one of the parties was *or should under the first proviso to sub-section* (4) *be treated as being in* such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof

all disturbance of such possession until such eviction.

until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction, *and when he proceeds under the first proviso to sub-section* (4), *may restore to possession the party forcibly and wrongfully dispossessed.*

S. 145.

(7) Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.

(7) *When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.*

(8) *If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.*

(9) *The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue summons to any witness directing him to attend or to produce any document or thing.*

(10) *Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section* 107.

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and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

SYNOPSIS.

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NATURE OF PROCEEDINGS UNDER THIS SECTION ..	5
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POLICE REPORT	8
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The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statement so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Enquiry as to possession.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Party in possession to retain possession until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

(CODE OF 1872—S. 530.)

CHAPTER XL.

POSSESSION.

530. Whenever the Magistrate of the District or a Magistrate of a Division of a District, or Magistrate of the first class, is satisfied that a dispute likely to induce a breach of the peace exists concerning any land or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land, within the limits of his jurisdiction,

Magistrate how to proceed if any dispute concerning land, etc., is likely to cause breach of the peace.

such Magistrate shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court, in person or by agent, within a time to be fixed by such Magistrate, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute.

Such Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire and decide which party is in possession of the subject of dispute.

Party in possession to be continued until ousted by due course of law.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

Explanation.—Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information; but the question of possession must be decided on evidence taken before him.

SYNOPSIS. S. 145.

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(CODE OF 1861—S. 318.)

CHAPTER XXII.

OF DISPUTES RELATING TO THE POSSESSION OF LAND OR THE RIGHT OF USE OF ANY LAND OR WATER.

Magistrate how to proceed if any dispute concerning land, etc., is likely to cause breach of the peace.

318. Whenever the Magistrate of the District or other Officer exercising the powers of a Magistrate shall be satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court in person, or by agent, within a time to be fixed by the Magistrate or other Officer as aforesaid, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute. The Magistrate or other Officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to enquire which party is in possession of the subject of dispute, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to be in such possession, to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

Party in possession to be continued until ousted by due course of law.

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Effect of order on subsequent civil suit. See Note 56.

Fact of actual possession.—

Legal right and actual possession. See Note 2, Pts. 2-4 and Note 25, Pts. 1 and 2.

Possession is real and tangible. See Note 25, Pt. 3.

Possession must be continuous. See Note 25, Pts. 6-10.

Nature of possession. See Note 25, Pts. 10-16.

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Joint possession. See S. 146, Note 6.

Object and principle of the section. See Note 1, Pt. 1, Note 2, Pts. 5-7 and Note 5, Pts. 2-4.

Order in respect of joint possession. See Note 52.
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Parties concerned in dispute.—
Agent, manager or servant. See Note 19, Pts. 8 and 9.
Landlord and tenant. See Note 19, Pt. 10 (a).
Two communities in dispute. See Note 19, Pt. 11.
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Pendency of civil suit is no bar to an order under this section. See Note 2, Pts. 8-11.
Previous decision of a Criminal Court as to possession—Effect of. See Note 56.
Prior decree of a Civil Court—Effect of. See Note 11, and Note 44.
Removal of wrong-doer. See Note 54 and Note 56, Pts. 3-4.
Review. See Note 56, Pts. 15 and 16.
Transfer of proceedings. See Note 5, Pt. 5.

1. History of the section.—Legislation concerning disputes likely to cause a breach of peace, and relating to immovable property began with Reg. XLIX of 1793. The object of such legislation was the prevention of a breach of the peace and the *method* was to bring before the Court the disputing parties, to ascertain who was in possession, and to constitute him the custodian of the property until the rights of the parties are effectively determined by the proper tribunal. The object and the method have remained the same throughout in all the subsequent legislations—only, the jurisdiction in such matters which originally was vested in the Court of the Dewanny Adalat by Reg. XLIX of 1793 was, by Reg. XV of 1824, transferred to the Magistrates.[1]

The following are the various legislations that were passed with regard to disputes relating to immovable property:—

(1) Reg. XLIX of 1793.
(2) Reg. VI OF 1813.
(3) Reg. XV of 1824.
(4) Reg. II of 1829.
(5) Act IV of 1840.
(6) Cr. P. Code, XXV of 1861, S. 318.
(7) Do. X of 1872, S. 530.
(8) Do. X of 1882, S. 145.
(9) Do. V of 1898, S. 145.

2. Legislative Changes.—

(1) *Changes introduced in* 1898—

(*a*) For the words "Concerning any tangible immovable property" occurring in S. 145 of the Code of 1882 the words "concerning any land or water or the boundaries thereof", were substituted. *See* Note 26, *infra*.

(*b*) Sub-Ss. (2) and (3) as also the first proviso to sub-S. (3) were newly added—*See* Note 46, *infra*.

(*c*) Second proviso to sub-S. (3) was also added. *See* Note 29, *infra*.

(2) *Changes introduced by the amendment of* 1923—

(*a*) In sub-S. (6), the words "or should under the first proviso to sub-S. (4) be treated as being in" and the words "and when

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Section 145—Note 1.
(1) (1928) 1928 Cal. 610 (625) (F. B.), *Agni Kumar Das* v. *Mantazaddin*. [See also (1903) 30 Cal. 155 (166-169), *Krishna Kamini* v. *Abdul Jubbar*.]

S. 145, Notes 2—3.

he proceeds under the first proviso to sub-S. (4), may restore to possession the party forcibly and wrongfully dispossessed'' are new. *See* Note 54, *infra*.

(*b*) Sub-S. (7) is new and has been substituted for the words ''Proceedings under this section shall not abate by reason only of the death of any of the parties thereto''. *See* Note 22, *infra*.

(*c*) Sub-Ss. (8), (9) and (10) are new. *See* Notes 31, 33 and 59, *infra*.

3. Scope and applicability of the section.—This section provides the procedure to be followed where the Magistrate is satisfied that—

(1) a *dispute* exists concerning any land or water or the boundaries thereof within the local limits of his jurisdiction, and

(2) such dispute is likely to cause a breach of the peace.

Where he is so satisfied, the section is imperative that the Magistrate must pass a preliminary order under sub-S. (1) and afterwards make an enquiry under sub-S. (4).[1] The inquiry is, however, limited to the question as to who was in *possession in fact* on the date of the order, irrespective of the question as to the *rights* of the parties.[2] A party forcibly and wrongfully dispossessed within two months of the date of the order may for this purpose be treated as if he had been in possession on the date of the order. Any party concerned in the dispute may, in such inquiry show that there is *no dispute* at all or that the dispute is *not such as to be likely to cause a breach of the peace*. If the Magistrate finds that this is so, he should cancel his preliminary order, inasmuch as the conditions for the applicability of the section are absent.[3] Otherwise the inquiry aforesaid must be held and if the Magistrate is able to decide that one of the disputing parties is in possession on the date of the preliminary order, he should pass a final order declaring that such party is entitled to possession of the property until evicted in due course of law, and forbidding all disturbance of such possession until such eviction (sub-S. 6). If he is *unable* to decide as to who was in possession on the date of the preliminary order he should *attach* the properties under the next section until a competent Court has determined the rights of the parties or the person entitled to the possession of the property.[4]

The primary object of the provision is the prevention of the breach of the public peace arising in respect of a dispute relating to immovable property; in order to achieve the object, the section enables the Magistrate to *settle* the matter temporarily so far as the Criminal Courts are concerned, and to maintain

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Note 3.

(1) (1927) 1927 Rang. 177 (178): 5 Rang. 129, *Maung Pu* v. *Maung Chit Pu*.
(1926) 1926 Sind 53 (55), *Mahomed Mahdishah of Pir Jhando* v. *Wahdal Shah*.
(2) (1901) 25 Bom. 179 (186), In re *Pandurung Govind Pujari*.
(3) (1901) 25 Bom. 179 (185), In re *Pandurung Govind Pujari*.
(1920) 1920 Cal. 104 (105), *Jharu Khan* v. *Sarada Charan Sikadar* (If so dropped High Court will not interfere).
(4) (1928) 1928 Cal. 610 (615) (F.B.), *Agni Kumar Das* v. *Mantazaddin* (To attach under S. 146 is wiser than acting under S. 107).

the *status quo* until the rights of the parties are decided by a competent Court.[5] The principle on which the section is based is that whether a person has the best or the worst claim in the world he should not take the law into his own hand and disturb the public peace.[6] The result of the proceedings may be to deprive the rightful owner of the possession of his property temporarily and to subject him to other inconveniences, but this and other considerations are necessarily subordinate to the imperative necessity of preserving the peace.[7] S. 145, Notes 3--3-A.

The pendency of a civil suit in respect of the right in question[8] or of proceedings under the Indian Companies Act[9] is no bar to action being taken under this section. But a proceeding under this section being a *quasi* executive action having for its justification the prevention of the breach of the public peace[10] should be taken with promptitude and finished as quickly as possible.[11] As to whether the fact that a Civil Court has adjudicated on the rights of the parties, puts an end to the dispute so as to make this section inapplicable, *see* Note 44 below. As to the effect of a suit being filed pending the proceedings under this section, *see* Note 48, *infra*.

The jurisdiction to institute proceedings under this section is an exceptional one and the provisions of the section should consequently be strictly followed when action is taken under it.[12]

3-A. Applicability to cases arising under the Bengal Alluvial Lands Act.—The Bengal Alluvial Lands Act (Bengal Act V of 1920) makes provision for the prevention of disputes concerning recently formed lands and in cases covered by that Act, the proper course would be to institute proceedings under that Act and not to proceed under this section. Where the Collector takes proceedings under that Act, all proceedings under this section including attachment of the property have to be stayed under the provisions of S. 10 of that Act.[1] It has been held however that the provisions of S. 145 have not been

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(5) (1925) 1925 Pat. 593 (594), *Abdul Shakur v. Abu Sayeed.*
(1928) 1928 Nag. 81 (83), *Emperor v. Ganikhan.*
(1899) 26 Cal. 625 (628), *Doulat Koer v. Rameswar Koeri.*
(1900) 4 Cal. W. N. 426 (428), *Tarugan Bibee v. Asamuddi Bepari.*
(1930) 1930 Cal. 715 (716): 58 Cal. 388, *Anandi Lal Mukherjee v. Lukh Chand Mundal.*
(1867) 8 Suth. W. R. 386 (390), *Khajah Enaetoollah Chowdhry v. Kishen Soondur Surma.*
(1916) 17 Cri. L. Jour. 143 (144): 1917 Mad. 204, *In re Lingaraja Misro.*
(6) (1917) 1917 Pat. 606 (608), *Ghasi Ram v. Amrit Mal.*
(1928) 1928 Cal. 610 (614, 615) (F.B.), *Agni Kumar Das v. Mantazaddin* (*Per* Rankin, C. J.).
(7) (1903) 30 Cal. 155 (195) (F.B.), *Krishna Kamini v. Abdul Jubbar.*
(1929) 1929 Cal. 328 (329), *Abdur Rahman Bhima v. Dinesh Haldar.*
(8) (1909) 9 Cri. L. Jour. 399 (400): 36 Cal. 370, *Kishori Lal Roy v. Srinath Roy.*
[See however (1920) 1920 Cal. 708 (712), *Ali Mohammad Mondal v. Fakirud-din Munshi.*]
(1920) 1920 Cal. 824 (828), *Indian Iron and Steel Co., Ltd. v. Bansa Gopal* (When the dispute related to right to bore for coal—Action under S. 107 to be taken).
(9) (1933) 1933 Cal. 433 (434), *S. N. Mukherjee v. Krishna Dasi.*
(10) See Note 5 *infra*.
(11) (1928) 1928 Rang. 314 (315), *Ma Nyain Mya v. Maung Po Hatik.*
(1907) 5 Cri. L. Jour. 91 (92, 93): 29 Mad. 561, *Raja of Karvetnagar v. Lodd Govinda Doss Krishna Doss.*
(12) (1926) 1926 Lah. 205 (206): 7 Lah. 134, *Atma Singh v. Harunam Singh.*
(1927) 1927 Lah. 805 (807), *Dhaniram v. Kaliram.*
(1933) 1933 All. 96 (97), *Emperor v. Hira Lal.*
(1930) 1930 Lah. 895 (895, 896), *Sis Ram v. Emperor.*
(1927) 1927 All. 286 (286, 287): 49 All. 325, *Banka Singh v. Gokul.*
(1913) 14 Cri. L. Jour. 277 (277) (All.), *Jhengar v. Baij Nath.*

Note 3-A.

(1) (1929) 1929 Cal. 646 (647, 648), *Digendra Behari Roy v. Janaki Nath Roy.*

S. 145. Notes 3-A—4.

impliedly repealed by S. 10 of that Act, and that if any proceedings have been taken under this section, they are not without jurisdiction.[2]

4. Sections 107, 144 and 145 compared.—A Magistrate is responsible for the preservation of the law and order within the local limits of his jurisdiction and for this purpose is entrusted with several weapons under the Code for the maintenance of the peace. Thus, under S. 107, *ante*, he has power to take security from a person who is likely to disturb the peace. In cases of *emergency* he has power to make temporary orders under S. 144. Where there is a dispute as to immovable property and such dispute is likely to cause a breach of the peace, he has powers under this section of declaring the possession of one of the disputing parties and of forbidding any disturbance of such possession.[1]

The exercise of the powers under S. 107 and S. 144 is *discretionary*, while this section requires that the Magistrate *shall* proceed as provided therein.[2] Where a dispute relating to immovable property is likely to cause a breach of the peace but there is no *emergency*, S. 144 will not of course apply[3] and the most appropriate remedy will be to proceed under this section.[4] Suppose now that the circumstances of a particular case satisfies the conditions necessary for the applicability of S. 107, S. 144 as well as of this section. What course is the Magistrate to adopt? It has been held generally that the Magistrate is not limited to the exercise of the powers under this section only but he may act under Ss. 107 or 144[5] though the proper course

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(2) (1924) 1924 Cal. 980 (981), *Abdul Jabar Munshi* v. *Mafizuddi Sarkar*.

Note 4.

(1) (1928) 1928 Cal. 610 (613) (F.B.), *Agni Kumar Das* v. *Mantazaddin*.
(1917) 18 Cri. L. Jour. 967 (968): 1917 U. B. 5: 3 U. B. R. 17, *Nga Po Hmi* v. *Mi Shwe Tha*.
(2) (1922) 1922 Pat. 435 (438): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.
(3) (1918) 19 Cri. L. Jour. 1002 (1002): 1918 Pat. 300, *Lachman Ram* v. *Dhiru Dusadh*.
(1900) 27 Cal. 918 (920), *Daimulla Talukdar* v. *Maharulla Talukdar*.
(4) (1920) 1920 Pat. 176 (176, 177), *Tarapada Bhattacharji* v. *Emperor*.
(1920) 1920 Pat. 215 (216), *Bhairo Gope* v. *Emperor*.
(1920) 1920 Pat. 219 (219), *Jhaman Mahton* v. *Thakuri Mahton*.
(1921) 1921 Pat. 392 (393), *Madan Lal* v. *Fulchand Ram*.
(1921) 1921 Pat. 410 (411), *Tiloki Rai* v. *King-Emperor*.
(1924) 1924 Pat. 145 (146), *Akal Mahton* v. *Mahabir Mahton*.
(1917) 18 Cri. L. Jour. 967 (968): 3 U. B. R. 17: 1917 U. B. 5, *Nga Po Hini* v. *Mi Shwe Tha*.
(1918) 19 Cri. L. Jour. 1002 (1002): 1918 Pat. 300, *Lachman Ram* v. *Dhiru Dusadh*.
(1935) 1935 Pat. 224 (225), *Puran Singh* v. *Ranjhari Koer*.
(5) (1922) 1922 Pat. 435 (438): 2 Pat. 94, *Shebalak Sing* v. *Kamaruddin Mandal*.
(1918) 1918 Pat. 228 (229), *Bansi Singh* v. *Emperor*.
(1918) 1918 Pat. 663 (665), *Mt. Kaniz Amina* v. *Emperor*.
(1922) 1922 Pat. 228 (230), *Ratanchand Sahu* v. *Mohanlal Sahu*.
(1929) 1929 Pat. 415 (416), *Lachman Das* v. *Ramchhabila Missir*.
(1934) 1934 Pat. 308 (308, 309): 13 Pat. 76, *Harihar Singh* v. *Upendranath Banarji*.
(1928) 1928 Cal. 610 (613, 614) (F.B.), *Agni Kumar Das* v. *Mantazaddin*.
(1929) 1929 Cal. 468 (469, 470), *Ahmed Ali Sheik* v. *Sabed Sardar*.
(1929) 1929 Pat. 714 (715), *Radhe Das* v. *Jairam Mahto*.
(1903) 26 Mad. 471 (473), *Belagal Ramacharlu* v. *Emperor* (Magistrate has a discretion to act under any of the sections).
(1909) 10 Cri. L. Jour. 221 (223): 5 N. L. R. 94, *Hira Singh* v. *Mohan Singh*.
(1906) 28 All. 406 (407, 408), *Emperor* v. *Ram Baran Singh*.
(1875) 23 Suth. W. R. (Cr.), 58 (58), In re *Kali Prosunno Roy*.
(1902) 6 Cal. W. N. 883 (884), *Bidhu Bhusan* v. *Annoda Churn*.
(1903) 7 Cal. W. N. 746 (748, 749), *King-Emperor* v. *Basiruddin Mullah*.
(1913) 14 Cri. L. Jour. 559 (562): 36 Mad. 315, In re *Muthia Moopan*.
(1905) 2 Cri. L. Jour. 170 (176): 32 Cal. 178, *Ekcowri Mukerjee* v. *Emperor*.
(1905) 2 Cri. L. Jour. 769 (770): 32 Cal. 966, *Sheoraj Roy* v. *Chatter Roy* (He has a discretion to act under either of the section).
(1909) 10 Cri. L. Jour. 231 (232, 233): 2 S. L. R. 18, *Imperator* v. *Lakhano Wd. Murid*.
[See also (1903) 7 Cal. W. N. 29 (30), *Balai* v. *Nobin* (Breach of peace contingent upon an attempt to exercise acts of possession—Procednre is not under S. 107 but under S. 145).]
[But see (1869) 12 Suth. W. R. 66 (68), *Rajbullub Addhya* v. *Gobindo Chunder Moitro* (Case under the Code of 1861).

would be to proceed under this section."[6] The question is really one of *propriety* and not of jurisdiction.[7] The Magistrate may find that after an order is passed under S. 107 or under S. 144 the likelihood of a breach of the peace no longer exists. In such a case action under this section becomes unnecessary.[8] On the other hand pending proceedings under this section, the emergency referred to in S. 144 may arise. In such a case an order under S. 144 is not without jurisdiction.[9]

But whether action has been taken under S. 107 or S. 144 or not, the Magistrate *must* if the conditions as to its applicability exist, take action under this section either in supercession or in continuation of the orders, if any, passed under Ss. 107 or 144.[10] In this sense the section is mandatory,[11] and the Magistrate cannot rest satisfied with, or continue from time to time the order passed under those sections and thus avoid an enquiry under this section.[12] If

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(1918) 19 Cri. L. Jour. 1002 (1002): 1918 Pat. 300, *Lachman Ran* v. *Dhiru Dusadh* (It is not applicable to cases of dispute).

(1921) 62 Ind. Cas. 590 (591) (Pat.), *Kali Pershad Gope* v. *Dhodhai Gope* (When possession is disputed S. 107 does not apply but only S. 145).]

(6) (1922) 1922 Pat. 435 (438): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.

(1927) 1927 Pat. 432 (432), *Latifon* v. *Mohammad Ibrahim*.

(1929) 1929 Pat. 67 (68), *Amanat Ali* v. *Emperor*.

(1903) 25 All. 537 (540, 541), *Mahadev Kunwar* v. *Bisu*.

(1875) 24 Suth. W. R. (Cr.) 67 (67), *Queen* v. *Mohesh Chunder Roy*.

(1892) 19 Cal. 127 (130), *Ananda Chandra Bhuttacharjee* v. *Stephen*.

(1898) 25 Cal. 559 (561), *Dobgobind Chowdhry* v. *Dhanu Dhan*.

(1898) 25 Cal. 798 (800), *Driver* v. *Queen-Empress*.

(1899) 3 Cal. W. N. 463 (464), *Bejoy Singha Neogi* v. *Empress*.

(1905) 9 Cal. W. N. 76 (76), *Durga Charan Kundu* v. *Toraf Ali*.

(1905) 2 Cri. L. Jour. 658 (659) (Cal.), *Emperor* v. *Debendra Nath Bose*.

(1908) 7 Cri. L. Jour. 403 (404, 405) (Cal.), *Baisnab Das Babaji* v. *Emperor*.

(1918) 13 Cri. L. Jour. 367 (368) (Cal.), *Abinash Chandra Mandal* v. *Lokenath Gani* (Proceedings under S. 107 and also under S. 144 or 145 should not be proceeded with at the same time).

(1918) 1918 Lah. 344 (344), *Jalal* v. *Emperor*.

(1922) 65 Ind. Cas. 555 (556) (Pat.), *Abdus Sayeed* v. *Emperor*.

(1918) 1918 Pat. 500 (501), *Himmat Mian* v. *Emperor*.

(1933) 1933 Pat. 584 (585), *Jagernath Singh* v. *Ramjas Singh*.

[See (1930) 1930 Pat. 162 (163), *Kishori Jha* v. *Anand Kishore Jha*.]

(7) (1929) 1929 Pat. 714 (716), *Radhe Das* v. *Jairam Mahto*.

(1922) 1922 Pat. 435 (438): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal* (Nothing in S. 144 ousts the jurisdiction of a Magistrate in cases falling within S. 145).

(8) (1928) 1928 Cal. 610 (613, 614), *Agni Kumar Das* v. *Mantazaddin*.

(9) [See (1928) 1928 Cal. 610 (614) (F.B.), *Agni Kumar Das* v. *Mantazaddin* (The question was left open).]

(10) (1922) 1922 Pat. 435 (440): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.

(1922) 1922 Pat. 557 (557), *Nandkishore Sao* v. *Bikan Singh*.

(1925) 1925 Pat. 514 (516), *Munni Lal* v. *Gatti Ahir*.

(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal Marwari*.

(1930) 1930 Pat. 162 (163), *Kishori Jha* v. *Anand Kishore Jha* (It is the proper course).

(1920) 1920 Cal. 841 (841), *Amulya Charan Sarkar* v. *Amrita Lal Mukherjee* (Magistrate's discretion in applying S. 107 instead of S. 145 cannot be interfered with).

(1865) 4 Suth. W. R. (Cr.) 12 (12), In re *Rajah Anundnath Roy*.

(1918) 1918 Pat. 481 (481), *Chadhari Ahir* v. *Raja Ram Singh* (Magistrate first initiating proceedings under S. 144 then under S. 145—Procedure not irregular).

(1920) 1920 Pat. 219 (219), *Jhaman Mahton* v. *Thakuri Mahton* (After order under S. 144 it is open to the Magistrate to start proceedings under S. 145).

(1921) 1921 Pat. 392 (393), *Madan Lal* v. *Fulchand Ram*.

(1922) 1922 Pat. 228 (230), *Ratan Chand Sahu* v. *Mohanlal Sahu*.

(1928) 1928 Pat. 574 (576, 577), *Amir Ali* v. *Dukhan Mohan*.

[But see (1868) 10 Suth. W. R. (Cr.) 1 (1), *Luteef Hossain*, In re (Case under the Code of 1861).

(1921) 22 Cri. L. Jour. 224 (Cal.), *Amulya Charan Sircar* v. *Amrita Lal Mukerji* (When Magistrate has elected to act under S. 107, High Court will not interfere in revision).

(1934) 1934 Pat. 463 (465), *Harihar Singh* v. *Emperor* (When Magistrate acts under one or other of the powers, High Court will not interfere).]

(11) See cases cited in foot-note 12.

(12) (1922) 1922 Pat. 435 (440): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.

(1922) 1922 Pat. 557 (558), *Nandkishore Sao* v. *Bikan Singh*.

(1928) 1928 Pat. 574 (576), *Amir Ali* v. *Dukhan Momin*.

(1929) 1929 Pat. 46 (48): 7 Pat. 269, *Gobind Ram Marwari* v. *Basantilal Marwari*.

(1907) 5 Cri. L. Jour. 76 (78) (Cal.), *Parkar Mahton* v. *Ram Khelwan*.

(1913) 14 Cri. L. Jour. 559 (562): 36 Mad. 315, In re *Muthia Moopan*.

S. 145, Notes 4—5.

he does so his action will amount to an abuse of the process of the Court.[13]

It is inadvisable that proceedings under S. 107 and under S. 144 or S. 145 should be allowed to go on at the same time.[14]

5. Nature of proceedings under this section.—A proceeding under this section constitutes an "inquiry" within the meaning of S. 4 (*k*), *ante*.[1] It is of a *quasi* executive character.[2] The action is of a purely *preventive* and *provisional* nature in a civil dispute pending formal adjudication of the rights of the parties[3] and is not of a punitive nature nor a matter relating to an offence for the application of Ss. 182 and 185, *infra*.[4]

It has been held that a proceeding under this section is a case within the meaning of Ss. 192, 526 and 528, *infra*.[5] In this view the District Magistrate has power under S. 192 to transfer a proceeding of which he has taken *cognizance* and he can be said to have taken cognizance of a proceeding only when he has satisfied himself that there are grounds for proceeding under this section and passed a preliminary order.[6] *See* Ss. 192, 526 and 528, *infra*. He can transfer the proceeding to any Magistrate subordinate to him empowered to pass orders under this section and it is not necessary that such Magistrate should have territorial jurisdiction over the subject of the disputes.[7] It has been held in the undermentioned cases that a proceeding under this section is a 'criminal' case.[8] The High Court has power under S. 526, *infra*, to transfer

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(13) (1922) 1922 Pat. 435 (440): 2 Pat. 94, *Sheba'ak Singh* v. *Kamaruddin Mandal*.

(14) (1918) 19 Cri. L. Jour. 367 (367) (Cal.), *Abinash Chandra Mandal* v. *Lokenath Gani*.

Note 5.

(1) (1901) 25 Bom. 179 (184), In re *Pandurang Govind Pujari*.
(1909) 9 Cri. L. Jour. 278 (279, 280) (Cal.), *Ali Mahomad Khan* v. *Tarak Chandra Banerji*.
(1908) 7 Cri. L. Jour. 423 (425): 11 Oudh Cas. 61, *Sardar Karam Singh* v. *Hearsey*.
(1895) 22 Cal. 898 (901, 902), *Satish Chandra Panday* v. *Rajendra Narain Bagchi*.

(2) (1901) 25 Bom. 179 (184, 185), In re *Pandurang Gobind Pujari*.
(1934) 1934 Nag. 194 (195), *Madho Kunbi* v. *Tilak Singh*.
(1925) 1925 All. 316 (317), *Nanhe Mal* v. *Jamilur Rahman*.
(1926) 1926 Pat. 51 (52), *Harbans Narain Singh* v. *Mohammad Sayed* (But apart from this section Magistrate cannot take action purely in his *executive* capacity).
(1915) 16 Cri. L. Jour. 249 (249): 8 S. L. R. 215: 1914 Sind 11, *Farid* v. *Piru* (Quasi civil).

(3) (1915) 16 Cri. L. Jour. 249 (249, 250): 8 S. L. R. 215: 1914 Sind 11, *Farid* v. *Piru*.
(1918) 1918 U. B. 8 (9): 3 U. B. R. 33, *Nga Chit* v. *Nga Ya*.

(4) (1914) 1914 All. 473 (474), *Rudra Partap Sahi* v. *Dawan Singh*.
(1899) 3 Cal. W. N. 148 (150), *Harbullabh* v. *Bajrang*.

(5) (1922) 1922 All. 99 (100), *Mahendra Singh* v. *Mt. Rajpati*.
(1923) 1923 Pat. 366 (367), *Abdul Hamid* v. *Hasan Raza*.
(1905) 3 Cri. L. Jour. 83 (84) (Cal.), *Guru Das Nag* v. *Gajendra Nath Tagore* (Even if the transfer is not valid, it can be cured under S. 529).
(1895) 22 Cal. 898 (901, 902), *Satish Chandra Panday* v. *Rajendra Narain Bagchi*.
(1903) 26 Mad. 188 (188), *Arumuga Tegundan*, In re.
[See also (1900) 5 Cal. W. N. 686 (688), *Raj Mohan* v. *Prosunno*.]
[But see (1901) 4 Cal. W. N. 821 (822), *Akbar Ali Khan* v. *Domi Lal* (A Magistrate of first class duly empowered has power only to transfer an inquiry or trial relating to an offence under S. 192).
[But see (1919) 1919 All. 311 (313), *Brahmanath* v. *Sundar Nath*.]

(6) (1933) 1933 All. 264 (266): 55 All. 301 (F. B.), *Kapoor Chand* v. *Suraj Prasad*.
(1928) 1928 Mad. 1230 (1231): 52 Mad. 241, *Chellapathi Naidu* v. *Subba Naidu*.

(7) (1928) 1928 Mad. 1230 (1231): 52 Mad. 241, *Chellapathi Naidu* v. *Subba Naidu*.

(8) (1895) 22 Cal. 898 (902), *Satish Chandra Panday* v. *Rajendra Narain Bagchi*.
(1903) 26 Mad. 188 (188), *Arumuga Tegundan and others*.
(1900) 3 Oudh Cas. 247, *Mathura Parshad* v. *Queen-Empress*.
(1908) 7 Cri. L. Jour. 423 (424): 11 Oudh Cas. 61, *Sardar Karam Singh* v. *L. Hearsey*.
(1905) 2 Cal. L. Jour. 60 n., *Bhuiya Akhoy Narain* v. *Rani Haripriya*.
(1912) 13 Cri. L. Jour. 452 (453): 34 All. 533, *Jaggu Ahir* v. *Murli Shukul*.

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a proceeding under this section.[9] *See* S. 526, *infra*. But as sub-S. (8) of S. 526 does not in terms apply to a proceeding under this section, a party is not entitled to an adjournment of the proceedings under that sub-section.[10]

An application to a Magistrate to take action under this section is not a *complaint* [S. 4, Cl. (*h*)] as it does not relate to an offence.[11] The initiation of a proceeding under this section may, in proper cases, constitute malicious prosecution of the other party so as to entitle him to claim damages in a civil action.[12]

6. Who can take action under this section.—Any of the Magistrates mentioned in the section may institute proceedings if he is satisfied that there is a dispute concerning land or water which is likely to cause a breach of the peace; the mere fact that a Sub-divisional Magistrate declined to take action in a particular case is no bar to the District Magistrate instituting proceedings if on the same materials he is satisfied as to the likelihood of a breach of the peace[1] even though no application has been made to him.[2] But where an order has been *passed* by a Magistrate under this section, it is not competent for another Magistrate also to take action while that order is in force; the proper course for him is to give effect to the order in case there is any likelihood of a breach of the peace.[3]

It was held in a case decided under the Code of 1872 that a Bench of Magistrates has no power to institute proceedings under this section.[4] Under the present S. 15, sub-S. (2) the Local Government may empower any Bench of Magistrates to exercise the powers of a first class Magistrate and this will include the power to take action under this section.

7. "Is satisfied."—It is essential for the assumption of jurisdiction to initiate proceedings under this section that the Magistrate should be *satisfied* from a Police Report or other information that a dispute likely to cause a breach of the peace exists.[1] Such a finding should be clear and unambigu-

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(1901) 5 Cal. W. N. 749 (753), *Lolit Mohan Moitra* v. *Maharaja Surya Kanta Acharya Chowdhery*.
[But see (1901) 25 Bom. 179, In re *Pandurung Govind Pujari*.
(1915) 16 Cri. L. Jour. 249 (249, 250): 1914 Sind 11: 8 S. L. R. 215, *Farid Walad Imambux* v. *Piru Walad Kouro*.]
(9) (1912) 13 Cri. L. Jour. 452 (453): 34 All. 533, *Jaggu Ahir* v. *Murli Shukul*.
(1903) 26 Mad. 188 (188), In re *Arumuga Tegundan*.
(1901) 5 Cal. W. N. 749 (753, 754), *Lalit Mohan Moitra* v. *Maharaja Suruya Kanta Acharya*.
(1923) 1923 Oudh 161 (161), *Muhammad Naqi Khan* v. *Rahamat Unnissa*.
(1925) 1925 Lah. 48 (48, 49), *Narain Singh* v. *Gaudhava Raj* (As the word "Criminal" in S. 526 has been omitted by Amendment of 1923, these decisions are no longer of any importance).
(1901) 25 Bom. 179 (183), In re *Pandurung Govind Pujari* (Do.).
(10) (1929) 1929 Cal. 778 (779), *Jamir Sheikh* v. *Murari Mohan Chowdhery*.
[See (1927) 1927 Pat. 351 (351): 6 Pat. 553, *Loka Mehton* v. *Kali Sinah*.]
(11) (1926) 1926 Sind 85 (86): 18 S. L. R. 278, *Moolyammal Topandas* v. *Ali Mohamad Jadow*.
(12) (1913) 18 Ind. Cas. 737 (738, 742) (Cal.), *C. H. Crowdy* v. *L. O'Reily*.
(1927) 1927 All. 412 (412, 413), *Sukh Nandan Sarup* v. *Fazal Husain*.

Note 6.

(1) (1902) 29 Cal. 242 (244), *Baida Nath Majumdar* v. *Nibaran Chunder Ghose*.
(1926) 1926 Cal. 1049 (1050, 1051), *Benoy Chandra* v. *Kala Chand*.
(2) (1926) 1926 Cal. 1049 (1050, 1051), *Benoy Chandra* v. *Kala Chand*.
(3) See Note 56, *infra*.
(4) (1878) 3 Cal. 754 (755), *Sufferuddin* v. *Ibrahim*.

Note 7.

(1) (1906) 33 Cal. 33 (42, 43), *Kulada Kinkar Roy* v. *Danish Mir*.
(1928) 1928 Nag. 81 (83), *Emperor* v. *Ganikhan*.
(1933) 1933 Oudh 253 (254), *Ram Manorath Das* v. *Kushal Kishore Das*.
(1913) 14 Cri. L. Jour. 495 (495): 36 All. 19, *Dan Pershad* v. *Ganesh Pandey*.
(1923) 1923 Rang. 211 (211): 1 Rang. 53, *Nga Po Tin* v. *Nga Po Soung*.
(1909) 9 Cri. L. Jour. 399 (401): 36 Cal.

S. 145, Note 7.

ous.[2] It is not possible however to lay down any hard and fast rule to specify the sufficiency of the materials upon which a Magistrate ought to be satisfied, before he assumes jurisdiction in any particular case.[3] He is not *bound* to take action on a Police Report or upon an expression of opinion by the Police,[4]—but he should have a statement of *facts* before him so that he may exercise his own judgment in arriving at a conclusion as to the necessity of taking action under this section.[5] He should however proceed with great caution where there is no Police Report and the only materials before him are statements of interested persons.[6] Where there are no materials at all before the Magistrate on which he could come to any finding, the mere fact that he *states* he is satisfied is not sufficient to give him jurisdiction under this section.[7]

The question whether upon the materials placed before him, proceedings should be instituted under this section, is one entirely within the Magistrate's *discretion*[8] and the High Court or the District Magistrate has no authority to direct a Subordinate Magistrate to institute proceedings under this section.[9]

370, *Kisheri Lal* v. *Srinath Roy*.
(1885) 1885 Pun. Re. No. 6, p. (20), *Budhu* v. *Queen-Empress*.
(1884) 1884 All. W. N. 317 (317, 318), *Bakhshullah* v. *Latafat-un-nissa*.
(1866) 6 Suth. W. R. 4 (4), In re *Mt. Zuhoorun* (Where the Magistrate had all the materials before him the mere fact that he failed to record a finding that he was satisfied does not render proceedings without jurisdiction).
(1920) 1920 All. 227 (229), *Mt. Har Piari* v. *Nathe Lal* (Do.).
(1935) 1935 Nag. 78 (80), *Emperor* v. *Mannu Lal* (Magistrates order must state his own satisfaction of truth of Police report).

(2) (1925) 1925 Oudh 484 (484), *Ram Bushan Das* v. *Ram Lakhan Sahu*.
(1917) 18 Cri. L. Jour. 557 (559): 1917 All. 262, *Nithu Ram* v. *Emperor*.
[See (1927) 1927 Lah. 822 (823), *Amir Hassan* v. *Qadar Bakhsh* (No finding as to likelihood of a breach of peace—Order set aside).
(1922) 1922 All. 31 (31), *Babu Singh* v. *Angnu Kewat* (Notices issued to parties showed that the Magistrate was satisfied that it was likely to cause a breach of the peace sufficient to give him jurisdiction).]

(3) (1906) 33 Cal. 33 (42, 43), *Kulada Kinkar Roy* v. *Danesh Mir*.
(1935) 1935 Oudh 316 (324), *Asghari Khanam* v. *Emperor* (Magistrate may act on statement of one witness).

(4) (1907) 6 Cri. L. Jour. 36 (37) (Cal.), *Maharaja Bahadur Singh* v. *Ranjit Singh*.
(1924) 1924 Pat. 787 (789), *Ganga Bishun Singh* v. *Rajo Chaudhuri*.
(1928) 1928 Nag. 81 (83), *Emperor* v. *Ganikhan*.
(1906) 33 Cal. 33 (42, 43), *Kulada Kinkar Roy* v. *Danesh Mir*.
(1929) 1929 Cal. 468 (469, 470), *Ahmed Ali Sheikh* v. *Sabed Sardar*.
(1917) 18 Cri. L. Jour. 692 (693): 1917 Pat. 435, *Mukhal Singh* v. *Ramsarup Singh* (Magistrate may institute proceedings in respect of a portion of the property mentioned in the police report if in his opinion it is sufficient to prevent a breach of the peace).

(5) (1905) 9 Cal. W. N. ccxxi (ccxxii), *Dollar* v. *Greenfield*.
(1924) 1924 Pat. 787 (789), *Ganga Bishun Singh* v. *Rajo Chaudhuri*.
(1906) 33 Cal. 33 (42, 43), *Kulada Kinkar Roy* v. *Danesh Mir*.
(1928) 1928 Nag. 81 (83), *Emperor* v. *Gani Khan*.
(1929) 1929 Cal. 468 (469, 470), *Ahmed Ali* v. *Sabed Sardar*.
(1876) 25 Suth. W. R. Cri. 2 (4), *Puddomonee Dassee* v. *Juggodumba Dassee*.
(1924) 1924 Lah. 678 (679), *Bhagwandas* v. *Maula Dad Khan* (The mere circumstances that the dispute is of a religious nature is not enough).

(6) (1925) 1925 Nag. 142 (143, 144), *Emperor* v. *Mt. Phutania*.
(1924) 1924 Cal. 444 (445), *Joymangal Singh* v. *Kanta Gope* (But the Magistrate is entitled to institute proceedings if he believes such statements).

(7) (1921) 1921 Pat. 176 (177), *Khuri Singh* v. *Darbari Mahton*.
(1879) 4 Cal. L. R. 483 (490), *Chunder Madhab* v. *Juggut Chunder*.
(1920) 1920 Pat. 499 (499), *Ransaroof Chowdhury* v. *Mussamat Darsano Koer* (The Police report did not disclose any basis for apprehension of a breach of the peace—Proceedings without jurisdiction).
(1902) 6 Cal. W. N. 340 (342), *Rai Radha Gobind Rai Sahib Bahadur* v. *Gossain Mohendra Gir* (Do.).
(1883) 12 Cal. L. R. 221 (222), *Deo Sarun* v. *Tulsi Kant*.
(1924) 1924 Rang. 178 (178, 179), *Ma Ma Gyi* v. *Emperor*.
(1905) 9 Cal. W. N. 51 (n), In the matter of *Barwari Lal Mukshopadhya* v. *Hridoy Chakravarthy* (The use of printed forms stating that the Magistrate is satisfied—Deprecated. The printed form does not show that the Magistrate was really satisfied).

(8) See cases under foot-note (5).
(1929) 1929 Cal. 805 (806, 807), *Nirrendra Chandra* v. *Sasadhar Saha*.

(9) (1921) 1921 Pat. 445 (446), *Chhedi Lal Marwari* v. *Mahabir Prasad Sukul*.
(1921) 1921 Pat. 410 (411), *Tiloki Roy* v. *Emperor*.
(1897) 24 Cal. 391 (394), *Kailash Chandra Pal* v. *Kunja Behari Poddar*.
(1929) 1929 Cal. 751 (752), *Kedarnath Sikdar* v. *Bijoy Mandal* (But where the Sub-Divisional Magistrate has proper materials before him, the

The High Court will not go into the *sufficiency* of the information which has satisfied the Magistrate, in case the case comes before it in revision,[10] as the preliminary order passed by the Magistrate is final. *See* sub-S. (5). S. 145, Notes 7—8.

The Magistrate is entitled to form his own opinion on *any* information, not necessarily on evidence at all, and he need not summon or examine any witnesses before passing the preliminary order.[11] The cases decided under the Codes of 1861 and 1872 to the effect that the Magistrate ought to afford opportunities to the parties to adduce evidence to satisfy him as to the likelihood of a breach of the peace are no longer of any importance in view of sub-S. (1) of the present section.[12]

The mere fact that a Magistrate issues an order under sub-S. (1) would not necessarily lead to the inference that the Magistrate was satisfied regarding the existence of a dispute likely to cause a breach of the peace. But when it is found that the Magistrate had ample ground for apprehending a breach of the peace and that he did issue an order under sub-S. (1) it can be held that he was *satisfied* regarding the likelihood of a breach of peace although he omitted to say so in his order.[13]

8. "Police Report."—In the corresponding sections in the Codes of 1861 and 1872, the words "Police Report" were absent, and it was held in cases decided under those Codes that the Police Report was inadmissible as evidence, even to show that a dispute likely to cause a breach of the peace existed.[1] Under the present section, the Magistrate is entitled to peruse a Police Report for the *limited* purpose of satisfying himself as to the likelihood of a breach of the peace, and as to the identity of the subject matter and of the contending parties.[2] It is inadmissible as *evidence* in the inquiry relating to the possession of the parties.[3]

The Police Report to a Magistrate suggesting initiation of proceedings under the section should not be confined to written reports which the Police themselves might have received. The Police themselves must inquire whether a breach of the peace is likely and state their grounds for their opinion and it is the result of their inquiry and not merely a copy of the reports which they may have received that is to be communicated to the Magistrate.[4]

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mere fact that he acts at the instance of the District Magistrate will not deprive him of jurisdiction).

(1929) 1929 Cal. 805 (806, 807), *Nirpendra Chandra Sen* v. *Sesadhar Saha*.

(10) (1917) 18 Cri. L. Jour. 23 (24): 1917 Mad. 610, *Krishnappa Naidu* v. *Alamelu Ammal*.

(1925) 1925 Oudh 46 (46), *Sher Bahadur Singh* v. *Fazal Ali*.

(11) (1923) 1923 Oudh 161 (162), *Mohammad Nagi Khan* v. *Rahimat-unnisa*.

(1869) 11 Suth. W. R. (Cr.) 36 (36), *Queen* v. *Ballabh Kant Bhuttacharjee*.

(1935) 1935 Oudh 316 (324), *Asghari Khanam* v. *Emperor* (It is not incumbent upon Magistrate to hold a preliminary inquiry himself by examining further witnesses, nor is it necessary for him to call for a report from the police).

[But see (1917) 18 Cri. L. Jour. 565 (566): 1917 Lah. 179, *Prem Singh* v. *Emperor*.]

(12) (1871) 15 Suth. W. R. 42 (43), *Abbaya Chowdhry* v. *Brae*.

(1868) 9 Suth. W. R. 64 (65), *Mt. Anundee* v. *Ranee Sonnaet Kooer*.

(1869) 4 Mad. H. C. App. 49 (50), *High Court Proceedings, 15th May*, 1869.

(1871) 16 Suth. W. R. 64 (64), *Tarafdi Mundal* v. *Chunder Bhoosun*.

[See also (1871) 15 Suth. W. R. 85 (85), *Gunga Narain* v. *Gour Soonder*.]

(13) (1935) 1935 Oudh 316 (325), *Asghari Khanam* v. *Emperor*.

Note 8.

(1) (1871) 16 Suth. W. R. 17 (17), In the matter of the petition of *Bhadreswari Chowdharin*.

(1871) 15 Suth. W. R. (Cr.) 42 (43), *Abbay Chowdhry* v. *T. Brae*.

(2) (1927) 1927 Cal. 327 (329), *Shashi Mukhi Choudrani* v. *Sarat Chandra*.

(3) (1927) 1927 Cal. 327 (329), *Rani Shashi Mukhi Chudhurani* v. *Sarat Chandra Chakravarty*.

(1920) 1920 Pat. 483 (485), *Kulbans Narain* v. *Ransidh Singh*.

(4) (1935) 1935 Nag. 78 (79), *Emperor* v. *Mannulal*.

S. 145, Notes 9—11.

9. "**Or other information.**"—A proceeding under this section being one to prevent a breach of the peace, the Magistrate has the widest possible latitude in interpreting the words "other information."[1] Thus they are wide enough to include the knowledge derived from *any source whatever*; it is not necessary that any person should have actually *informed* the Magistrate.[2] The Magistrate can base his action on the complaint filed by one of the parties[3] or on the statement on oath of the person who presented the complaint[4] or on a perusal of the petitions filed by the parties in another proceeding.[5]

[*See also* Note 5, *supra*.]

10. Effect of previous civil proceedings on the institution of proceedings under this section.—*See* Note 11, *infra*.

11. "Dispute", meaning of.—There is nothing in the section to show that the word dispute as used in this section has anything other than its ordinary meaning of disagreement, struggle, scramble or quarrel.[1] Where therefore there is any dispute concerning land, *etc.*, it would seem to be proper for the Magistrate to act under this section, independent of the question whether such dispute is reasonable or *bona fide*, or where a decree has been passed in favour of a party or possession has been delivered to him in execution.[2] Indeed, the question whether a dispute is reasonable or *bona fide* would necessitate an inquiry into the *rights* of the parties[3] which is prohibited by the section. [*See* sub-S. (4)]. It has however been held in the undermentioned cases that the dispute must be a reasonable[4] or *bona fide* one.[5] It has also been held that where the rights of the parties have been "within a time not too remote" adjudicated between the parties by a decree of a Civil Court there can be no *bona fide* dispute between the parties.[6] According to yet another class of

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Note 9.

(1) (1934) 1934 Nag. 194 (195), *Madho Kunbi* v. *Tilak Singh*.
(2) (1925) 1925 Pat. 553 (556), *Gouri Shankar* v. *The Collector of Muzaffarpur*.
(1920) 1920 Pat. 219 (220), *Jhaman Mahton* v. *Thatkuri Mahton*.
(3) (1934) 1934 Nag. 194 (195), *Madho Kunbi* v. *Tilak Singh*.
(1906) 3 Cri. L. Jour. 48 (49) (All.), *Har Prasad* v. *Pandurang*.
(4) (1931) 1931 Rang. 51 (52), *U Pyinnya* v. *U Wilatha*.
(5) (1920) 1920 Pat. 219 (220), *Jhaman Mahton* v. *Thakuri Mahton*.

Note 11.

(1) (1928) 1928 Cal. 610 (620) (F.B.), *Agni Kumar Das* v. *Mantazaddin*.
(1934) 1934 Pat. 471 (472), *Gaya Prasad Singh* v. *Ram Sarober Sarin Singh*.
(1933) 1933 Lah. 145 (146), *Turab Ali Khan* v. *Shiromani Gurdwara Parbandhak Committee*.
(2) (1928) 1928 Cal. 610 (614, 619) (F.B.), *Agni Kumar Das* v. *Mantazaddin*.
[See also (1876) 25 Suth. W. R. (Cr.) 18 (18), *Nobin Chunder Koondoo* v. *Jogendro Nath Bhuttacharjee*.]
(3) See cases cited in foot-note (10) below.
(4) See cases cited in foot-note (5) below.
(5) (1906) 28 All. 406 (407, 408), *Emperor* v. *Ram Baran Singh*.
(1928) 1928 Pat. 574 (576), *Amir Ali* v. *Dukhan Momin*.
(1918) 1918 Pat. 663 (665), *Mt Kaniz Amina* v. *Emperor* (S. 144 is a method of avoiding breach of the peace only when the claim is not made in good faith).
(1918) 1918 Pat. 672 (673), *Ganpat Singh* v. *Emperor* (Claim a mere pretence —S. 145 proceedings not necessary).
(1925) 1925 Pat. 514 (515), *Munai Lal* v. *Gatti Ahir*.
(1929) 1929 Pat. 415 (416), *Lachman Das* v. *Ramchhabila Missir*.
[See (1922) 1922 Pat. 13 (17), *Kamala Prasad Singh* v. *Gobind Sahay*.
(1881) 6 Cal. 835 (841-843), *Gobind Chunder Moitra* v. *Abdul Syed*.
(1922) 1922 Pat. 435 (439-441): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.
(1925) 1925 Pat. 610 (611), *Shama Charan* v. *Emperor*.
(1903) 7 Cal. W. N. 558 (561), *Amriteshwari Debi* v. *Darpa Narain Das*.
(1868) 9 Suth. W. R. 18 (18), *Imamali* v. *Suddurudeen* (Acts of accused likely to lead to breach of peace and Magistrate finding that their statements as to possession are false—Proceedings under this section need not be drawn up and accused may be prosecuted under the Penal Code).]
(6) (1881) 6 Cal. 835 (841-843), *Gobind Chunder Moitra* v. *Abdul Sayed*.
(1889) Rat. 462, In re *Motilal*.
(1899) 26 Cal. 625 (628), *Doulat Koer* v. *Rameswari Koeri* alias *Dulin Saheba*.

S. 145. Note 11.

cases[7] the dispute means a dispute as to possession in the eye of the law, and that where a party to a Civil Court's decree has been placed in possession by the Court in execution of the decree there is thereafter no dispute as to possession in the eye of the law and the Magistrate has no jurisdiction to take action under this section. If there is a likelihood of a breach of the peace in such cases the duty of the Magistrate in such cases is to maintain the Civil Court's decree or possession,[8] by taking action against the unsuccessful party under Ss. 107 or 144, *ante*.[9] It is submitted that the reasons stated above for these views are not correct. If the views are correct they would involve the consideration by the Magistrate of the questions as to the nature and form of the Civil Court's decree or of the execution proceedings, the binding nature of the decree or of the delivery of possession on the parties before him, whether the parties were properly represented in such proceedings, whether such decree or execution proceedings are final or are challenged or set aside in subsequent proceedings, and what events have happened subsequently which have the effect of altering or modifying the rights of the parties as conferred by such decree or delivery of possession.[10] That the Magistrate has no power to enquire into such questions is stated expressly in sub-S. (4) by the use of the words "the Magistrate shall then without reference to the merits of the claims of any of the parties to a right to possess the subject, *etc.*" A decree-holder or auction-purchaser placed in possession

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(1919) 1919 All. 311 (314), *Brahma Nath* v. *Sunder Nath*.
(1871) 16 Suth. W. R. 24 (26), *Rai Moham Roy* v. *Mr. J. P. Wise*.
(1875) 24 Suth. W. R. 17 (17), *Ranegunge Coal Association* v. *Hem Lall Ghatwal*.
(1920) 1920 Pat. 210 (210), *Sukan Singh* v. *Prayag Singh*.
(1922) 1922 Pat. 557 (558), *Nandkishore Sao* v. *Bikan Singh*.
(1922) 1922 Pat. 435 (439): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.
[See also (1922) 1922 Pat. 228 (230), *Ratan Chand Sahu* v. *Mohanlal Sahu*.
(1921) 59 Ind. Cas. 374 (375): 1920 Pat. 687, *Lachmi Singh* v. *Emperor* (Party clearly in possession—There is no dispute).]

(7) (1920) 1920 Pat. 633 (634), *Behari Gir* v. *Bhubaneshwari Koer*.
(1880) 7 Cal. L. R. 516 (518, 519), *Bholanath Ghose* v. *Mothoor Mundle*.
(1922) 1922 Pat. 13 (16, 17), *Kamla Prasad Singh* v. *Gobind Sahay*.
(1923) 1923 Pat. 76 (78), *Maharaja Pratap* v. *Sunder Bans Koer*.
(1899) 26 Cal. 625 (628, 630), *Doulat Koer* v. *Rameswari Koeri* alias *Dulin Saheba*.
(1904) 1 Cri. L. Jour. 256 (257, 258) (Bom.), In re *Moti Lal Har Gobind*.
(1920) 1920 Pat. 210 (210), *Sukan Singh* v. *Prayag Singh*.
(1912) 13 Cri. L. Jour. 583 (584) (Cal.), *Jogabandhu Shaha* v. *Raj Kumar Roy Chowdhury* (As the decree and delivery of possession was not between parties before the Magistrate, the proceedings under S. 145 is not without jurisdiction).
(1928) 1928 Cal. 610 (638) (F.B.), *Agni Kumar Das* v. *Mantazaddin* (*Per* Mukerji, J.).

(8) (1871) 16 Suth. W. R. (Cr.) 24 (25, 26), *Rai Mohun Roy* v. *Mr. J. P. Wise*.
(1923) 1923 Pat. 76 (78), *Maharaja Pratap Udai Nath Saha Meo* v. *Bhalain Sunderbans Koer*.
(1926) 1926 Jour. 138 (Oudh), *Lachmi Kuer* v. *Partab Narain*.
(1903) 7 Cal. W. N. 118 (121), *Krista Alhadini Dasi* v. *Radha Syam Panday*.
(1923) 1923 Cal. 176 (176), *Akhoy Mondal* v. *Basu Rai*.
(1899) 26 Cal. 625 (628), *Doulat Koer* v. *Rameswari Koeri* alias *Dulin Saheba*.
(1917) 18 Cri. L. Jour. 301 (302): 1917 Cal. 100, *Srinath Roy* v. *Probhat Chandra* (Collector's order under S. 41 of the Bengal Survey Act V of 1875, has the force of a Civil Court's decree and must be maintained).
(1901) 5 Cal. W. N. 563 (565, 566), *Gordon Sims* v. *Joharry Lal* (It is not necessary that the decree should be between the same parties).
(1922) 1922 Pat. 13 (16), *Kamala Prasad Singh* v. *Gobind Sahay*.
(1922) 1922 Pat. 197 (199), *Ram Krishna Singh* v. *The King-Emperor*.

(9) (1922) 1922 Pat. 435 (439): 2 Pat. 94, *Shebalak Singh* v. *Kamaruddin Mandal*.
(1920) 1920 Pat. 210 (210), *Sukan Singh* v. *Prayag Singh*.
(1929) 1929 Pat. 505 (506), *Jainath Pati* v. *Ramlakhan Prasad*.
(1875) 24 Suth. W. R. 17 (17), *Ranegunge Coal Association, Ltd.* v. *Hem Lall Ghatwal*.
(1881) 6 Cal. 835 (841-843), *Gobind Chandra Moitra* v. *Abdul Sayed*.
(1919) 1919 All. 311 (314), *Brahma Nath* v. *Sundar Nath*.
(1889) Rat. Un. Re. Cri. Cas. 462, In re *Motilal*.
(1916) 20 Cal. W. N. 796 (797), *Atul Hazra* v. *Uma Charan Changdar*.
(1928) 1928 Lah. 818 (820), *Wali Muhammad* v. *Rahmat Ali*.
(1922) 1922 Pat. 557 (558), *Nandkishore Sao* v. *Bikan Singh*.

(10) (1928) 1928 Cal. 610 (613) (F.B.), *Agni Kumar Das* v. *Mantazaddin* (*Per* Rankin, C.J.).

S. 145. Notes 11—12.

by the process of Court has to maintain his own possession and the law gives him the same assistance as it gives to other persons in possession and leaves to him the same liberty to part with his possession.[11] But if he is forcibly and wrongfully dispossessed within two months of such delivery of possession, the Magistrate has power to restore his possession under sub-S. (6) as a forcible disturbance of possession is contrary to criminal law. But if he does not complain of such dispossession for over two months and sleep over his rights to claim reinstatement, he has the right thereafter to come to a Criminal Court and ask the Magistrate to maintain the Civil Court's decree or delivery of possession.[12]

12. Likely to cause a breach of the peace.—The jurisdiction conferred upon a Magistrate to institute proceedings under this section is of an *exceptional* character, and can be exercised only when the dispute is such that it is *likely to cause a breach of the peace.*[1] It is thus determined by an apprehension of a breach of the peace, and not by any infringement of private rights[2] or by the dispossession of any of the parties,[3] and the Magistrate should be very careful in acting under this section, to guard himself against the danger of assuming jurisdiction in cases, where the "suggested apprehension of the breach of the peace is little more than colourable and made simply to induce the Court to deal with matters properly cognizable by a Civil Court."[4]

The Magistrate should satisfy himself from the materials on record that, *on the date* he purports to act, there is *present* a fear that there will be a breach of the peace owing to the dispute, unless proceedings are taken under this section.[5] Thus where there is no present danger of a breach of the peace,

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(11) (1934) 1934 Nag. 217 (219), *Emperor* v. *Hakim Khan.*

(12) (1928) 1928 Cal. 610 (623) (F.B.), *Agni Kumar Das* v. *Mantazaddin.*

(1922) 1922 Cal. 364 (365): 49 Cal. 177, *Sahabai Mandal* v. *Bhajohari Nath.*

Note 12.

(1) (1905) 2 Cri. L. Jour. 670 (674, 675): 33 Cal. 33, *Kulada Kinkar Roy* v. *Danesh Mir.*

(1879) 4 Cal. 650 (653), In the matter of the petition of *Kunund Narain Bhoop.*

(1901) 5 Cal. W. N. 428 (430): 28 Cal. 446, *Amesh Mollah* v. *Ejhar Uddi Mollah.*

(1920) 1920 Cal. 344 (345), *Sib Narain Mukerjee* v. *Satish Chandra Ghosal.*

(1921) 1921 Nag. 100 (101), *Asaram* v. *Chotulal.*

(1901) 25 Bom. 179 (184, 185), In re *Pandurang Govind Pujari.*

(1925) 1925 Nag. 448 (449), *Ramachandra* v. *Ganpat.*

(1928) 1928 Mad. 859 (859, 860), *Mamidapillai Sattaya* v. *Cutumbara Rao.*

(1866) 5 Suth. W. R. 14 (16), *Dewan Elahee Newoz* v. *Suburinnissa.*

(1893) 6 C. P. L. R. 21 (23), *Mt. Paikabai* v. *Jagannath and Raja Ram.*

(1865) 2 Suth. W. R. (Cr.) 44 (44), *Queen* v. *Sonaoollah.*

(1927) 1927 Cal. 944 (944), *Nikunja Behari* v. *Usbah Devi.*

(1893) 15 All. 394 (394, 395), *Ganga Prasad* v. *Narain.*

(1893) 20 Cal. 513 (517), *Dhanput Singh* v. *Chatterput Singh.*

(1875) 23 Suth. W. R. (Cr.) 45 (48), *Bejoy Nath Chatterjee* v. *Bengal Coal Co., Ltd.*

(1896) 23 Cal. 557 (561), *Kali Kissen Tagore* v. *Anund Chunder Roy.*

(1871) 15 Suth. W. R. (Cr.) 42 (43), *Abhaya Chowdhry* v. *T. Brae.*

(1917) 1917 Pat. 28 (29), *Ballam Singh* v. *Lal Babu.*

(1918) 1918 Nag. 197 (197), *Shesh Rao Nago Rao Patil* v. *Emperor.*

(1928) 1928 Nag. 81 (83), *Emperor* v. *Ganikhan.*

(1902) 6 Cal. W. N. 417 (419): 30 Cal. 112, *Manindra Chandra* v. *Barada Kanta Roy.*

(2) (1914) 1914 All. 62 (63): 36 All. 143, *Ram Lochan* v. *Emperor.*

(3) (1913) 14 Cri. L. Jour. 223 (224) (All.), *Sheoraj Singh* v. *King-Emperor.*

(4) (1884) 10 Cal. 78 (79, 80), *Obboy Chandra* v. *Mohomed Sabir.*

(1928) 1928 Mad. 1230 (1231): 52 Mad. 241, *Chellapathi Naidu* v. *Subba Naidu.*

(1926) 1926 Nag. 371 (372), *Nago* v. *Atmaram.*

(1926) 1926 Sind 85 (86): 18 S. L. R. 278, *Moolyammal Topandas* v. *Ali Mohomed Jadow.*

[See also (1893) 6 C. P. L. R. 21 (23), *Mt. Paikabai* v. *Jagannath.*]

(5) (1932) 1932 Cal. 60 (60, 61), *Hari Charan De* v. *Sher Ali Talukdar.*

(1930) 1930 Cal. 715 (716), *Anadi Lal Mukherjee* v. *Sukh Chand Mandal.*

(1921) 1921 Pat. 445 (447), *Chhedi Lal Marwari* v. *Mahabir Prasad Sukul.*

(1929) 1929 Cal. 341 (342, 343), *W. Stewart* v. *Hughes.*

(1901) 25 Bom. 179 (185), In re *Pandurang Gobind Pujari.*

[See (1926) 1926 Sind 85 (85): 18 S. L. R. 278, *Moolyamal Tapandas* v. *Mohamed Jadow.*

S. 145, Notes 12—13.

the fact that a breach of the peace is likely to take place at some future time will not justify a Magistrate in taking action under this section.[6] But it is not necessary that there should be a danger of an *imminent* breach of the peace[7] or that there should have been any *overt* acts of violence.[8] It is sufficient for Magistrate to institute proceedings if there is a reasonable apprehension that a disturbance of the peace is likely to occur.[9] Though all the persons concerned in the dispute may be of a peaceful disposition, yet if the dispute is, in its nature, of such a kind that it is likely having regard to known conditions of society to lead to a breach of the peace, it is enough to give the Magistrate jurisdiction under this section.[10] But where a breach of the peace has *already* occurred and a complaint is filed alleging several offences, the Magistrate has no jurisdiction to institute proceedings under this section, and the proper course is to inquire into the offences and order redelivery of possession if necessary under S. 522, *infra*.[11]

Where the Magistrate finds that no breach of the peace is likely, he has no jurisdiction to give any directions regarding the subject of the dispute.[12]

13. Subject of the dispute.—The subject of the dispute must be *land* or *water* or the *boundaries thereof*. A dispute relating to the distribution of *fees* payable to pilgrims is not one within the section.[1-a] The subject-matter of the dispute should be ascertained definitely and described clearly in the preliminary order.[1] The absence of clear specification of the subject of the dispute is a serious defect[2] though it will not vitiate the proceedings when the parties were under no misapprehension regarding it.[3]

(1881) 7 Cal. 385 (286, 387), *Damodur Biddyadhur Mohapatro* v. *Syamanund Dey*.

(1925) 1925 Oudh 416 (416): 29 Oudh Cas 23, *Mannu Lal* v. *Harde Ram*.

(1924) 1924 Lah. 678 (679), *Bhagwandas* v. *Mulla Dad Khan* (The mere fact that the dispute is of a religious nature is not sufficient to give the Magistrate jurisdiction).]

(6) (1881) 7 Cal. L. R. 352 (353), *Uma Churn* v. *Beni Madhub*.

(1904) 1 Cri. L. Jour. 360 (362): 26 All. 190, In re *Basdeo*.

(1929) 1929 Cal. 341 (342, 343), *W. Stewart* v. *Hubert Hughes*.

(7) (1905) 2 Cri. L. Jour. 670 (674, 675): 33 Cal. 33, *Kulada Kinker Roy* v. *Danesh Mir*.

(1908) 8 Cri. L. Jour. 170 (181): 1 S. L. R. 50, *Balmukund Jagannath* v. *Emperor*.

[But see (1920) 1920 Pat. 745 (746), *Isri Prasad Chawdhri* v. *Warasat Hussain*.

(1932) 1932 Nag. 134 (135): 28 Nag. L. R. 154, *Baliram* v. *Gangoo*.]

(8) (1902) 6 Cal. W. N. 737 (765): 30 Cal. 155 (F. B.), *Krishna Kamini Chowdhurani* v. *Abdul Jabbar Chowdhry*.

[But see (1917) 1917 Pat. 368 (369), *Deonandan Singh* v. *Ram Ajodhya Singh*.]

(9) (1906) 33 Cal. 33 (44), *Kulada Kinker Roy* v. *Danesh Mir*.

(10) (1902) 6 Cal. W. N. 737 (765): 30 Cal. 155, *Krishna Kamini Chowdhurani* v. *Abdul Jabbar Chowdhry*.

(1924) 1924 Lah. 678 (679), *Bhagwan Das* v. *Maula Dal Khan* (But the mere circumstance that the dispute is of a religious nature is not sufficient unless there are materials to show that a breach of the peace is likely).

(11) (1900) 4 Cal. W. N. 57 (58), *Kesu* v. *Moti*.

(12) (1923) 1923 Mad. 472 (472), *Mahalakshmi* v. *Subbarayadu*.

Note 13.

(1-a) (1906) 3 Cri. L. Jour. 214 (215) (Cal.), *Narayan Misser* v. *Bhagwan Misser*.

(1) (1903) 7 Cal. W. N. 558 (561), *Amriteshwari* v. *Darpa*.

(1907) 5 Cri. L. Jour. 32 (35) (Cal.), *Maharaja Surja Kanta Acharja Bahadur* v. *Maharaja Jagadindra Nath Roy Bahadur*.

(1931) **1931 Mad. W. N. 1317** (1319), *Yeducatra Mullijalamma* v. *Gopisetti Veeranna*.

(1866) 6 Suth. W. R. 61 (63), *Amirthanath Jha* v. *Ahmed Reza*.

(1904) **1 Cri. L. Jour. 917 (918, 919): 27** All. 296, In re *T. A. Martin*.

(2) (1920) 1920 Cal. 344 (345), *Sib Narain Mukerjee* v. *Satish Chandra Ghoshal*.

(3) (1925) 1925 Oudh 152 (153), *Prabhu Dayal* v. *Emperor*.

(1920) 1920 Pat. 219 (220), *Jhaman Mahton* v. *Thakuri Mahton*.

(1910) 11 Cri. L. Jour. 69 (71): 12 Oudh Cas. 400, *Iklas Kunwar* v. *Raghraj Singh*.

(1901) 5 Cal. W. N. 563 (565), *Gordon Sims* v. *Joburry Lal*.

(1903) 30 Cal. 155 (200), *Krishna Kamini* v. *Abdul Jabbar*.

S. 145, Notes 13—14.

Where a land consists of several plots and each plot is the subject of a separate dispute and each such dispute stands on its own footing, it is not proper for the Magistrate to club all such items together and treat them as one for the purposes of an inquiry under this section.[4] Where however none of the parties to the proceeding were prejudiced by such a course[5] or where all such items were covered by the same state of circumstances and there was only a single dispute in respect of all of them[6] the mere fact that the Magistrate did not institute separate proceedings in respect of each such item is not sufficient to invalidate the proceedings.

Where the dispute relates to possession of an *undivided share* in a property, the Magistrate has no power to institute proceedings under this section, as the subject of the dispute cannot be *ascertained definitely*.[7] As to cases where the dispute relates to joint possession between co-owners in respect of a definite piece of land, *see* Note 45, *infra*.

14. "Within the local limits of his jurisdiction."—It is only where the dispute relates to property within the local limits of the Magistrate's jurisdiction, that the Magistrate is empowered to institute proceedings under this section.[1] Thus where a *portion* only of the subject of dispute lies within the Magistrate's jurisdiction, he has power to pass orders only in *respect of such portion*; an order passed in respect of the whole property is *ultra vires*.[2] The Magistrate has however jurisdiction to decide if the subject of the dispute is within the local limits of his jurisdiction,[3] and where it is uncertain as to whether the subject of dispute is situate in one or the other of two local areas, it has been held that the proceedings may be taken by a Magistrate having jurisdiction over *any* of such areas.[4]

An objection to the jurisdiction (territorial) of the Magistrate should be taken at the earliest opportunity, and a party will not be allowed to wait, take a chance of a judgment in his favour and being unsuccessful raise the questions

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(4) (1907) 5 Cri. L. Jour. 91 (93): 29 Mad. 561, *Raja of Karvetnagar* v. *Lodd Gobinda Dass Krishna Dass.*
(1874) 21 Suth. W. R. Cri. 55 (55), *Modhoosoodhun Shaha* v. *Bejoy Gobind Chowdhary.*
(1867) 8 Suth. W. R. 63 (63), *Messrs Watson and Co.* v. *Ranee Surnomoyee.*
[See also (1902) 6 Cal. W. N. 206 (207), *Manik Mandal* v. *Govinda Mandal.*]
(5) (1901) 5 Cal. W. N. 544 (545), *Iswar Chunder Chowdhry* v. *Ambica Churn Majumdar.*
(1923) 1923 Pat. 545 (545, 546), *Gajadhar Mull* v. *Thakur Singh.*
(1888) 15 Cal. 31 (34), *Katubul Singh* v. *Uma Singh.*
(1910) 14 C. W. N. ccxxiii.
(6) (1903) 30 Cal. 155 (200) (F. B.), *Krishna Kamini* v. *Abdul Jabbar.*
(1882) 10 Cal. L. R. 523 (524), *Azim Mollah* v. *Satoo Poramanik.*
(1921) 59 Ind. Cas. 378 (381) (Mad.), *Velu Malavarayan* v. *Kuppusamy Pillay.*
(1901) 5 Cal. W. N. 710 (712, 713), *Sadar Ali* v. *Abdul Karim.*
(1924) 1924 Cal. 539 (539), *Sajani Kanta Roy* v. *Shamsher Ali Sheik.*
(7) (1896) 23 Cal. 80 (82-86), *Surb Narain Singh* v. *Biraj Mohun Thakur.*
(1903) 7 Cal. W. N. 462 (464), *Monmohan* v. *Rajendra Coomar.*
(1910) 11 Cri. L. Jour. 370 (370, 371) (Cal.), *Bhabanath Chakravarti* v. *Peary Sarma.*
(1915) 16 Cri. L. Jour. 284 (286): 1915 Mad. 1105, *Bulkis Bivi* v. *Nagoor Kanni Rowther.*

Note 14.

(1) (1928) 1928 Mad. 1230 (1231): 52 Mad. 241, *Chellapathi Naidu* v. *Subba Naidu.*
(1922) 1922 Pat. 219 (220), *Raja Kalanand* v. *Hirde Misser.*
(1902) 29 Cal. 885 (886), *Ishan Chunder* v. *Garth* (Even though on a report of a police-officer of another district).
(2) (1905) 2 Cri. L. Jour. 406 (407): 32 Cal. 444, *Korban Molla* v. *Raja Srinath Roy.*
(1872) 17 Suth. W. R. Cri. 33 (34), *Goluck Chunder Roy* v. *Raj Mohan Bose.*
(3) (1920) 1920 Cal. 912 (912), *Rajani Kanta De* v. *Debendra Nath Singh Roy.*
(4) (1910) 11 Cri. L. Jour. 69 (71): 12 Oudh Cas. 400, *Iklas Kunwar* v. *Raghuraj.*

of jurisdiction in revision.[5]

S. 145, Notes 14—15.

15. Effect of non-compliance with the provisions of the section.—The *jurisdiction* of a Magistrate to institute proceedings under this section arises on his being satisfied:—

(*a*) that there is a dispute concerning land or water or the boundaries thereof, and

(*b*) that such a dispute is likely to cause a breach of the peace.[1]

Thereupon the section provides for the *procedure* to be adopted in respect of the action that the Magistrate is empowered to take under this section. As has been seen already the provisions of the section are *mandatory* and should be strictly followed. (*See* Note 3, *ante*.) The question however arises as to what is the effect of non-compliance with all or any of such provisions on the proceedings taken by the Magistrate under this section. It has been held that a non-compliance, in the undermentioned instances being a violation of a mandatory provision of law rendered all subsequent proceedings *void* and *without jurisdiction*.

(*a*) Failure to draw up a preliminary order.[2]

(*b*) Failure to set out the grounds in the preliminary order.[3]

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(5) (1928) 1928 Cal. 610 (612) (F. B.), *Agni Kumar Das* v. *Mantazaddin*.
(1874) 21 Suth. W. R. 85 (89), *Sonatun* v. *Gooroo*.
[See also (1906) 2 Cri. L. Jour. 670 (676, 677): 33 Cal. 33, *Kalada Kinker Roy* v. *Danesh Mir*.
(1913) 14 Cri. L. Jour. 269 (271): 40 Cal. 982, *Basanta Kumar Dasi* v. *Mohesh Chandra Laha*.]

Note 15.

(1) (1933) 1933 All. 264 (266-268): 55 All. 301, *Kapurchand* v. *Suraj Prasad*.
(1932) 1932 All. 446 (447, 448), *Madan Mohan Lal* v. *Mt. Sheoraj Kunwar*.
(1926) 1926 Sind 53 (55), *Mahomed Mahdishah of Pir Jhando* v. *Wahdalshah*.
(1915) 16 Cri. L. Jour. 235 (236): 8 S. L. R. 207, *Farid* v. *Piru*.
(1912) 13 Cri. L. Jour. 753 (757, 759): 36 Mad. 275, *Kamal Kutty* v. *Udaya Varma Raja*.
(1905) 2 Cri. L. Jour. 618 (633): 33 Cal. 68 (F. B.), *Sukh Lal Sheikh* v. *Tara Chand Ja*.
(1868-69) 4 Mad. H. C. App. xii (xiii), *Madras High Court Proceedings 13th July*, 1868.

(2) (1914) 1914 Mad. 78 (81), *Subramaniya Iyer* v. *Mariya Pillai*.
(1876) 25 Suth. W. R. 74 (76-78), *Sheikh Mungoland Peer Khan* v. *Durga Narain Nag*.
(1903) 25 All. 537 (539, 540), *Mahadep Kunwar* v. *Bisu*.
(1865) 4 Suth. W. R. 26 (26), *Harvey* v. *Brice*.
(1869) 3 Beng. L. R. 76, *Kashi Kishore Roy* v. *Tarani Kant Lahori*.
(1872) 17 Suth. W. R. 53 (54), *Emambandee Begum* v. *Tek Bahadoor*.
(1903) 30 Cal. 443 (444), *Sukru Dosadh* v. *Ram Pergash Singh*.
(1925) 1925 Lah. 368 (368), *Sher Khan* v. *Dr. Fazal Ilahi*.
(1910) 11 Cri. L. Jour. 47 (47) (Cal.), *Bitau Rai* v. *Bisheshr Rai* (No preliminary order passed. Magistrate passed final orders on examining only the Patwari—Held order is without jurisdiction).
(1905) 2 Cri. L. Jour. 222 (223) (All.), *Bihari Lal* v. *Chajju*.
(1924) 1924 Lah. 91 (91): 4 Lah. 66, *Hakam* v. *Ralja Ram*.
(1927) 1927 Lah. 805 (806), *Dhani Ram* v. *Kaliram*.
(1871) Rat. Un. Re. Cri. Cas. 51 (51), *Reg.* v. *Nathu*.
(1870) Rat. Un. Re. Cri. Cas. 39 (39), *Reg.* v. *Amichand*.
(1903) 1903 P. L. R. 115, *Malik Sultan* v. *Mt. Mano*.
(1919) 1919 Nag. 160 (160), *Mohammad Hassam* v. *Muhammad Shami*.
(1915) 16 Cri. L. Jour. 206 (206): 1915 Lah. 404, *Teku* v. *Buta Singh*.
(1915) 16 Cri. L. Jour. 628 (629): 1915 Lah. 232, *Mussammat Budhan* v. *Ram Rakha*.
(1930) 1930 Lah. 895 (895, 896), *Emperor* v. *Sia Ram*.
(1914) 1914 All. 107 (107), *Autor Kurmi* v. *Emperor*.
(1913) 14 Cri. L. Jour. 63 (64), *Mussamat Sarada* v. *Emperor* (Disobedience to a final order under S. 145, where there was no preliminary order, is not punishable under S. 188 as such an order is without jurisdiction).
(1927) **1927 All. 286 (286, 287): 49 All. 325, *Banka Singh* v. *Gokul*.**
(1910) 11 Cri. L. Jour. 422 (423), *Haidar Ali Shah* v. *Emperor*.
(1905) 2 Cri. L. Jour. 347 (348): 32 Cal. 552, *Banwari Lal* v. *Hriday*.

(3) (1908) 8 Cri. L. Jour. 399 (400) (Mad.), *Posuka Kulla* v. *Tandalgara Chikka Hiria*.
(1919) 1919 All. 311 (313), *Brahma Nath* v. *Sundar Nath*.
(1905) 9 Cal. W. N. 621, *Nythyanund Roy Bahadur* v. *Parish Nath Sur*.
(1905) 2 Cri. L. Jour. 637 (642): 33 Cal. 352, *Khosh Mahommed Sirkar* v. *Nazir Mahomed*.
(1905) 2 Cri. L. Jour. 222 (223, 224) (All.), *Bihari Lal* v. *Ohujjo*.

S. 145, Note 15.

(*c*) Failure to specify the property in dispute, in the preliminary order.[4]

(*d*) Failure to serve or publish the notice as required by sub-S. (3).[5]

(*e*) Refusal to receive the evidence adduced by the parties—Sub-S. (4).[6]

It is submitted that this view is not correct on principle. The *jurisdiction* of the Magistrate does not depend upon how he proceeds.[7] As pointed out by their Lordships of the Privy Council in *Abdul Rahiman* v. *Emperor*,[8] the bare fact of an omission or irregularity in a matter of procedure unaccompanied by any probable suggestions of any failure of justice having been occasioned thereby is not sufficient to invalidate the proceedings. The only test therefore in such cases is whether the parties have been prejudiced by reason of such irregularity or omission (*see* S. 537, *infra*), and if in spite of a failure to conform to the provisions substantial justice has been done, the defect is cured under S. 537, *infra*, and the final orders thereon will not be interfered with in revision.[9]

(1907) 5 Cri. L. Jour. 118 (Note), *Criminal Reference No.* 189 *of* 1903.
(1933) 1933 All. 96 (97), *Emperor* v. *Hira Lal.*
(1900) 24 Bom. 527 (533), In re *Pandurung Govind* (It appears from the report that the defect in procedure had operated to the prejudice of the parties concerned in the dispute).

(4) (1904) 1 Cri. L. Jour. 917 (918, 919): 27 All. 296, In re *T. A. Martin.*
(1920) 1920 Cal. 344 (345), *Siv Narayan Mukherjee* v. *Satish Chandra Ghosal.*

(5) See the cases in Foot Note 2 to Note 28, *infra.*

(6) (1904) 1 Cri. L. Jour. 774 (774): 31 Cal. 685, *Manmatha Nath Mitter* v. *Baroda Prasad Roy Chowdhry.*
(1907) 6 Cri. L. Jour. 452 (454): 34 Cal. 840, *Kolha Koer* v. *Muneswar Tewari.*

(7) (1933) 1933 All. 264 (266-268): 55 All. 301, *Kapurchand* v. *Suraj Prasad.*
(1922) 1922 Lah. 454 (455), *Jhanda Ram* v. *Topan Ram.*
(1912) 13 Cri. L. Jour. 753 (757-759): 36 Mad. 275, *T. Kamal Kutty* v. *Udayavarma Raja.*
(1915) 16 Cri. L. Jour. 235 (236): 8 S. L. R. 207, *Farid* v. *Piru.*
(1905) 2 Cri. L. Jour. 618 (633): 33 Cal. 68 (F. B.), *Sukh Lal Sheikh* v. *Tara Chand Ta.*

(8) (1927) 1927 P. C. 44 (49): 5 Rang 53, *V. M. Abdul Rahman* v. *King-Emperor.*

(9) (1926) 1926 Sind 53 (55), *Mahomed Mahadishah of Pir Thando* v. *Wahdalshah.*
(1932) 1932 Mad. W. N. 320 (320, 321), *Lingayya* v. *Nagayya.*
Failure to draw up preliminary order not sufficient to invalidate proceedings unless prejudice is caused.
(1932) 1932 All. 446 (447, 448), *B. Madan Mohan Lal* v. *Mt. Sheoraj Kunwar.*
(1933) 1933 Pesh. 88 (89, 90), *Mohan Lal* v. *Mt. Morni.*
(1874) 22 Suth. W. R. 81 (81), *Gour Mohun Majee* v. *Doollubh Majee.*
(1870) 2 Weir 98 (98), *High Court Proceedings 9th August*, 1870 *No.* 1479.
(1917) 18 Cri. L. Jour. 633 (633): 1917 Lah. 35 (1), *Nur Buksh* v. *Emperor.*
(1917) 18 Cri. L. Jour. 461 (461, 462): 1917 Lah. 35 (2), *Sajad Hussain* v. *Nanak Chand.*
(1925) 1925 Rang. 111 (111), *Mg Po Lon* v. *Mg Ba On.*
(1914) 1914 Lah. 295 (296), *Muhammad Sharif* v. *Dhanpat Rai.*
(1875) 24 Suth. W. R. 16 (17), *Raneegunge Coal Association, Ltd.* v. *Hem Lall.*
(1912) 13 Cri. L. Jour. 296 (297) (All.), *Jhabba* v. *Dalchand.*
Omission to set out grounds not sufficient to invalidate proceedings unless prejudice is caused.
(1932) 1932 All. 681 (682, 683), *Barmha Singh* v. *Emperor.*
(1910) 11 Cri. L. Jour. 141 (143): 32 All. 132, *Ganga Saran Singh* v. *Bhagwat Prasad.*
(1905) 2 Cri. L. Jour. 637 (645, 648, 649): 33 Cal. 352, *Khosh Mohamed Sircar* v. *Nazir Mahomed.*
(1919) 1919 Mad. 166 (167), *Jaganadha* v. *Gopalakrishna.*
(1921) 59 Ind. Cas. 378 (381) (Mad.), *Muthusamy Pillai* v. *Kuppusamy Pillai.*
(1904) 1 Cri. L. Jour. 1055 (1056): 7 Oudh Cas. 334, *Bidyadhar* v. *Jagadish Pershad.*
(1907) 6 Cri. L. Jour. 345 (345) (Mad.), *Posuka Kulla* v. *Tandalagara Chikka Hina.*
(1907) 5 Cri. L. Jour. 117 (118) (All.), *Babban Singh* v. *Baldeo Singh.*
(1915) 16 Cri. L. Jour. 235 (236): 1914 Sind 8: 8 S. L. R. 207, *Farid* v. *Piru.*
(1917) 18 Cri. L. Jour. 100 (102): 1917 Oudh 400: 19 Oudh Cas. 136, *Udai Bhan Pratab Singh* v. *Ram Samaja.*
(1908) 7 Cri. L. Jour. 28 (28, 29): 30 Mad. 548, In re *Chinnappaudayan.*
(1912) 13 Cri. L. Jour. 753 (757, 759): 36 Mad. 275, *Kamal Kutty* v. *Udayavarama Raja.*
(1904) 7 Oudh Cas. 334 (334), *Bidya Dhar* v. *Jagadish Pershad.*
(1933) 1933 All. 264 (267, 268): 55 All. 301, *Kapurchand* v. *Suraj Prasad.*
(1927) 1927 Rang. 177 (178): 5 Rang. 129, *Maung Pu* v. *Maung Chit Pyu.*
(1935) 1935 Oudh 316 (325), *Asghari Khanam* v. *Emperor* (Where there is no want of jurisdiction but a mere omission to frame the order under sub-section 1 in accordance with law, the defect is curable under S. 537).

S. 145, Notes 16—17.

16. Preliminary order.—On the Magistrate being satisfied that preventive action under this section is necessary (*see* Notes 7, *ante*), he should make a preliminary order in writing containing the following particulars:—

(1) A statement that the Magistrate is satisfied as to the existence of a dispute likely to cause a breach of the peace. *See* Note 12, *ante*.

(2) The grounds of his being so satisfied. *See* Note 17, *infra*.

(3) A correct description of the property in respect of which the proceedings are instituted.

(4) A statement of the names of persons concerned in such dispute, *see* Note 19, *infra*.

(5) A direction requiring such persons to attend his Court within a time to be fixed and to put in written statements of their claims in respect of the fact of actual possession.

The object of such an order is to give all persons concerned in the dispute notice that the Magistrate is taking action under this section to prevent a breach of the peace, and to provide them opportunities to prove their claims before him so as to enable him to decide which of the parties was in possession of the property at the date of the initiation of the proceedings.[1] It is not however necessary that the order should be in any particular form or recorded in a separate sheet.[2]

It was held in the undermentioned cases that it is the preliminary order that gives the Magistrate *jurisdiction* to proceed under this section, and therefore that an omission to draw up a preliminary order renders all proceedings *without jurisdiction*.[3] It is submitted that this view is not correct. As has been seen in Note 15, *supra*, the *jurisdiction* of the Magistrate arises on his being satisfied as to the existence of a dispute likely to cause a breach of the peace and the direction to draw up a preliminary order under sub-S. (1) is only a matter relating to *procedure* and not to *jurisdiction*.[4] As to the effect of a failure to draw up a preliminary order, *see* Note 15, *supra*.

17. Statement of grounds in the preliminary order.—It is obligatory on the Magistrate to state in writing the *grounds* of his being satisfied that there is a likelihood of a breach of the peace on account of a dispute concerning immovable property.[1] The object of requiring the grounds to be stated is firstly to inform the parties concerned in the dispute against whom

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Note 16.

(1) (1927) 1927 Lah. 805 (806), *Dhani Ram* v. *Kali Ram.*
(2) (1868) 10 Suth. W. R. Cri. 16 (16), *Joyram Singh* v. *Jugnarain Dooby.*
(1866) 6 Suth. W. R. Cri. 50 (50), In re *Sabhee Singh.*
(3) (1930) Cal. 443 (444), *Sukaru Dosdah* v. *Ram Pergash Singh.*
(1876) 25 Suth. W. R. 74 (76-78), *Sheikh Mungloand Peer Khan* v. *Durga Narain Nag.*
(1927) 1927 Lah. 805 (806), *Dhaniram* v. *Kali Ram.*
(1869) 3 Beng. L. R. 76, *Kashi Kishor Roy* v. *Tarini Lahori.*
(1919) 1919 Nag. 160 (160), *Mahomed Hasham* v. *Mahomed Sharni.*
[See also (1933) 1933 All. 96 (97), *Hira Lal* v. *Emperor.*]
(4) (1932) 1932 All. 446 (447, 448), *Madan Mohan Lal* v. *Mt. Sheoraj Kunwar.*
See cases in foot-note 9 to note 15, *supra*.

Note 17.

(1) (1932) 1932 Mad. 368 (369), *Venkatapathi* v. *Sanyasiraju.*
(1865) 2 Suth. W. R. 31 (31), *Queen* v. *Ranjeet.*
(1866) 6 Suth. W. R. 61 (63), *Amrithanatha Jha* v. *Ahmed Reza.*
(1893) 6 C. P. L. R. Cri. 21 (23), *Mussamat Paikabi* v. *Jegannath and Rajaram.*
(1933) 1933 All. 96 (97), *Emperor* v. *Hira Lal.*
(1871) 16 Suth. W. R. 64 (64), *Tarafdi Mundul* v. *Chunder Bhoosan Banerjee.*
(1901) 28 Cal. 416 (418), *Jagomohan* v. *Ram Kumar.*
(1905) 2 Cri. L. Jour. 342 (343): 32 Cal. 771, *Nityanund Roy Bahadur* v. *Paresh Nath Sen.*
(1879) 4 Cal. 650 (653), In re *Kunund Narain Bhoop.*

S. 145, Notes 17—19.

the proceedings are instituted of the reasons which have induced the Magistrate to take action[2] and secondly to enable the High Court, in case the matter should come up subsequently in revision, to ascertain whether the institution of proceedings under those circumstances was justified.[3] The term "ground" includes the *particulars* of the information which have satisfied the Magistrate that action is necessary and does not merely mean the *source of the Magistrate's information.*[4]

It is not necessary that the grounds should be furnished in any particular form, it is enough if they exist and appear in the records of the proceedings.[5] Thus it is a sufficient compliance with the provisions of sub-S. (1) if the Police Report[6] or the complaint filed by any of the parties[7] sets out the grounds sufficiently and is expressly referred to by the Magistrate in his preliminary order. It is not absolutely necessary that they should be stated *seriatum* in the preliminary order itself.[8] As to the effect of omission to set out the grounds, *see* Note 15, *supra.*

18. Omission to state grounds—Effect of.—*See* Note 15, *supra.*

19. "Parties concerned in such dispute."—It has been seen already that the Magistrate's jurisdiction to institute proceedings under this section is dependent upon his being satisfied that there is a dispute likely to cause a breach of the peace. His jurisdiction to require particular persons to attend the proceedings would equally depend upon his being satisfied that they were concerned in such dispute.[1] It is therefore the duty of the Magistrate to ascertain as far as he can, on the materials before him, *who are the parties concerned* in such dispute before he initiates the proceedings.[2] He should mention their names

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(2) (1893) 20 Cal. 520 (525, 526), *Queen-Empress* v. *Govind Chandra Doss and others.*
(1903) 7 Cal. W. N. 599 (600, 601), *Sabid Mondul* v. *Lakshmi Mondul.*
(1905) 2 Cri. L. Jour. 637 (644, 645): 33 Cal. 352, *Khosh Mohamed Sirkar* v. *Nazir Mahomed.*
(1905) 9 Cal. W. N. cclxiii, *Radakishore Ghose* v. *Purna Chandra Pundit.*

(3) (1872) 18 Suth. W. R. Cri. 11 (14), In the matter of *J. D. Sutherland.*
(1932) 1932 Sind 145 (147, 148): 26 S. L. R. 353, *Natho Khan* v. *Emperor.*
(1925) 1925 Nag. 448 (449), *Ramachandra* v. *Ganpat.*
(1899) 12 C. P. L. R. Cr. 2 (3), *Tularam Sao* v. *Bheoram.*
(1893) 20 Cal. 520 (525, 526), *Queen-Empress* v. *Gobind Chandra Das.*

(4) (1905) 9 Cal. W. N. cclxiii, *Radha Kishore* v. *Purna.*
(1873) 19 Suth. W. R. 10 (11), *Kishoree Mohan Roy* v. *Baboo Durga Mohun Dass.*

(5) See foot-notes (6), (7) and (8).
[See (1925) 1925 Nag. 448 (449), *Ramachandra* v. *Ganpat.*]
(1867) 8 Suth. W. R. 83 (84), *Bisseshur* v. *Narain Mahtar.*
(1905) 2 Cri. L. Jour. 102 (103): 27 All. 294, *Azizuddin* v. *Emperor* (There was nothing in the records to indicate that a dispute likely to cause a breach of peace existed).
(1900) 27 Cal. 981 (982, 983), *Mohesh* v. *Narainbagh* (But it is not sufficient if the Magistrate simply orders that a preliminary order should be drawn up in accordance with the Police report).

(6) (1905) 2 Cri. L. Jour. 637 (641): 33 Cal. 352, *Khosh Mohamed Sircar* v. *Nazir Mahomed.*
(1920) 59 Ind. Cas. 401 (402): 1920 All. 227, *Mussammat Har Piari* v. *Nathe Lal.*
(1905) 2 Cri. L. Jour. 670 (673): 33 Cal. 33, *Kuiada Kinar Roy* v. *Danesh Mir.*
(1906) 3 Cri. L. Jour. 48 (49) (All.), *Harprasad* v. *Pandurang.*
(1905) 2 Cri. L. Jour. 679 (681): 32 Cal. 1093, *Tara Pada Biswas* v. *Nural Hugu.*
(1917) 18 Cri. L. Jour. 23 (24): 1917 Mad. 610, *Krishnappa Naidu* v. *Alamelu Ammal.*
(1920) 1920 Pat. 745 (746), *Isri Prasad Chawdhri* v. *Warasat Hussain.*
(1881) 7 Cal. 46 (49): 4 Shome L. R. 119, *Kali Kristo Thakur* v. *Ghulam Ali Chowdhry.*
(1886) 13 Cal. 175 (179), *Goluck Chander Pal* v. *Kali Charan.*

(7) (1906) 3 Cri. L. Jour. 487 (488) (Mad.), *Saiyed Mahomed Ghous Saheb* v. *Sayid Khadir Badshaw Saheb.*
(1932) 1932 Sind 145 (146): 26 S. L. R. 353, *Natho Khan* v. *Emperor.*
(1906) 3 Cri. L. Jour. 48 (49) (All.), *Har Prasad* v. *Pandurang.*
(1917) 18 Cri. L. Jour. 156 (157): 1918 Mad. 1203, In re *Medai Dhalavoy Tirumalayappa Mudaliar.*

(8) (1917) 18 Cri. L. Jour. 156 (157): 1918 Mad. 1203, In re *Medai Dhalavoy Tirumalayappa Mudaliar.*

Note 19.

(1) (1897) 24 Cal. 55 (61), *Protab Narain* v. *Rajendra Narain.*
(2) (1897) 24 Cal. 55 (61), *Protab Narain* v. *Rajendra Narain.*
(1925) 1925 Nag. 457 (458), *Narayan* v.

specifically in the preliminary order and require them to attend his Court and put forward their claims to possession of the property.[3] S. 145, Note 19.

The words "parties concerned in such dispute" do not mean merely the persons actually disputing,[4] or persons actually present at or near the land and concerned in the threatened breach of the peace.[5] They refer to persons claiming to be *in possession* at the time of the preliminary order—though not actually concerned in the apprehended breach of the peace.[6] It was however held in the undermentioned cases that the words include all persons interested or claiming a *right* to the property in dispute and that the Magistrate is therefore bound to make them parties to the proceedings.[7]

The owner or proprietor of the property who is *in possession* through his servant or manager is a person concerned in the dispute and is therefore a necessary party to the proceedings.[8] It is not necessary in such cases to make the servants or the manager parties to the proceedings as their possession is simply that of their master or proprietor.[9] A Receiver appointed by a Court who is in possession on behalf of the Court cannot be said to be a person "concerned in the dispute" and cannot be made a party to the proceedings without the leave of the Court appointing him.[10]

In a dispute between rival landlords however, the tenants who are actually in possession in their own right are necessary parties to the proceedings.[10-a]

In a dispute between two communities, the Magistrate may choose the right persons to represent each community and pass an order binding on the communities though there is no provision corresponding to O. 1, R. 8 of the Civil Procedure Code.[11]

Chandrabhaga.
(1902) 6 Cal. W. N. 101 (103), *Mangal Haldar* v. *Naimudhi Fakir.*
(1900) 24 Bom. 527 (532), In re *Pandurang Govind Pujari.*

(3) (1900) 27 Cal. 892 (917), *Laldhari Singh* v. *Sukdeo Narain Singh.*
(1901) 5 Cal. W. N. 900 (903), *Beni Singh* v. *Umrao Mahto.*
(1900) 24 Bom. 527 (532), In re *Pandurang Govind Pujari.*

(4) (1894) 21 Cal. 29 (32, 33), *Ram Chandra Das* v. *Monohur Roy.*
(1900) 4 Cal. W. N. 753 (754, 755), *Ganesh Jalia* v. *Ayubali Chaudhuri.*
(1903) 30 Cal. 155, *Krishna Kamini* v. *Abdul Jubbar.*
(1925) 1925 Oudh 484 (484), *Ram Bushan Das* v. *Ram Lakhan Sahu.*

(5) (1916) 17 Cri. L. Jour. 449 (449): 1917 Cal. 173, *Manmotha Nath* v. *Ganga Giri.*
(1925) 1925 Oudh 190 (192), *Abadi Begam* v. *Mirza Ahmad Mirza Beg.*

(6) (1903) 30 Cal. 155 (194-200), *Krishna Kamini* v. *Abdul Jabbar.*
(1894) 21 Cal. 404 (417), *Bechu Sheikh* v. *Deb Kumari Dasi.*
(1925) 1925 Oudh 484 (484), *Ram Bhushan Das* v. *Ram Lakhan Sahu.*
(1925) 1925 Oudh 190 (192), *Abadi Begam* v. *Mirza Ahmad Mirza Bag.*

(7) (1894) 21 Cal. 29 (32, 33), *Ram Chandra Das* v. *Monohur Roy.*
(1900) 4 Cal. W. N. 753 (754, 755), *Ganesh Jalia* v. *Ayubali Chaudhuri.*
(1917) 18 Cri. L. Jour. 44 (44): 1917 Mad. 742, *Nagoji Rao* v. *Subbarayalu Naidu.*

(8) (1917) 18 Cri. L. Jour. 44 (44): 1917 Mad. 742, *Nagoji Rao* v. *Subbarayalu Naidu.*
(1894) 21 Cal. 915 (919), *Behari Lall* v. *Darley* (It is not enough to implead the manager of a company in a proceeding. The company is itself a necessary party).
(1902) 6 Cal. W. N. 206 (207), *Manik Mandal* v. *Govinda Mandal.*
(1903) 7 Cal. W. N. 208 (209), *Jhabu Singh* v. *Ruther Ford.*
(1880) 6 C. L. R. 193 (194), *Jitbahan* v. *Bansrup Dhobi.*
(1898) 25 Cal. 423 (424), *Brown* v. *Prithiraj Mandal.*
(1904) 1 Cri. L. Jour. 49 (53): 31 Cal. 48, *Dhondhai Singh* v. *G. R. Fullet.* (But where the proprietors were outside the jurisdiction held the proceedings against the manager or agent were not vitiated).
(1894) 21 Cal. 916 (917), *Newaz Ali* v. *Ram Ballabh Chakravarti.*

(9) (1912) 16 Cal. W. N. c (c), *Gopal Mandol* v. *Hari.*

(10) (1903) 30 Cal. 593 (598), *Dunne* v. *Kumar Chandra Kishore.*
(1911) 12 Cri. L. Jour. 185 (185) (Mad.), *Maddipotti Chinna* v. *Narayanasamy Naidu.*

(10-a) (1900) 27 Cal. 892 (917), *Laldhari Singh* v. *Sukdeo Narain Singh.*
[See also (1901) 28 Cal. 446 (451), *Anesh Mollah* v. *Ejaharuddi Mollah.*
(1915) 16 Cri. L. Jour. 590 (590): 1916 Cal. 727, *Haridas Samanta* v. *Abdul Matleb Mallik.*
(1880) 5 Cal. L. R. 287, *Harakh Narain* v. *Luchmi Bux.*]

(11) (1925) 1925 All. 316 (317), *Nanhe Mal* v. *Jamil-Ur-Rahman.*

S. 145, Notes 19—22.

See also the following cases.[12]

As to the effect of non-joinder of necessary parties, *see* Note 20, *infra*.

20. Addition of parties.—The section contains no provision for addition of parties after the commencement of the inquiry. Sub-S. (5) merely enables third parties (persons interested) to intervene for a limited purpose, *viz.*, that of shewing that no dispute likely to cause a breach of peace exists: it does not enable *new* parties to be added.[1] It has however been held that the Magistrate has power to add parties even after the initiation of the proceedings provided that such parties were originally concerned in the dispute which is the foundation of the proceedings, but that such power of adding parties should be exercised before the commencement of the *inquiry* under sub-S. (4).[2] After the commencement of the inquiry however, new parties cannot be added but if they are added, the inquiry should commence *de novo* in their presence.[3]

The question of non-joinder or mis-joinder of parties to a proceeding under this section is a matter relating to *procedure* and does not affect the *jurisdiction* of the Magistrate.[4] It is at the most an *irregularity* which may be sufficient to vitiate the proceedings only if the parties are *prejudiced* by reason of such irregularity.[5] *See* S. 537, *infra*.

21. Non-joinder of parties—Effect.—*See* Note 20, *supra*.

22. Continuation of proceedings by or against legal representatives—Sub-S. (7).—There was no provision in the Code of 1882 for substitution of legal representatives for deceased parties and it was held that the son could not be made a party on the death of his father pending the proceedings—as he was not a "party concerned in the dispute."[1] This Code as it stood before the amendment provided however that proceedings under this section shall not abate by reason only of the death of any of the parties thereto. But it was held in the undermentioned case[2] that as there was no specific provision for bringing in the legal representatives on the record all that the Court had to decide was whether the proceedings had not abated by the death of any

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(12) (1925) 1925 Cal. 1040 (1045), *Ishan Chandra Samanta* v. *Haridoy Krishna Bose*.
(1872) 18 Suth. W. R. 54 (55), In the matter of the petition of *Gobinda Chandra Ghose*.
(1879) 4 Cal. 650 (654), In re *Kunund Narain Bhoop*.

Note 20.

(1) (1879) 4 Cal. 650 (654), In re *Kunund Narain Bhoop*.
(1900) 4 Cal. W. N. 748 (749), *Rajkumar Singh* v. *Mahadeo Singh*.
(1901) 5 Cal. W. N. 900 (903), *Beni Singh* v. *Umrao Mahto*.
(1899) 3 Cal. W. N. 329 (331), *Janoki Nath Roy* v. *Queen-Empress*.
(1900) 4 Cal. W. N. lxxxiii, *Khetter Mohan* v. *Nanki Ram*.
(2) (1903) 30 Cal. 155 (201), *Krishna Kamini* v. *Abdul Jabbar*.
(1916) 17 Cri. L. Jour. 449 (449): 1917 Cal. 173, *Manmotha Nath Chatterjee* v. *Ganga Giri Gossain*.
(3) (1903) 30 Cal. 155 (201), *Krishna Kamini* v. *Abdul Jabbar*.
[See also (1916) 17 Cri. L. Jour. 449 (449): 1917 Cal. 173, *Manmotha Nath Chatterjee* v. *Ganga Giri Gossain*.]
(4) (1903) 30 Cal. 155 (200), *Krishna Kamini* v. *Abdul Jubbar* (In view of this decision, 5 Cal. W. N. 428; 28 Cal. 446; 6 Cal. W. N. 101; are no longer good law).
(1905) 2 Cri. L. Jour. 202 (203): 32 Cal. 287, *Bholanath Singh* v. *Wood*.
(1917) 1917 Pat. 264 (265), *Jatan Singh* v. *Dukhia Singh*.
(1920) 1920 Cal. 417 (418): 47 Cal. 438, *Moiram Bewah* v. *Mrijan Sardar*.
(5) (1926) 1926 Pat. 67 (67, 68), *Nandan Singh* v. *Sivaram Singh*.
(1934) 1934 All. 853 (854), *Peare Lal* v. *Emperor* (As the parties were prejudiced S. 537 has no application).
(1905) 2 Cri. L. Jour. 202 (203): 32 Cal. 287, *Bholanath Singh* v. *Wood*.
(1902) 6 Cal. W. N. 206 (207), *Manik Mandal* v. *Govind Mandal*.

Note 22.

(1) (1894) 21 Cal. 404 (411), *Bechu Sheikh* v. *Deb Kumari Dasi*.
[But see (1878) 2 C. L. R. 264 (264), *Ranee Anondmoyee* v. *Luchmon Pershad*.]
(2) (1914) 15 Cri. L. Jour. 676 (677): 1915 Mad. 92, *Subbia Servai* v. *Chokkalinga Thevan*.

of the parties. The introduction of sub-S. (7) by the amendment of 1923 now specifically provides for bringing in of the legal representatives of deceased parties on the record and the Court has no power to drop the proceedings on the death of any of the parties.[3] S. 145, Notes 22—25.

It has been held, however, that the power of substitution cannot be extended to applications for revision under S. 435 against orders under this section, and that therefore that an application for revision abates on the death of any of the parties thereto.[4]

23. "His Court".—The preliminary order should direct that the parties should attend the *Court* of the Magistrate issuing the order. The jurisdiction to make the final order is however not *personal* to the Magistrate making the preliminary order.[1]

24. Written Statements.—The object of requiring the parties to file written statements of their claims to possession is merely to assist the Magistrate in ascertaining the grounds on which they claim possession; they are not in the nature of pleadings in a civil action. The inquiry into the question of possession is therefore not necessarily limited to the *allegation made in the written statements*[1] and the failure of the parties to file their statements will not deprive the Magistrate of his jurisdiction to make the inquiry.[2]

As the object of the proceedings is to *settle* the disputes though temporarily on a judicial inquiry into the question of possession, the Magistrate should not ordinarily refuse to provide opportunities to the parties to file their statements although he has a discretion to refuse to grant an adjournment for the purpose.[3]

25. "Fact of actual possession".—The words 'actual possession' mean actual *physical* possession—not necessarily *lawful* possession.[1] It includes the possession of a mere trespasser.[2] It should however be *real* and tangible,[3] that is there should be effective occupation and control over the property.[4] A stealthy

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(3) (1934) 1934 Cal. 787 (788), *Misil Mirdha* v. *Abdul Rahim*.
(4) (1919) 1919 Lah. 236 (236): 1919 P. R. 23, *Krishen Deo Singh* v. *Hari Singh*.
(1916) 17 Cri. L. Jour. 389 (390): 1917 Mad. 664, *Subbaraju* v. *Ramachandra Raju*.

Note 23.

(1) (1906) 4 Cri. L. Jour. 223 (226, 227) (Cal.), *Ram Kissore Roy* v. *Dwarka Nath Sen*.

Note 24.

(1) (1915) 16 Cri. L. Jour. 525 (526): 1916 Mad. 967, *Narayan* v. *Kandasamy*.
(2) (1923) 1923 Pat. 369 (370), *Ramjaria* v. *Piar Koeri*.
(3) (1908) 12 Cal. W. N. 896, *Sheikh Mansar Ali* v. *Matiullah*.
(1924) 1924 Pat. 783 (783), *Raghunath Kuer* v. *Rajkishore Kuer* (The Magistrate should not reject a written statement on the ground that it was not filed in time).
(1910) 14 Cal. W. N. ccxvi (ccxxvi).

Note 25.

(1) (1928) 1928 Cal. 610 (619), *Agni Kumar Das* v. *Mantazaddin*.
(1928) 1928 Cal. 344 (347): 55 Cal. 826, *Ambar Ali* v. *Piran Ali*.
(1915) 16 Cri. L. Jour. 525 (526): 1916 Mad. 967, *Narayana Asari* v. *Kandasamy Asari*.
(1905) 2 Cri. L. Jour. 28 (30) (Bom.), In re *Sanganbasawa kom Basappa*.
(1924) 1924 Lah. 678 (679), *Bhagwandas* v. *Maula Dadkhan*.
(1905) 2 Cri. L. Jour. 408 (410) (Cal.), *Rajendra Narain Roy* v. *Mohammad Arzumand Khan Chowdhury*.
(1913) 14 Cri. L. Jour. 633 (633) (All.), *Kunji Lal* v. *Emperor*.
(1934) 1934 Nag. 217 (219), *Emperor* v. *Hakim Khan*.
(1879) 2 All. 465 (467), *Govindprasad*, In re.
(2) (1928) 1928 Cal. 344 (347): 55 Cal. 826, *Ambar Ali* v. *Piran Ali*.
(1928) 1928 Cal. 610 (619), *Agni Kumar Das* v. *Mantazaddin*.
(1928) 1928 Nag. 284 (285-287): 24 N. L. R. 148, *Shriram* v. *Samirmal*.
[But see (1871) 6 Mad. H. C. App. 13 (13, 14), *High Court Proceedings, 9th January, 1871, No. 35.*]
(3) (1875) 23 Suth. W. R. 45 (48), *Bejoy Nath Chatterjee* v. *Bengal Coal Company*.
(4) (1922) 1922 Pat. 371 (372), *Ramnarain Singh* v. *Dhourai Gope*.

S. 145, Notes 25—26.

act of ploughing and sowing in the absence of the other side is neither real nor tangible possession.[5] The possession contemplated by the section should also be continuous.[6] An isolated act of trespass or the possession of the property for one day in a year or one day in a week is not such possession as is contemplated by the section.[7] By continuous possession is meant however such possession which a party in possession may have to exercise, has exercised or exercises whenever he likes.[8] The continuous possession should therefore be understood to be such possession as the nature of the property is susceptible of.[9] Actual possession is not however confined to mere bodily possession.[10] It includes the possession of the master through his servant,[11] of the proprietor through his agent or manager[11-a] of the landlord through his immediate tenant[12] or of a usufructuary mortgagee.[13] Thus in a dispute between rival landlords, the Magistrate may make an inquiry as to who holds the property though the tenants are in actual occupation of the land.[14] But where the dispute is between the landlord and his tenant, the Court cannot find possession of the landlord through his tenant.[15] Similarly the possession of a servant which is simply that of his master and merely permissible cannot be maintained as against his master.[16]

26. "Land or water or the boundaries thereof".—The expression 'land or water' is described in sub-S. (2). The Codes of 1861 and 1872 contained a similar definition of land or water. In the Code of 1882 however the words were replaced by the words "concerning tangible immovable property or the boundaries thereof". In cases decided under that Code it was held that disputes regarding incorporeal rights such as rights to ferry or rights to fishery or rights to collect rents and profits in respect of immovable property, would not come within the meaning of "tangible immovable property" and that therefore such disputes should if at all be properly dealt with only under S. 147, *infra*, and not under this section.[1] Such rights have now been included within the purview of this section by the introduction of sub-S. (2) in this Code.

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(5) (1922) 1922 Pat. 371 (372), *Ramnarain Singh* v. *Dhourai Gope*.
(6) (1922) 1922 Cal. 502 (503): 49 Cal. 871, *Nayan Manjuri Dasi* v. *Fazley Huo Sardar*.
(7) (1922) 1922 Pat. 502 (503): 1 Pat. 164, *Adhikanda Sahu* v. *Jogi Sahu*.
(1934) 1934 Pat. 565 (570), *Mahabir Singh* v. *Emperor*.
(1912) 16 Cal. W. N. cclxvii, *Manik Chandra* v. *Prannath*.
(8) (1927) 1927 Cal. 313 (315), *Loke Nath Roy* v. *Boylalgani*.
(9) (1925) 1925 Oudh 251 (252), *Mahesh Singh* v. *Emperor*.
(10) (1872) 18 Suth. W. R. 11 (13), *Sutherland* v. *Crowdy*.
(11) (1872) 18 Suth. W. R. 11 (13), *Sutherland* v. *Crowdy*.
(11-a) (1904) 1 Cri. L. Jour. 49 (55): 31 Cal. 48, *Dhondhai Singh* v. *Follet*.
(1917) 1917 Pat. 606 (607), *Ghasi Ram* v. *Amrit Mal*.
(12) (1872) 18 Suth. W. R. 11 (13), *Sutherland* v. *Crowdy*.
(1876) 25 Suth. W. R. 18 (18), *Nobin Chunder* v. *Jegendranoth*.
(1884) 1884 Pun. Re. No. 19, p. 35, *Narain Das* v. *Empress*.
(1878) 3 Cal. 320 (321), *Empress* v. *Thacoor Dyal Singh* (Where the tenant is not the immediate tenant S. 145 is not applicable).
(13) (1872) 18 Suth. W. R. 11 (13), *Sutherland* v. *Crowdy*.
(14) (1915) 16 Cri. L. Jour. 284 (285): 1915 Mad. 1105, *Balki Bivi* v. *Nagoor Kami Rowther*.
(1871) 15 Suth. W. R. (Cr.) 1, (2), In the matter of *J. W. Masey*.
(1880) 5 Cal. L. R. 287 (289, 290), *Harak Narain* v. *Luchmi Bux*.
(15) (1891) 2 Weir 107 (107), *Baboo Reddi* v. *Kullappa Nattan*.
(1915) 16 Cri. L. Jour. 284 (285): 1915 Mad. 1105, *Bulkis Bivi* v. *Nagoor Kanni Rowther*.
(16) (1923) 1923 Mad. 60 (63), *Thyalyee Ammal* v. *Srirangaraya Goundan*.
(1926) 1926 Nag. 286 (288), *Bajirao* v. *Mt. Dadibai*.

Note 26.

(1) (1885) 11 Cal. 413 (416) (F.B.), *Parmatha Bhusana Deb Roy* v. *Doorga Churn Battacharji*.
(1886) 12 Cal. 539 (541), *Krishna Dhone* v. *Troilokia*.
(1886) 13 Cal. 179 (181), *Anand Moyi* v. *Shurnomovi*.

S 145, Note 26.

The following classes of disputes have been held to fall within the purview of this section:—

(*i*) Dispute regarding the right to collect the rent in respect of immovable property;[2]

(*ii*) Dispute relating to possession of standing crops[3] and crops harvested but still on the land;[4]

(*iii*) Dispute as to trees growing on the land;[5]

(*iv*) Dispute as to the right to the lac grown on the trees and as to the right to tap the trees;[6]

(*v*) Dispute as to possession of a bund;[7]

(*vi*) Dispute as to possession of a temple;[8]

(*vii*) Dispute as to mining and boring rights;[9]

(*viii*) Dispute as to right to ferry;[10]

(*ix*) Dispute as to right to fishery;[11]

(*x*) Dispute as to channel rights when the channel is used for irrigation purposes.[12]

The following classes of disputes have been held not to come within the purview of this section:—

(*i*) Disputes as to crops cut and removed from the land;[13]

(*ii*) Disputes as to the right to *share* in the rents and profits of immovable property;[14]

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(2) (1885) 11 Cal. 413 (416, 417) (F.B.), *Pramatha Bhusana Deb Roy* v. *Doorga Churn Bhattacharji.*
(1888) 15 Cal. 527 (530, 531), *Sarabananda Basu Mozumdar* v. *Pran Sankar Roy Chowdhuri.*
(1889) 12 Mad. 88 (89), *Ramasamy* v. *Danakoti Ammal.*
(1889) 16 Cal. 513 (522, 523), *Abhayessari Debi* v. *Shidhessari.*
(1917) 18 Cri. L. Jour. 652 (654): 1917 Pat. 217, *Punit Mahton* v. *Sirajulhaq.*
(1917) 18 Cri. L. Jour. 156 (157): 1918 Mad. 1203, In re *Medai Dhalvoy Tirumalayappa Mudaliar.*
(1885) 1885 All. W. N. 299 (299), *Durga Kuar* v. *Phulzarilal.*
(1909) 36 Cal. 986, *Akaloo Chandra Das* v. *Mohesh Lal.*
[But see (1907) 5 Cri. L. Jour. 394 (395): 10 Oudh Cas. 89, *Mohammed Fazil* v. *Muhammad Abdul Samad.*
(1905) 1905 All. W. N. 278 (278): 28 All. 266, *Chaurasi* v. *Ram Shankar.*]

(3) (1907) 11 Cal. W. N. ccxxxix, *Amrit Singh* v. *Musst. Lakhpati.*
(1903) 30 Cal. 110 (111), *Ramzan Ali* v. *Janardhan Singh.*
(1927) 1927 All. 99 (100), *Sita Das* v. *Jaisiri Das.*
(1893) 15 All. 394 (395), *Ganga Prasad* v. *Narain.*

(4) (1917) 1917 Pat. 183 (184), *Sundermal* v. *Jhakarilal.*
(1900) 2 Weir 108, *Krishnaswamy Iyer,* In re (The fact that the crops were removed subsequent to the dispute would not oust the Magistrate's jurisdiction).
[But see (1928) 1928 Sind 68 (69): 22 S. L. R. 151, *Rahimdino* v. *Emperor.*]

(5) (1920) 1920 Cal. 708 (710), *Ali Muhammad Mondal* v. *Fakiruddin Munshi.*

(6) (1934) 1934 Nag. 112 (113): 30 N.L.R. 311, *Emperor* v. *Narsingdas Gangadhar.*
(1918) 1918 Pat. 237 (237), *Jibhlal Mato* v. *Emperor.*
[But see (1920) 1920 Cal. 708 (710), *Ali Muhammad Mondal* v. *Fakiruddi Munshi.*]

(7) (1930) 1930 Cal. 59 (60), *Sashi Bushan* v. *Debendra Gati Ram.*

(8) (1883) 2 Weir 110 (111), *Sundara Pandaram* v. *Vallinayaka Nadan.*

(9) (1922) 1922 Pat. 340 (344), *Mahadoe Dutt* v. *J. N. Sarkar.*
(1919) 1919 Pat. 210 (212), *Andrew Yule & Co.* v. *A. H. Skone.*
(1922) 1922 Cal. 83 (84, 85), *Bimala Prasad Mukerjee* v. *Tata Iron & Steel Co., Ltd.*

(10) (1899) 26 Cal. 188 (193), *Hurbullubh Narain Singh* v. *Luchmeswar Prosad Singh.*
(1905) 9 Cal. W. N. ccxv, *Mohini Nath* v. *Sarat.*

(11) (1919) 1919 P. 210 (212), *Andrew Yule & Co.* v. *A. H. Skone.*
(1907) 6 Cri. L. Jour. 398 (399): 35 Cal. 117, *Balajit Singh* v. *Bhaju Ghose.*

(12) (1924) 1924 Oudh 341 (341, 342), *Chote Lal* v. *Emperor.*

(13) (1903) 30 Cal. 110 (111), *Ramzan Ali* v. *Janardhan Singh.*
(1927) 1927 All. 99 (100), *Situ Das* v. *Jairi Das.*
(1928) 1928 Sind 193 (195): 22 S. L. R. 386, *Relumal* v. *Pherumal.*
(1906) 3 Cri. L. Jour. 52 (53): 28 All. 266, *Chaurasi* v. *Ram Shankar.*
[But see (1928) 1928 Sind 68 (69): 22 S. L. R. 151, *Rahimdino* v. *Emperor.*]

(14) (1896) 23 Cal. 80 (82-86), *Surb Narain*

S. 145, Notes 26—27.

(*iii*) Dispute as to the rights to weigh grain in a market;[15]

(*iv*) Dispute as to the right to perform puja in a temple;[16]

(*v*) Dispute regarding collections and offerings in a temple;[17]

(*vi*) Dispute relating to collection of fees from pilgrims at Sradh Ceremony at Gaya;[18]

(*vii*) Dispute regarding the right to remove sandalwood paste from an idol.[19]

(*viii*) Dispute as to the right of succession to a mutt and its appurtenances;[20]

(*ix*) Disputes as to rights to *joint* possession of immovable property.[21]

Moveable property as such would not ordinarily come within the purview of the section unless it is in the shape of standing crops or other produce of land or rents and profits of the land in dispute.[22] But where such moveable property is included in the immovable property or is in the premises of such immovable property, *prima facie* it belongs to the person entitled to possession of the immovable property and the Magistrate has jurisdiction to pass orders under this section even in respect of such property.[23]

In cases of disputes likely to cause a breach of the peace but not coming strictly within the purview of this section, the Magistrate should take security from both the parties to the dispute under S. 107.[24]

See Note 2, *supra*.

27. Service and publication of the preliminary order sub-S. (3).— Sub-S. (3) provides that a copy of the preliminary order should be served on such person or persons as the Magistrate may direct in the manner provided for the service of summons. (*See* Ss. 68—74, *ante*), and that it should also be published by being affixed to some conspicuous place at or near the subject of the dispute. The object of publication of the order is to bring the proceedings to the notice of all persons interested in the property in dispute besides the persons

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Singh v. *Brij Mohun Thakur*.
(1883) 5 All. 607 (608), *Beni Narain* v. *Achari Nath*.
(1922) 1922 Oudh 199 (200): 25 Oudh Cas. 137. *Emperor* v. *Ram Bhajan*.
(15) (1922) 1922 All. 430 (430), *Maqbul Ahmad* v. *Emperor*.
(16) (1916) 17 Cri. L. Jour. 235 (236): 1917 Mad. 840. *Palaniyandi Pandaram* v. *Palaniyandi Thevan*.
(1926) 1926 Cal. 437 (438, 439): 52 Cal. 959, *Surandera Nath Banerjee* v. *Shoshi Bhusan Sarkar*.
(17) (1926) 1926 Cal. 437 (438, 439): 52 Cal. 959, *Surendra Nath Banerjee* v. *Shoshi Bhusan Sarkar*.
(1927) 1927 Nag. 333 (334): 23 N. L. R. 84, *Raosahhag Singh* v. *Baktwar Singh*.
(1911) 12 Cri. L. Jour. 3 (4, 5): 38 Cal. 387, *Ram Saran Pattak* v. *Raghu Nandu Gir*.
(1920) 1920 Pat. 383 (383), *Ghulam Sibtan* v. *Khaniz Khatoon*.
(18) (1906) 3 Cri. L. Jour. 214 (215) (Cal.), *Narayan Misser* v. *Bhugwan Misser*.
(19) (1902) 4 Bom. L. R. 438 (439): 24 Bom. 527, In re *Pandurang Govind Pujari*.
(20) (1869) 11 Suth. W. R. 23 (23), *The Queen* v. *Sreeputt Giri Gossain*.
(21) (1935) 1935 Nag. 44 (45), *Laxmanappa* v. *Ganusingh*.
(1872) 18 Suth. W. R. 36 (37, 38), *Ramrunginee Dassee* v. *Gooroodass Roy* (Right to collect rent in respect of joint undivided estate not within section).
(22) (1907) 11 Cal. W. N. cclxii, *Radha Kanta Lal* v. *Mt. Nazima Begum*.
(1897) Rat. Un. Re. Cri. C. 891 (891), *Queen-Empress* v. *Ram Chandra Shivjiram*.
(1921) 1921 Oudh 6 (9): 24 Oudh Cas. 167, *Arjun Singh* v. *Chandan Kuar*.
(1920) 1920 Mad. 209 (211, 212), *Gopala Iyer* v. *Krishnaswamy Iyer*.
(23) (1912) 13 Cri. L. Jour. 222 (223) (Mad.), *Kochunny* v. *Manavikramaraja*.
(1922) 1922 All. 528 (528), *Gajraj Singh* v. *Emperor*.
(1933) 1933 Lah. 409 (412): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.
[But see (1920) 1920 All. 225 (226): 42 All. 214, *Mt. Mahdei* v. *Beni Prasad*.]
(24) (1922) 1922 All. 430 (430), *Maqbal Ahmad* v. *Emperor*.
(1907) 6 Cri. L. Jour. 398 (399): 35 Cal. 117, *Balajit Singh* v. *Bhaju Ghose*.

named in the preliminary order and also to inform them of the grounds on which the proceedings are instituted.[1] The order should specify the date[2] and the place[3] where the inquiry by the Magistrate is to be held, in order to enable the parties to put in their written statements and to adduce evidence in support of their respective claims. S. 145, Notes. 27—28.

The Magistrate takes action under this chapter on behalf of the Crown with the sole object of preventing a breach of the peace, and therefore all processes for service or publication of the order should be issued at Government expense, and the parties named in the preliminary order should be ranged on one side, as first party, second party and so on.[4]

The Magistrate should satisfy himself before proceeding to make the inquiry under sub-S. (4), that proper service of the order has been effected[5] and where a party appears and complains that he was not properly served, it is the duty of the Magistrate to afford him an opportunity of adducing his evidence if it is found that he was not properly served.[6]

28. Omission to serve or publish the order.—It has been held in some cases that the use of the word 'then' in sub-S. (4) indicates that a compliance with the provisions of sub-S. (3) is a condition precedent to the jurisdiction of the Magistrate to make the inquiry under sub-S. (4)[1] and that as the provisions of sub-S. (3) are mandatory, a failure to carry out the provisions renders the proceedings of the Magistrate *without jurisdiction*[2] and therefore that such a defect is not curable under S. 537, *infra*.[3] On the other hand a contrary view has also been held that the use of the word 'then' in sub-S. (4) indicates merely the sequence or the order of the proceedings and does not constitute any condition precedent to the exercise of jurisdiction.[4] Accordingly an omission to carry out the *procedure* laid down for the service or publication of the order has been held not an error of *jurisdiction*, but if anything only an irregularity which may be sufficient to invalidate the proceedings in cases where the parties are prejudiced by reason of such irregularity.[5] *See* Note 15, *ante*, for a fuller discussion as to the effect of non-compliance with the section.

Note 27.

(1) (1905) 2 Cri. L. Jour. 618 (624): 33 Cal. 68, *Sukh Lal Sheikh* v. *Tara Chand Ta.*
(1918) 1918 Pat. 578 (581), *Ram Sahai Chowdhury* v. *Deonandan Prasad.*
(2) (1930) 1930 Sind 52 (53), *Maji* v. *Emperor.*
(3) (1903) 7 Cal. W. N. 705 (706), *Kolinath Mistri* v. *Abhoy Bepari.*
(4) (1925) 1925 Nag. 142 (143), *Emperor* v. *Mt. Phutanja.*
(5) (1904) 1 Cri. L. Jour. 716 (717) (Cal.), *Jogendra Nath Rai* v. *Abu Shaikh.*
((1905) 9 Cal. W. N. ccxlv (ccxlvi), *Akhoy Kumar* v. *Narendra.*
(1872) 17 Suth. W. R. 9 (9), *Ramrunginee* v. *Gooroo Doss.*
(6) (1904) 1 Cri. L. Jour. 44 (46) (Cal.), *Sripati Charan Mundle* v. *Ram Kumar Bagdi.*
(1920) 1920 Cal. 541 (542), *Kalicharan Kapali* v. *Abdul Lashkar.*

Note 28.

(1) (1905) 2 Cri. L. Jour. 569 (570, 572) (Cal.), *Nawab Khajah Sohmolla Bahadur* v. *Ishan Chandra Das Sarkar.*
(1904) 8 Cal. W. N. 590, *Janu Manjhi* v. *Maniruddin.*
(1905) 9 Cal. W. N. 909, *Nawab Khajah Solemollah Bahadur* v. *Ishan Chandra Das Sarkar.*
(2) (1918) 1918 Nag. 46 (46), *Tukaram Kunbi* v. *Punjabrao.*
(1904) 1 All. L. Jour. (N.) 274 (274), *Ram Nath* v. *King-Emperor.*
(1917) 1917 Pat. 71 (71), *Sheonandan Prasad Singh* v. *Wahidul Huq.*
(1904) 1 Cri. L. Jour. 529 (530) (Cal.), *Janu Manjhi* v. *Maniruddin.*
(1919) 1919 All. 311 (313), *Brahmanath* v. *Sundar Nath.*
(3) (1905) 2 Cri. L. Jour. 569 (570, 572) (Cal.), *Nawab Khajah Solemalla Bahadur* v. *Ishan Chandra Das Sarkar.*
(4) (1905) 2 Cri. L. Jour. 618 (633): 33 Cal. 68, *Sukh Lal Sheikh* v. *Tara Chand Ta.*
(5) (1907) 6 Cri. L. Jour. 352 (352, 353): 30 All. 41, *Debi Prasad* v. *Sheodat Rai.*
(1918) 1918 Pat. 481 (481), *Chadhari Ahir* v. *Raja Ram Singh.*
(1904) 1 Cri. L. Jour. 1055 (1056): 7

S. 145, Note 29.

29. Attachment in case of emergency.—The power to order interim attachment of the property in dispute is limited to such cases only, where a likelihood of a breach of the peace is so *imminent* as to call for *immediate* action to prevent it;[1] and should therefore be exercised with great caution[2] inasmuch as the effect of the order may be to deprive the rightful person in possession, of the possession of the property. The Magistrate has thus no jurisdiction to attach a property merely for the purposes of avoiding future litigation.[3] The question whether the matter is one of such emergency as to justify an attachment is one within the Magistrate's discretion, and the exercise of such a discretion for the maintenance of the peace would not be lightly interfered with.[4]

Apart from the power to attach the property in urgent cases, the Magistrate has no jurisdiction under this section to pass any other temporary order in respect of the property pending inquiry into the question of possession.[4-a] Thus he has no power to order that neither party should cultivate the land during the pendency of the proceedings.[4-b]

The attachment is not effected merely by an order of restraint on alienation as in civil cases.[5] The object of the provision is to keep effective *control* of the subject in dispute so as to prevent the contesting parties from creating a breach of the peace in their attempts to obtain physical possession.[6] (*See* Form No. XXIII). The Magistrate should take possession of the property and manage it during the pendency of the proceedings and for this purpose it is quite competent for him, in his administrative capacity, or in the exercise of his inherent jurisdiction to appoint some person to manage on his behalf and subject to his control and supervision.[7] But the person so appointed is only an agent of the Magistrate, and has not got all the powers of a receiver

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Oudh Cas. 334, *Bidya Dhar* v. *Jagdish Pershad*.
(1918) 1918 Pat. 578 (580, 581), *Ram Sahai* v. *Deonandam Prasad*.
(1927) 1927 Nag. 234 (234), *Sego Patel* v. *Parashram*.
(1913) 21 Ind. Cas. 564 (564, 565): 38 Mad. 432, *Parasuramayya* v. *Ramachandrudu*.
(1908) 7 Cri. L. Jour. 28: 30 Mad. 548, In re *Chinnappaudayan*.
(1925) 1925 Rang. 270 (270): 3 Rang. 169, *Maung Mauk* v. *Maung Po Yin*.
(1924) 1924 Nag. 171 (172), *Bhure Khan* v. *Fakir*.
(1926) 1926 Sind 53 (55), *Mohamed Mahdi of Pir Jhando* v. *Wahadalshah*.
(1915) 16 Cri. L. Jour. 224 (224): 1915 All. 9, *Ram Behari* v. *Munesher* (The mere fact that the dispute is not mentioned in the notice does not deprive the Magistrate of his jurisdiction).
(1908) 8 Cri. L. Jour. 119 (120, 121): 35 Cal. 774, *Sajjad Ahmed Chaudhury* v. *Parbaticharan Roy* (Irregularities and *prejudice* to parties so great as to amount to want of jurisdiction).
(1907) 6 Cri. L. Jour. 113 (114): 1907 P. R. 7, *Abdulla Khan* v. *Gunda* (In this case the parties were prejudiced as they were not heard—But the order was held to be without *jurisdiction*).
(1918) 1918 Nag. 44 (45), *Madho Prasad* v. *Jaggansi* (Do.).
(1922) 1922 Pat. 77 (78), *Basawan Pandey* v. *Tilak Gope* (Held where provisions of sub-S. 3 are not complied with and prejudice is caused thereby, even then the jurisdiction of the Magistrate is affected).

Note 29.

(1) (1926) 1926 Lah. 205 (205, 206): 7 Lah. 134, *Atma Singh* v. *Harnam Singh*.
(2) (1926) 1926 Lah. 205 (205): 7 Lah. 134, *Atma Singh* v. *Harnam Singh*.
(3) (1926) 1926 Lah. 205 (206): 7 Lah. 134, *Atma Singh* v. *Harnam Singh*.
(4) (1933) 1933 Lah. 409 (410): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.
(4-a) (1921) 1921 Lah. 205 (205), *Ram Ditta* v. *Dayal Mal*.
(4-b) (1925) 1925 Rang. 111 (112), *Mg Po Lon* v. *Mg. Ba On*.
(5) (1933) 1933 Lah. 409 (411): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.
(1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer*.
[But see (1918) 1918 Pat. 197 (198, 201), *Mewa Lal* v. *Emperor*.]
(6) (1925) 1925 Nag. 297 (298): 21 Nag. L. R. 191, *Dashrath* v. *Tarachand*.
(1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer*.
(7) (1925) 1925 Nag. 297 (298): 21 Nag. L. R. 191, *Dashrath* v. *Tarachand*.
(1933) 1933 Lah. 409 (411): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.
[But see (1905) 2 Cri. L. Jour. 13 (14) (Cal.), *Bhola Mahto* v. *Emperor*.]

S. 145, Notes 29—32

appointed under S. 146.[8] The various modes in which an attachment can be effected are indicated in S. 88, sub-S. (4), *ante*[9] but it has been held that apart from this power of the Magistrate to appoint a person to manage the property on his behalf, the Magistrate has no *jurisdiction* to appoint an interim receiver of the property in dispute.[10]

The custody of the Court during an attachment effected under this section enures for the benefit of such party as is found by the Magistrate to be in possession of the subject of dispute at the institution of the proceedings.[11] As to the effect of an attachment under S. 146, *see* Notes to S. 146, *infra*.

An order of attachment may, in case of emergency, be made at any time provided it is during the *pendency* of the proceedings. The Magistrate has no jurisdiction to pass an order of attachment *before* drawing up the preliminary order.[12]

Where a party is dispossessed by an order of attachment under this section, he cannot file a summary suit under S. 9 of the Specific Relief Act for recovery of possession, as the dispossession is *not* "otherwise in due course of law" within the meaning of that section.[13]

30. **Appointment of a receiver.**—*See* Note 29, *supra*.

31. **"Crops or other produce subject to speedy and natural decay"—Sub-S. (8).**—The word "produce" is not necessarily confined to what is grown from the ground. It refers also to finished articles or semi-finished articles made from raw material and hence molasses being the produce of the factory can be sold, under the provisions of sub-S. (8), if subject to natural and speedy decay.[1]

32. **Procedure at the inquiry.**—The procedure to be adopted in the enquiry under this section is prescribed by the section itself.[1] It is analogous to, though distinct from, the procedure adopted in the trial of summons cases.[2] *See* S. 244, *infra*.

The witnesses should be examined in chief, cross-examined and re-examined; it is not proper to allow one party to examine all his witnesses in chief and postpone the cross-examination until all the other witnesses are

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(8) (1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer*.
(1912) 13 Cri. L. Jour. 295 (295) (Mad.), *Srinivasa Pillai* v. *Sathayappa Pillai*.
(1933) 1933 Lah. 409 (411): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.

(9) [See also (1933) 1933 Lah. 409 (411): 14 Lah. 615, *Prem Kaur* v. *Benarsi Das*.]

(10) (1929) 1929 Lah. 223 (224): 10 Lah. 800, *Diwan Chand* v. *Emperor*.
(1910) 11 Cri. L. Jour. 536 (536) (Mad.), *Subhdramma* v. *Satyam Swami*.
(1933) 1933 Mad. W. N. 917 (918), *Ramakrishna Pillai* v. *Narayanan Chettiar*.
[See also (1918) 1918 Pat. 197 (198, 201), *Mewa Lal* v. *Emperor*.

(11) (1926) 1926 Cal. 782 (786), *Abinash Charan Chowdury* v. *Tarini Charan Chowdhury*.
(1890) 17 Cal. 814 (819): 5 Sar. 528, *Khagendra Narain* v. *Matangini*.
(1932) 1932 Cal. 29 (31): 58 Cal. 1070, *Rajjabali Khan* v. *Faku Bibi* (Possession of receiver appointed under sub-S. 4 enures to the benefit of successful party).
(1912) 13 Cri. L. Jour. 23 (23) (Mad.), *Ismail Ghanni Ammal* v. *Katima Rowther* (Do.).

(12) (1921) 1921 Pat. 353 (353), *Jamuna Prasad Singh* v. *Mohan Koeri*.

(13) (1908) 7 Cal. L. Jour. 547 (548, 551-553), *Leo Moore* v. *Monoranjan Guha*.
(1918) 1918 Cal. 137 (137), *Azimuddin Ahmed* v. *Alauddin Bhimya*.
(1878) 1 Cal. L. R. 86 (87), In the matter of *Ran Soondari Debee*.

Note 31.

(1) (1930) 1930 Oudh 165 (166): 5 Luck 462, *Nihal Chand* v. *Jai Ram*.

Note 32.

(1) (1923) 1923 Pat. 53 (54), *Moti Singh* v. *Dhanukdhari Singh*.
(2) (1920) 1920 Pat. 520 (520), *Ram Prasad Sahu* v. *Emperor* (Though there is nothing in S. 145 to suggest which party should begin the case it is unusual for the second party to begin his evidence).

S. 145, Notes 32–34.

examined in chief.[3] The inquiry should be commenced quickly[4] and should go on from day to day until all the evidence is taken and arguments are heard. The order should be passed as soon as possible.[5]

The inquiry is necessarily a short and summary one and the words 'if possible' in sub-S. (4) show that it is unnecessary for the Magistrate to formulate a decision on the question of possession if it should present insuperable difficulties.[6] He should either proceed under S. 146, *infra* or under the provisions of S. 107 in such cases.[7]

33. Issue of summons to witnesses—Sub-S. (9).—The procedure to be followed is laid down in the section itself and the provisions of the Code relating to the procedure to be adopted in summons cases are not applicable to proceedings under this section.[1] It was held in cases decided before the amendment of 1923 that as S. 244, *infra* is not applicable to a proceeding under this section, the parties were not entitled to obtain processes to enforce attendance of their witnesses and that the Magistrate could issue summonses only under S. 540, *infra* if he considered their evidence essential.[2] It was however held in other cases (also decided before 1923) that the direction in sub-S. (4) to receive the evidence produced implies a duty on the Court to assist the parties in enforcing the attendance of their witnesses if it is shown that their evidence cannot be enforced without such assistance,[3] and that the Court should not arbitrarily refuse to issue process to witnesses cited by the parties.[4] Sub-S. (9) has been newly introduced by the Amending Act of 1923, on the lines of S. 244, sub-S. (2), *infra* to give effect to the latter view.[5]

34. Power to adjourn enquiry.—Having regard to the object of the proceedings under this section, namely to prevent a breach of the peace, an elaborate and protracted inquiry is not contemplated;[1] it is incumbent on the Magistrate to dispose of the case as quickly as possible with due regard to the rules of procedure prescribed by the section.[2] But as the enquiry is of a *quasi*

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(3) (1923) 1923 Pat. 53 (54), *Moti Singh* v. *Dhanukhdari Singh.*
(4) (1923) 1923 Pat. 53 (54), *Moti Singh* v. *Dhanukhdari Singh.*
(1934) 1934 Pat. 471 (472), *Gaya Prasad Singh* v. *Ram Saraber Saran Singh.*
(5) (1924) 1924 Pat. 689 (690), *Sastu Sahu* v. *Mattunni Thakur.*
(6) (1901) 25 Bom. 179 (184), In re *Pandurung Govind Pujari.*
(1926) 1926 Bom. 313 (313), *Mallappa Basappa Kurnahulla*, In re.
(1922) 23 Cri. L. Jour. 166 (167) (Lah.), *Atma Ram* v. *Allah Wasaya.*
(7) (1926) 1926 Bom. 313 (313), *Mallappa Basappa Kurnahulla*, In re.

Note 33.

(1) (1905) 32 Cal. 1093 (1097), *Tarapada Biswas* v. *Nurul Haq.*
(1903) 30 Cal. 508 (515), *Surjaya Kanta Acharjee* v. *Hem Chunder Chowdhry.*
[But see (1918) 1918 Pat. 301 (301), *Dhabari Mian* v. *Gorakh Prasad.*
(1885) 11 Cal. 762 (766), *Hurendra Narain* v. *Baruani.*
(1894) 21 Cal. 29 (33), *Ramchandra Das* v. *Monohur Roy.*]
(2) (1905) 2 Cri. L. Jour. 679 (684, 685): 32 Cal. 1093, *Tarapada Biswas* v. *Nural Haque Mia.*
(1911) 38 Cal. 24 (26), *Harendra Kumar Bose* v. *Girish Chandra Mitra.*
(1922) 1922 Pat. 226 (227), *Arjun Mahton* v. *Jugannath Singh.*
(1915) 16 Cri. L. Jour. 284 (284, 285): 1915 Mad. 1105, *Bulkis Bibi* v. *Nagoor Ganni Rowther.*
(3) (1903) 30 Cal. 508 (515), *Surjaya Kanta Acharjee* v. *Hem Chunder Chowdhry.*
[See (1930) 1930 All. 319 (319): 52 All. 91, *Chakrapan* v. *Emperor.*]
(4) (1894) 21 Cal. 29 (33), *Ram Chandra Das* v. *Monohur Roy.*
(1903) 30 Cal. 508 (515, 516), *Madhub Chandra Tanti* v. *Martin.*
(1885) 11 Cal. 762 (766), *Hurendro Narain Singh Chowdhry* v. *Bhobani Pre Baruani.*
(1872) 18 Suth. W. R. 64 (65), *Shamsunkar Mazoomdar* v. *Anundomyee Dassya.*
(1914) 1914 Cal. 753 (753), *Gaizuddi Howladar* v. *Amuddi Howladar.*
(5) "*We have added this sub-Section on the lines of S. 244 (2)*" *Report of the* JOINT COMMITTEE (1922).

Note 34.

(1) *See Note* 32, *ante.*
(2) (1923) 1923 Pat. 53 (54), *Moti Singh* v. *Bhanukdhari Singh.*

civil nature, the Magistrate has a discretion in *proper* cases to adjourn the enquiry to enable the parties to file written statements of their claims or to adduce evidence in support of their claims to possession.[3] *See* S. 344, *infra*. S. 145, Notes 34—37.

But the parties are not entitled to an adjournment under the provisions of S. 526, *infra*, as S. 526 has no application to proceedings under this section.[4]

See S. 526, *infra*.

35. Perusal of statements.—A written statement is not *evidence* by itself, and the Magistrate should take evidence in *proof* of such a statement.[1] Even where one of the parties is absent and the other party files a statement alleging that he is in possession, the Magistrate cannot make an order in favour of the second party merely on the strength of that statement without taking evidence in support thereof.[2]

36. "Hear the parties".—Sub-S. (4) casts upon the Magistrate the obligation of *hearing* the parties, he should not debar a party from exercising his right of audience[1] on the ground that there is no documentary evidence in the case[2] or that such party has not filed any written statement in support of his claim.[3]

37. "Receive all such evidence as may be produced".—It is *obligatory* on the Magistrate to receive all such evidence as may be produced by the parties to prove the fact of possession.[1] He has however a discretion to curtail the number of witnesses to prevent the ends of justice being defeated or delayed but

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(1918) 1918 Cal. 158 (158), *Ramesh Chandra Sen* v. *Aijuddi Sheikh*.
(1904) 1 Cri. L. Jour. 631 (632) (Cal.), *Gobind Chandra Chakrabutty* v. *Nibaran Chandra Bhuttacharjee* (If the discretion in refusing time has been properly exercised it will not be interfered with).
(1913) 14 Cri. L. Jour. 303 (303) (Cal.), *Piziruddin Mollah* v. *Totajuessa Bibi* (Do.).
(1909) 9 Cri. L. Jour. 35 (35, 36) (Cal.), *Abdul Rauf Mia* v. *Rahomuddin Bhuia* (The Magistrate cannot adjourn proceedings *sine die*).
[See however (1910) 11 Cri. L. Jour. 7 (Cal.), *Guru Das Hazra* v. *Weatheral*.]
(3) (1925) 1925 Cal. 263 (263), *Bande Ali* v. *Rajaullah*.
(1913) 14 Cri. L. Jour. 40 (Cal.), *Haripada Mandal* v. *Sanyasi Charan Biswas* (It is not obligatory on him to do so).
(1921) 1921 Jour. 32 (2), *Biseambhar Roy* v. *Amiuddin* (Magistrate wrongly exercised discretion in refusing an adjournment for production of material documents).
(1932) 1932 Sind 145 (147): 26 S. L. R. 353, *Natha Khan* v. *Emperor* (But where such a document is not material the discretion of the Magistrate was not interfered with).
(4) (1914) 1914 Cal. 557 (557), *Lakhan Chandra Roy* v. *Yakub Mondal*.

Note 35.

(1) (1904) 8 Cal. W. N. 642 (643), *Gobind Chandra Chakrabutty* v. *Nibaran Chandra Bhuttacharji*.
See also the cases in Foot Note 2.
(2) (1901) 5 Cal. W. N. 71 (72), *Kefatullay* v. *Feruzuddin Miah*.
(1908) 8 Cri. L. Jour. 27 (28) (Cal.), *Nojem Mirdha* v. *Jamalali Khalifa*.
(1923) 1923 Pat. 369 (370), *Ramjhria* v. *Piar Koeri*.

Note 36.

(1) (1918) 1918 Pat. 301 (301), *Dhabari* v. *Gorak Prasad*.
(1920) 1920 Pat. 383 (383), *Ghulam Sibtain* v. *Khaniz Khatoon*.
(1933) 1933 Lah. 145 (146), *Turab Ali Khan* v. *Shromani Gurdwara Parbandhak Committee*.
(2) (1917) 1917 Pat. 264 (266), *Jatan Singh* v. *Dukhia Singh*.
(3) (1923) 1923 Pat. 369 (370), *Ramjharia* v. *Piar Koeri*.

Note 37.

(1) (1917) 18 Cri. L. Jour. 1024 (1025): 1918 Cal. 901, *Yar Mohammad Saha* v. *Hayat Mahommed Saha*.
(1917) 18 Cri. L. Jour. 36 (37): 1916 Lah. 378, *Tara Chand* v. *Behari Lal*.
(1929) 1929 Mad. 847 (848), *Chinnappareddigari Sidda Reddi* v. *Mala Dasari Adigadu*.
(1911) 15 Cal. W. N. cxliv, *Gaisudden* v. *Mohammed*.
(1870) 6 Mad. H. C. App. 4 (4), *High Court Proceedings* 28th *November*, 1870.
(1907) 6 Cri. L. Jour. 452 (454): 34 Cal. 840, *Kolha Koer* v. *Muneswar Tevari*.
(1904) 1 Cri. L. Jour. 774 (774): 31 Cal. 685, *Manmatha Nath Mitter* v. *Baroda Prasad Roy Chowdhry*.
(1934) 1934 Pat. 471 (472), *Gaya Prasad Singh* v. *Ram Sarober Saran Singh*.
(1866) 5 Suth. W. R. Cri. 79 (79), *Maharaja Gobind Nath Rai* v. *Rajah Amind Nauth Rai* (Evidence cannot be rejected merely because it is oral evidence).
(1918) 1918 Cal. 94 (95), *Sakhayat Ali* v. *Alhadi Hazi* (Do.).
(1918) 1918 Nag. 136 (136, 137), *Jaiwanti* v. *Ramrao*.
(1918) 1918 Nag. 138 (138, 139), *Pilaji* v. *Darya*.

S. 145, Notes 37—38.

such a discretion should be exercised not arbitrarily[2] but with due care and caution and with a careful regard to the circumstances of the case.[3] Thus the fact that there was a local inspection[4] or that there were documentary evidence in the case[5] or that the police report contained some admissions by the parties,[6] cannot justify a Magistrate in refusing to receive oral evidence produced by the parties. But the mere rejection of a document produced by the parties, or the omission to receive certain evidence adduced by the parties is not sufficient to vitiate the findings arrived at by the Magistrate unless such evidence is material and the parties are prejudiced by such rejection or omission.[7]

38. "Consider the effect of such evidence and take such further evidence as he thinks necessary".—The Magistrate should come to a decision only on evidence adduced before him; he cannot decide the question of the actual possession of the property in dispute *on no evidence at all*[1] or merely on the written statements of the parties[2] or on his personal impressions[3] or on the report of a local inspection[4] or on a police report[5] or on statements of the parties not made on oath.[6] In such cases and in cases where the evidence before him is not sufficient to enable him to come to a conclusion, he should himself call for further evidence and exercise the power of summoning witnesses. (S. 540, *infra*), to enable him to decide the question of possession[7] even though he may act *suo motu*.[8] The Magistrate is bound

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(1915) 16 Cri. L. Jour. 789 (789): 1916 Mad. 917, *Velayuda Kone* v. *Narayana Kone*.

(2) (1921) 1921 Pat. 308 (310), *Biswanath Mahapatra* v. *Shivanand Saraswathi* (If the refusal to examine witnesses has prejudiced the parties, the proceedings are vitiated).

(1917) 1917 Mad. 594 (596), *Marudanayam Pillai* v. *Moshannamanao Rowthen*.

(3) (1906) 3 Cri. L. Jour. 423 (425) (Cal.), *Samir Sheikh* v. *Jahed Sheikh*.

(1924) 1924 Pat. 534 (536, 537), *Mr. Wahid-un-nissa* v. *Pichit Lal Misir*.

(4) (1919) 1919 Cal. 67 (67): 46 Cal. 1056, *Sahadat Khan* v. *Taijaddi Sheikh*.

(1920) 1920 Mad. 566 (567), *Sree Manavedava Raju* v. *Parapravan Naidu*.

(1921) 1921 Pat. 176 (178), *Khubi Singh* v. *Darbari Mahton*.

(1868) 9 Suth. W. R. 64 (65), *Mussamat Anundee Koer* v. *Ranee Soonact Koer*.

(1906) 3 Cri. L. Jour. 193 (194) (Cal.), *Lal Behari Saha* v. *Bejoy Sankar Sikdar*.

(5) (1922) 1922 Lah. 348 (349): 2 Lah. 372, *Mt. Malan* v. *Mekhan Singh*.

(1904) 1 Cri. L. Jour. 717 (718) (Cal.), *Lowsen Santal* v. *Kali Charan Santal*.

(1920) 1920 Mad. 566 (567), *Sreemanavedava Raju* v. *Parapravan Naidu*.

(6) (1909) 10 Cri. L. Jour. 6 (Mad.), *Pasupathy Mudali* v. *Subramaniya Gurukkal*.

(7) (1921) 1921 Pat. 483 (484), *Hanuman Singh* v. *Sheo Chandra Singh*.

(1917) 1917 Pat. 145 (146), *Paitali Singh* v. *Ganapathy Kuer*.

[See (1921) 1921 Pat. 308 (310), *Biswanath Mahapatra* v. *Shivanand Saraswathi*.]

Note 38.

(1) (1924) 1924 Cal. 544 (544), *Hatemali Chaprasi* v. *Osimaddy*.

(1917) 22 Cal. W. N. xxxix, *Girindra Nath* v. *Nurjan*.

(1922) 1922 Mad. 437 (438), *Palani Goundan* v. *Kulandai Velu*.

(1910) 11 Cri. L. Jour. 90 (90) (Cal.), *Asfandyar Khan* v. *Irshad Khan*.

(1904) 1 Cri. L. Jour. 716 (717) (Cal.), *Jogendra Nath Rai* v. *Abu Shaikh* (Magistrate cannot pass final orders *merely* on the evidence of a person not called by either party).

(1916) 1916 Lah. 368 (369): 1916 P. R. 4, *Fatish Sher Khan* v. *Emperor* (Do.).

(1882) 1882 All. W. N. 18 (18), *Govind* v. *Jageshar* (No order as to possession can be passed without taking evidence).

(2) *See note* 35 *supra*.

(3) (1922) 1922 Oudh 256 (256): 25 Oudh Cas. 148, *Mirza Raza Hussain* v. *Mt. Mehadi Hasan Mirza* (Importing his personal knowledge of evidence recorded in mutation proceedings—Illegal).

(4) (1871) 16 Suth. W. R. 13 (13, 14), *The Government* v. *Kali Chundro Shah*.

(1907) 6 Cri. L. Jour. 384 (384, 385): 31 Mad. 82, *Arumuga Goundan* v. *Venkatasubbier* (Magistrate cannot act on evidence recorded by a Subordinate Magistrate at a local inspection).

(5) (1927) 1927 Cal. 327 (329), *Rani Shashi Mukhi Chaudhurani* v. *Sarat Chandra Chakravarty*.

(1920) 1920 Pat. 483 (485), *Kulbans Narain Singh* v. *Ramsidh Singh*.

(1906) 10 Cal. W. N. cii, *Denonath Talapatra* v. *Taroo*.

(6) (1871) 16 Suth. W. R. 13 (13, 14), *The Government* v. *Kali Chandra Shah*.

(7) (1924) 1924 Pat. 509 (511), *Bhulan Raut* v. *Kumari Rai* (But if on the evidence produced he is satisfied as to who is the party in actual possession he need not take further evidence).

(1914) 1914 Cal. 812 (812), *Juthan Singh* v. *Ram Narain Singh*.

(8) (1914) 1914 Cal. 812 (812), *Juthan Singh* v. *Ram Narain Singh*.

even in cases where one party is absent, to satisfy himself by examining the *evidence* adduced by the other party that the other party is entitled to an order in his favour.[9] But where one of the parties admits the possession of the other, the Magistrate is entitled to act on such admission; it is not necessary that he should call for any fresh evidence.[10]

39. Procedure in recording evidence.—The evidence of witnesses in proceedings under this chapter should be recorded in the manner provided by Ss. 356, 357 and 359, *infra*.[1] It is not sufficient to record only a memorandum of such evidence. (S. 355.) Irregularity, in recording the evidence will not, however, vitiate the proceedings unless such irregularity has in *fact* occasioned a failure of justice and has prejudiced the parties.[2] The Magistrate is bound to record the evidence of the witnesses *himself* and cannot delegate the duty to a subordinate Magistrate.[3] An order passed by a Magistrate on the evidence recorded by a subordinate Magistrate is one passed without jurisdiction.[4]

The parties to a proceeding under this section are not in the position of 'accused persons'.[5] Therefore where a Magistrate has recorded the evidence of witnesses in part and is succeeded by another Magistrate, the latter should record the rest of the evidence and pass final orders under S. 350, *infra* and the parties have no right to insist on a *de novo* inquiry under the proviso to S. 350.[6] (*See* S. 350, *infra*). Similarly the provisions of S. 360, apply to proceedings under this section subject to the qualification that there is no accused whose presence at the reading of the evidence is necessary.[7] *See* S. 360, *infra*.

40. Local inquiry and Local inspection.—Where the Magistrate finds it necessary to understand the topography of the property in dispute or to ascertain its features to enable him to appreciate the evidence offered in Court he may either:

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(9) (1902) 6 Cal. W. N. 925 (925), *Ramakrishna* v. *Aghore*.
(1929) 1929 Mad. 847 (848), *Chinnappareddigari* v. *Desari Adigadu*.
(1902) 6 Cal. W. N. 925 (925), *Ramakrishna* v. *Aghore*.

(10) (1903) 7 Cal. W. N. 351 (352), *Huro Mohan Sardar* v. *Gobind Sahu*.
(1911) 12 Cri. L. Jour. 47 (48) (Mad.), *Gangadharam Iyer* v. *Sankarappa Naidu*.

Note 39.

(1) (1873) 20 Suth. W. R. 14 (14), *Khettromony* v. *Sreenath*.
(1925) 1925 Oudh 286 (286), *Choudhuri Mohammad Ayab* v. *Chaudhuri Sarfaraz Ahmed*.
[See (1915) 16 Cri. L. Jour. 192 (192): 42 Cal. 381: 1915 Cal. 664, *Krista Mondal Sadananda Mondal* v. *Krista Mondal*.]

(2) (1931) 1931 All. 2 (3); *Sankatha Mirir* v. *Bishwanath*.
(1931) 1931 All. 3 (6): 53 All. 172, *Kallu* v. *Bashiruddin*.
(1928) 1928 Oudh 112 (112), *Sumaran Singh* v. *Emperor*.
(1932) 1932 Sind 145 (146): 26 S. L. R. 353, *Natho Khan* v. *Emperor*.

(3) (1932) 1932 Mad. 368 (369), *Gadagamma Venkatapathi* v. *Baliarsimhurni Sanyasiraju*.
(1907) 6 Cri. L. Jour. 384 (384, 385): 31 Mad. 82, *Arumuga Goundan* v. *Venkatasubba Iyer*.

(4) (1932) 1932 Mad. 368 (369), *Gadagamma Venkatapathi* v. *Baliarsimhurni Sanyasiraju*.
(1868-69) 4 Mad. H. C. App. 20 (20), *High Court Proceedings*, *16th November*, 1875, *No.* 2820.

(5) (1925) 1925 Oudh 286 (286), *Choudhuri Mohammad Ayub* v. *Chaudhury Sarfraz Ahmed*.

(6) (1924) 1924 Pat. 786 (786), *Sondi Singh* v. *Govind Singh*.
(1910) 11 Cri L. Jour. 440 (440): 37 Cal. 812, *Anun Sheikh* v. *Jitu Sheikh*.
(1923) 1923 Cal. 483 (484), *Syed Sadek Reza* v. *Sachindra Nath Roy*.
(1909) 9 Cri. L. Jour. 278 (280) (Cal.), *Ali Mohamed Khan* v. *Tarak Chandra Banerji*.
[See (1875) 23 Suth. W. R. 62 (62), *Guru Churn Sen* v. *Kali Nath Das Biswas*.]

(7) (1925) 1925 Cal. 822 (831): 52 Cal. 721, *Narendra Chandra Rudra Pal* v. *Subarali Bhuiya*.
(1922) 1922 Pat. 371 (372), *Ram Narain Singh* v. *Dhonrai Gope*.
[But see (1925) 1925 Cal. 678 (678, 679): 52 Cal. 437, *Aswini Kumar Dutt* v. *Putti*.]

S. 145, Notes 40—41.

(*i*) direct a local inquiry—*See* S. 148, *infra*.

or

(*ii*) make a local inspection of the property—*See* S. 539-B, *infra*.[1]

He has no power however to direct a Subordinate Magistrate to inquire into the question of *possession* and to make a report thereon.[2]

As to local inquiry by a Subordinate Magistrate *see* S. 148, *infra*.

The power of holding a local *inspection* should be used very sparingly and in exceptional cases and that only for the purpose of understanding and appreciating the *evidence* adduced in the case.[3] The reason is that the party against whom the result of the local inspection is used is put to a considerable disadvantage in having to remove any *wrong* impression which the Magistrate may have formed at such inspection.

The Magistrate should hold the local inspection only after due notice to the parties[4] and should make a record of any relevant facts observed at such inspection.[5] But a failure to make such a memorandum is not by itself sufficient to vitiate the proceedings, unless the parties have been prejudiced by such omission.[6]

41. Possession at the date of the preliminary order.—The Magistrate has to decide on inquiry and give a finding as to whether any and which of the parties was in possession of the property in dispute *at the date of the preliminary order*.[1] The only exception to this rule is the case where one of the parties has been forcibly and wrongfully dispossessed within two months of the date of the order in which case the Magistrate has to *treat* such person as having been in possession at the date of the preliminary order, under the proviso to sub-section.[4] *See* Notes 43, 47, *infra*). Except as provided by the proviso abovementioned, the Magistrate is not concerned with previous possession[2] or the question as to how the possession was obtained, though he may take these into consideration in deciding the question of possession at the date of the preliminary order.[3] In

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Note 40.

(1) (1922) 1922 Pat. 249 (251), *Ram Ratan Kuar* v. *Tarak Nath Bhattacharji*.
(1923) 1923 Pat. 31 (32), *Lachmi Narain Agarwala* v. *Mukhram Marwari*.
(1923) 1923 Pat. 366 (368), *Abdul Hamid* v. *Hasan Raza*.

(2) (1908) 8 Cri. L. Jour. 150 (150) (Mad.), In re *Ramaswamy Nayakar*.
(1879) 3 Cal. L. R. 134 (135, 136), In the matter of *Baikunt Kumar*.
(1932) 1932 Mad. 368 (369), *Gadagamma Venkaiapathi* v. *Baliarsimhurmi Sanyasiraju*.
(1912) 13 Cri. L. Jour. 777 (778) (All.), *Pitambar Lal* v. *Sarada Prasad*.

(3) (1923) 1923 Pat. 366 (368), *Abdul Hamid* v. *Hasan Raza*.
1922) 1922 Pat. 249 (251), *Mt. Ram Ratan Kuar* v. *Tarakh Nath Bhattacharji*.

(4) (1920) 1920 Pat. 749 (749), *Ram Sahai Singh* v. *Dwarka Singh*.

(5) (1922) 1922 Pat. 294 (294), *Ramsundar* v. *Kesho Prasad Singh*.

(6) (1925) 1925 Cal. 1246 (1247): 53 Cal. 46, *Forbes* v. *Muhammad Ali Haidar Khan*.

Note 41.

(1) (1932) 1932 Sind 145 (146): 26 S. L. R. 353, *Natho Khan* v. *Emperor*.
(1926) 1926 Nag. 371 (371, 372), *Nago* v. *Atmaram*.
(1906) 10 Cal. W. N. xlvii, *Dhorani* v. *Monmohan*.
(1891) 13 All. 362 (363), In re *Jaillal*.
(1895) 18 Mad. 41 (42), *Agra Bank* v. *Luchman*.
(1919) 1919 Mad. 812 (813), *Sankara Kylasa Mudaliar* v. *Kuthalinga Mudaliar*.
(1909) 9 Cri. L. Jour. 505 (506) (Mad.), *Mundlamuny Ellamandu* v. *Gadipudi Chinnah Venkiah*.
(1915) 26 Ind. Cas. 156 (157): 1915 Mad. 748, *Vaithinathier* v. *Suppalu Ammal*.
(1907) 5 Cri. L. Jour. 91 (92, 93): 29 Mad. 561, *Raja of Karvetnagar* v. *Lodd Govinda Dass Krishna Dass*.
(1926) 1926 Nag. 371 (371, 372), *Nago* v. *Atamaram*.

See also cases under Foot-note (9).

(2) (1891) 13 All. 362 (363), In the matter of *Jaillal* (Decision or possession upon evidence taken six months previously by another officer, illegal).
(1909) 9 Cri. L. Jour. 505 (506) (Mad.), *Mundlamuny Ellamandu* v. *Gadipudi Chinnah Venkiah* (Where Magistrate found possession one year earlier—Held, order was bad).
(1901) 5 Cal. W. N. 900 (903, 904), *Beni Singh* v. *Umrao Mahto* (The Magistrate cannot in a proceeding subsequently instituted find possession on the date of the earlier proceedings).

(3) (1915) 16 Cri. L. Jour. 239 (240): 1915 Mad. 1176, *Thumbalabed Hampanna* v. *Parsi Gangamma*.

S. 145, Note 41.

arriving at a decision, he should have due regard to the nature of the property and the mode in which acts of possession may be exercised over the property.[4] A single act of trespass or a stealthy act of ploughing will not constitute dispossession of the party who is otherwise in possession thereof.[5]

Where the Magistrate passed an order first under S. 144 restraining both parties from exercising acts of possession over the property and subsequently instituted proceedings under this section in respect thereof, it was held that the Magistrate was right in finding possession on the date of the preliminary order with the party who was in possession at the date of the order under S. 144, as in spite of the order under S. 144, the possession of such party should be deemed to have continued in law though he was restrained for the purpose of prevention of a breach of the peace from exercising *acts of possession* for a particular period.[6]

The Magistrate has no power to decide who should be in possession of the property *in future* without reference to possession at the date of the preliminary order.[7] Thus where the parties referred the question of possession to certain arbitrators and the arbitrators without deciding the question of possession on the date of the order passed an award stating who should be in possession in future it was held that the Magistrate should not act upon the award of the arbitrators regarding future possession and that the proper course for him to adopt would be to drop the proceedings on the settlement of the dispute under sub-S. 5.[8]

The Magistrate is not concerned with possession on the date of the *inquiry*[9] as no change of possession pending the proceedings is contemplated by the section.[10]

Where the Magistrate on inquiry decided the question of possession on the date of the preliminary order but omitted to mention the words "on the date of the preliminary order" in his final order, it was held that the omission was only an irregularity curable under S. 537, *infra*.[11]

Where the subject of dispute is a very considerable area of land, and the contention of both the parties is that they hold possession of this area through ryots, the question which the Magistrate has to solve with regard to possession is not the simple question of who is in possession of the whole land but who is in possession of the constituent portions of the land piece by piece by the hands of his ryots.[12]

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(4) (1889) 16 Cal. 281 (286), *Jagat Kishore* v. *Khajah Ashanallah*.

(5) (1889) 16 Cal. 281 (286), *Jagat Kishore* v. *Khajah Ashanallah*.

(6) (1900) 27 Cal. 785 (788, 789), *Joyanti Kumar Mookerjee* v. *Middleton*.

(7) (1929) 1929 Nag. 285 (286), *Gangadhar* v. *Balakrishna*.

(8) (1924) 1924 Pat. 589 (591): 3 Pat. 288, *Uttim Singh* v. *Jodhan Rai*.
(1929) 1929 Nag. 285 (287, 288), *Gangadhar* v. *Balakrishna*.

(9) (1897) 1897 Pun. Re. No. 5, *Gauher Khan*, In re.
(1873) 20 Suth. W. R. 51 (52), *Prithiram Chowdhry* v. *F. T. Woodroffe*.
[But see (1879) 2 Weir 98 (99), *Chokkalingam* v. *Ammalalchi*.
(1891) 15 Bom. 152 (155), In the matter of *Hehapa and Shivaganagava*.
(1886) 12 Cal. 521 (521), *Chunder Kumar Poddar* v. *Chundra Khanta Ghose*.]

(10) (1886) 12 Cal. 539 (541, 542), *Krishna Dhone Dutt* v. *Troilokia Nath Biswas*.
(1885) 11 Cal. 365 (372, 373), *Ambler* v. *Pushong*.

(11) (1917) 18 Cri. L. Jour. 1024 (1027): 1918 Cal. 901, *Yar Mohammad Saha* v. *Hayat Mohammad Saha*.

(12) (1874) 21 Suth. W. R. 55 (55), *Mudhoosoodhun Shaha* v. *Bejoy Govind Chowdhary*.

S. 145, Notes 42—43.

42. Reference to arbitration.—As has been seen already the section directs that the Magistrate should himself receive all the evidence produced by the parties, and come to a conclusion on the evidence. Hence it is not proper to delegate the inquiry into possession, even with the consent of parties to arbitrators,[1] or to a Subordinate Magistrate.[2] Where however, the matter has been compromised, then there is no longer any "dispute likely to cause a breach of the peace" and the proper course for the Magistrate to adopt in such cases is to cancel the preliminary order and stay all further proceedings thereon under sub-S. (5).[3] Even where the Magistrate passes an order in terms of the compromise, it should in reality be treated as an order under sub-S. 5[4] and *not* as a final order under sub-S. 6. If it purports to be a final order, such an order is without *jurisdiction*, and the Magistrate is competent to institute fresh proceedings in respect of the subject of dispute.[5] But where the parties refer the question as to who was in possession on the date of the preliminary order to arbitration, the Magistrate may accept the findings of the arbitrators as *evidence* of possession and pass an order under sub-S. (6) on the basis of such evidence.[6]

43. Question of title.—The words "without reference to the merits of the claims of any such parties to a right to possess" in sub-S. (4) show that the Magistrate should confine himself only to the question of *actual possession*, and has no power to inquire into and decide on the *rights* of the parties to possession of the property.[1] But where he finds on such inquiry that the

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Note 42.

(1) (1921) 1921 Cal. 637 (638), *Jamuna Das Kijriwala* v. *Hanuman Baksh Marwari*.
(1917) 1917 Pat. 191 (192, 193), *Hamidul Haq* v. *Adalt Hossain*.
(1917) 1917 Pat. 624 (624, 625), *Hari Prasad Tewari* v. *Sewak Das*.
(1905) 2 Cri. L. Jour. 347 (349): 32 Cal. 552, *Banwari Lal Mukhopadhya* v. *Hriday Chakravarti*.
(2) See Note 40, Foot-note (2).
(3) (1925) 1925 Oudh 190 (193), *Abadi Begam* v. *Mirza Ahmed Mirza Beg*.
(1921) 1921 Cal. 637 (638), *Jamunadas Kijriwala* v. *Hanuman Baksh Marwari*.
(4) (1911) 12 Cri. L. Jour. 32 (33) (Cal.), *Sadhu Biswas* v. *Muhammad Ali Biswas*.
(5) (1911) 12 Cri. L. Jour. 32 (33) (Cal.), *Sadhu Biswas* v. *Muhammad Ali Biswas*.
[But see (1923) 1923 Lah. 46 (47), *Bava Bansigir* v. *Bava Jamnagir* (The decision cannot be supported. After the Razi there is no dispute and the Magistrate should have dropped the proceedings. Held, in this decision that a second proceeding should be treated as a continuance of the first).]
(6) (1903) 7 Cal. W. N. 461 (462), *Taramoni Chaudhurani* v. *Gyanendra Mohan*.
(1918) 1918 Pat. 383 (384), *Haldhar Singh* v. *Bulaki Singh*.
(1902) 6 Cal. W. N. cix (cx), *Janaki* v. *Kalika Miser*.

Note 43.

(1) (1919) 1919 Cal. 930 (932-934), *Sajuddi Mandal* v. *Cork*.
(1919) 1919 Nag. 98 (99), *Shankar* v. *Bhayaji*.
(1932) 1932 Sind 145 (147): 26 S. L. R. 353, *Natho Khan* v. *Emperor*.
(1907) 6 Cri. L. Jour. 192 (193) (Cal.), *Ram Dyal* v. *Kedarnath*.
(1905) 1 Cal. L. Jour. 30 (n), *Taripkhalasi* v. *Badruddi Mandal*.
(1920) 1920 Pat. 499 (499), *Ram Saroop Chowdhry* v. *Mussamat Darsano Koer*.
(1908) 8 Cri. L. Jour. 28 (30): 35 Cal. 795, *Kochi Fakir* v. *Romesh Chandra Biswas*.
(1857-59) 7 Moore I. A. 283 (309), *Maharajah Maheshur Sing* v. *Government of India*.
(1917) 1917 Pat. 606 (608), *Ghasi Ram* v. *Amrit Mal*.
S. C. Oudh 127, In the matter of *Thakur Fazil Ali Khan*.
(1908) 7 Cri. L. Jour. 336 (337) (Cal.), *Arju Mea* v. *Atman Mea*.
(1926) 27 Cri. L. Jour. 44 (45) (Oudh), *Abdul Wahab* v. *Emperor*.
(1914) 1914 Oudh 31 (31), *Inayat Ullah* v. *Anant Hussain*.
(1926) 1926 Bom. 313 (313), In re *Mallappa Basappa Kurnahulla*.
(1925) 1925 Oudh 149 (149), *Emperor* v. *Mt. Man Kunwar*.
(1927) 1927 All. 476 (478), *Ata Hussain* v. *Latif Hussain*.
(1905) 2 Cri. L. Jour. 552 (554): 32 Cal. 602, *Prayag Marton* v. *Gobind Marton*.
(1908) 5 All. L. Jour. 284 (284), *Kochai Fakir* v. *Ramesh Chandra Biswas*.
(1871) 3 N.-W. P. 171 (171), *Doorjun Singh* v. *Shibba*.
(1869) 6 Bom. H. C. Cri. 30 (32), *Dastur Husang Jamasji* v. *R. L. Fell*.
(1867) 4 Bom. H. C. R. 153 (154), *Bapuji Jagjivan* v. *Magistrate of Kheda*.
(1925) 1925 Pat. 33 (34): 3 Pat. 809, *H. V. Law & Co.* v. *Manindra Chandra Nandy*.
(1923) 1923 Rang. 211 (211): 1 Rang. 53, *Nga Po Tin* v. *Nga Po Sung*.

evidence as to possession adduced by the parties is equally balanced, and that he is unable to conclude from such evidence, which of the parties was in possession, he is entitled to inquire into the rights of the parties and to corroborate the evidence as to possession, by the *presumption* that possession follows title.[2] But such a presumption cannot be applied to cases where the evidence as to possession on both sides is equally unworthy of credit.[3] In such a case the proper course for the Magistrate to adopt would be to pass an order under S. 146, *infra*.[4]

S. 145, Notes 43—44.

44. Effect of prior proceedings on the inquiry into possession.—It has been seen already in Note 11, *ante* that the mere fact that a decree had been passed by a Civil Court awarding possession of the property in dispute or that possession of the property was delivered by that Court to one of the parties will not affect the *jurisdiction* of the Court to institute proceedings under this section. The question, however, arises as to what is the effect of such decree or delivery of possession on the inquiry into the question of possession by the Magistrate. It was held in the undermentioned cases[1] that it was the duty of the Magistrate in such cases to *find* possession in accordance with the Civil

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(1872) 7 Suth. W. R. 3 (4, 5), *Koomar Poresh* v. *Messrs. Watson & Co.*
(1928) 1928 Notes 61 (*e*), *Hazari Gope* v. *Mt. Bibi Amna.*
(1872) 17 Suth. W. R. 59 (59), *Government* v. *Sreeputteero.*
(1867) 7 Suth. W. R. Cr. 26 (26), *Queen* v. *Mussammat Imam Bandee.*
(1926) 1926 Jour. 153 (2), *Abdul Wahab* v. *Emperor.*
(1926) 1926 Jour. 183 (2), *Subda Santal* v. *Kushal Santal.*
(1920) 1920 Pat. 520 (521), *Ram Prasad Sahu* v. *Emperor.*
(1864) Suth. W. R. Cri. Gap. No. 2 (2), *Grijamonee* v. *Ishur Chunder.*
(1893-1900) 1893-1900 Low. Bur. Rul. 148 (150), *Maung Po Su* v. *Maung Pan Aung.*
(1913) 14 Cri. L. Jour. 138 (139) (Lah.), *Bogha* v. *Emperor.*
(1932) 1932 Mad. 368 (369), *Venkatapathi* v. *Sanyasiraju.*
(1924) 1924 Lah. 678 (679), *Bhagwandas* v. *Maula Dad Khan.*
(1935) 1935 Pat. 83 (85), *Gursahai Singh* v. *Meghn Mahton.*
(2) (1923) 1923 Cal. 303 (304), *Akshoy Kumar Bhattacharjia* v. *Brojeswar Ghattak.*
(1922) 1922 Mad. 188 (189), *Adaikkan* v. *Nallakaruppan.*
(1918) 1918 Pat. 650 (651), *Subh Narayan* v. *Lachmi Narayan Kuar.*
(1918) 1918 Pat. 658 (659), *Dwarka Rai* v. *Nathuni Koeri.*
(1919) 1919 Pat. 132 (133), *Udit Narayan Lal* v. *Sunderman Jha* (But refusal to consider documents of title in such cases will not amount to refusal of jurisdiction).
(1887) 14 Cal. 169 (172, 173), *Raja Babu* v. *Muddun Mokhun Lall* (The mere fact that the Magistrate considered and discussed documents of title not sufficient to invalidate his decision provided he had other materials on which to decide question of possession).
(1934) 1934 Cal. 95 (96), *Devandra Nath Khan* v. *Dhanmoni Dassi.*
(1920) 1920 Cal. 889 (889), *Romesh Chandra Sarkar* v. *Mohin Chandra Guha.*
(3) (1923) 1923 Cal. 303 (304), *Akshoy Kumar Bhattacharja* v. *Brojeswar Ghattak.*
(1910) 11 Cri. L. Jour. 353 (353) (Mad.), *Pananganti Parthasarathy* v. *Venkataswamy Reddi.*
(1916) 28 Ind. Cas. 477 (477, 478): 1916 Cal. 253, *Lala Singh* v. *Latif Hossein.*
(1923) 1923 Cal. 228 (233), *Promode Kumar Roy* v. *Madan Mohan Saha Paramnaik.*
(1900) 27 Cal. 25 (27), *Thakur Singh* v. *Bhogeraj.*
(4) (1923) 1923 Cal. 303 (305), *Akshoy Kumar Bhattacharja* v. *Brojeswar Ghattak.*

Note 44.

(1) (1905) 2 Cri. L. Jour. 761 (762): 32 Cal. 796, *Gulraj Marwari* v. *Sheik Bhattoo.*
(1866) 6 Suth. W. R. Cr. 10 (10, 11), *Shama Soondery Debbia* v. *Jardine Skinner & Co.*
(1902) 6 Cal. W. N. 38 (39): 29 Cal. 208, *Kunja Behari Das* v. *Khetro Pal Singh.*
(1880) 5 Cal. L. R. 200 (206, 208), In the matter of *Chatraput Singh.*
(1922) 1922 Pat. 197 (199), *Ram Krishna Singh* v. *Emperor.*
(1920) 1920 Pat. 483 (485), *Kubbans Narain Singh* v. *Ramsidh Singh.* (If there was no adjudication on the question of possession the action of the Magistrate is not without jurisdiction).
(1916) 17 Cri. L. Jour. 182 (183): 1916 Cal. 339, *Atul Hazara* v. *Uma Charan.*
(1905) 2 Cri. L. Jour. 236 (237) (All.), *Baldeo Bakhsh Singh* v. *Raj Ballam Singh* (But where decree deals with rights and not with possession of the property, the order of the Magistrate is not without jurisdiction).
(1905) 2 Cal. L. Jour. 147 (149), *Kedar Prasanna Lahiri* v. *Lalit Mandal* (Previous orders of Criminal Courts are not binding on the Magistrate).
[See also (1910) 11 Cri. L. Jour. 655 (656) (Rang.), *Ma E Mya* v. *Maung Po Thaung.*]

S. 145, Note 44.

Court's decree or order and to maintain such possession, and that to take proceedings which had the effect of modifying or cancelling such decree or order was to assume a jurisdiction which the law did not contemplate. It is submitted that this view is not correct. The Magistrate who initiates the proceedings under this section has to determine the question of actual possession with reference to a particular point of time namely, the date of the preliminary order and in investigation of this question any previous order of a Civil or Criminal Court relating to possession of the property may throw considerable light upon the matter.[2] Thus the fact of delivery of possession or the entry in the Record of Rights may raise a presumption in favour of the continuance of that possession unless the other party can show that subsequently they have succeeded in effectively displacing the person put in possession.[3] But there is no inflexible rule of law that a Magistrate is concluded by every previous order of a Civil or Criminal Court relating to the property and the weight to be attached to any such previous order must depend upon the facts and circumstances of the particular case.[4] The value of such order or decree as a piece of evidence must necessarily vary inversely with the time that has elapsed since the date of such order or decree and a delivery of symbolical possession is of little value as against third persons in possession under independent titles.[5] The Magistrate is however bound to refer to the Civil Court's decree or order relating to possession and to give his reasons in case he comes to a conclusion at variance with it[6] and he cannot discard other evidence relating to actual

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(2) (1905) 2 Cri. L. Jour. 670 (679): 33 Cal. 33, *Kulada Kinker Roy* v. *Danesh Mir.*
(1919) 1919 Nag. 98 (99), *Sankar* v. *Bhaoaji.*
(1919) 1919 Cal. 526 (528), *Atul Chandra* v. *Srinath Laik.*
(1913) 17 Cal. W. N. 56 (n.).
(3) (1921) 60 Ind. Cas. 430 (431): (1920) 1920 Pat. 810, *Manindra Kishore Jha* v. *Clairsmith.*
(1876) 25 Suth. W. R. 74 (80), *Sheikh Mungle* v. *Durga Narain.*
(1887) 14 Cal. 169 (173): 11 Ind Jur. 256, *Raja Babu* v. *Muddun Mohun Lall.*
(1933) 1933 Pat. 586 (587), *Dalip Narayan Singh* v. *Rasik Lal Chaudhri.*
(1921) 1921 Pat. 295 (296), *Pattak Jairam Singh* v. *Thakur Doman Singh.*
(1933) 1933 Cal. 424 (425), *Mehr Ali Mia* v. *Bidyut Baran Mukerjee.*
(1923) 1923 Cal. 483 (483, 484), *Syed Sadek Reza* v. *Sachindra Nath Roy.*
(1923) 1923 Pat. 437 (438), *Rambarai Rai* v. *Sagina Rai.*
(1920) 1920 Pat. 717 (719), *Babulal Miser* v. *Manager, Bettiah Estate.*
(1926) 1926 Lah. 479 (480), *Jagat Singh* v. *Sunder Singh.*
(1915) 16 Cri. L. Jour. 315 (316): 1915 Cal. 644, *Chintamoni Jena* v. *Jagannadas Ramanuja Das.*
(1918) 1918 Cal. 284 (285), *Prafulla Nath Tagore* v. *Hodding.*
(1924) 1924 Pat. 765 (766, 767), *Tufani Lal* v. *Bibi Umatul Rasool.*
(1928) 1928 Cal. 610 (616), *Agni Kumar Das* v. *Mantazaddin.*
(1922) 1922 Mad. 356 (357), *Mahomed Hussain Saheb* v. *Pachayappa Chetty.*
(4) (1905) 2 Cri. L. Jour. 670 (679): 33 Cal. 33, *Kulada Kinker Roy* v. *Danesh Mir.*
(1925) 1925 Cal. 186 (186, 187), *Promoda Sundari Dassi* v. *Khetra Beg.*
(1919) 1919 Cal. 526 (528), *Atul Chandra* v. *Srinath Laik.*
(1914) 15 Cri. L. Jour. 663 (663, 664): 1915 Mad. 83, *Annaswamy Iyengar* v. *Muthukumaraswami Pillai.*
(1934) 1934 Pat. 471 (472), *Gaya Prasad Singh* v. *Ram Sarober Saran Singh.*
(1923) 1923 Pat. 364 (365), *Kedar Nath Chaubey* v. *Jaleswar Ram Tewari.*
(1928) 1928 Cal. 344 (347): 55 Cal. 826, *Ambar Ali* v. *Piran Ali* (The person who obtains symbolical possession is not necessarily in actual possession).
(1923) 1923 Pat. 437 (438), *Rambarai Rai* v. *Sagina Rai.*
(1919) 1919 Nag. 98 (99), *Shankar* v. *Bhayaji.*
(1924) 1924 Pat. 509 (510, 511), *Bhulan Rait* v. *Kumari Rai.*
(1908) 8 Cri. L. Jour. 392 (392): 31 Mad. 416, *Raghava Aiyengar* v. *Krishnaswamy Iyer.*
(1914) 1914 Mad. 78 (81), *Subbarama Iyer* v. *Mariya Pillai* (A Civil Court's decree without delivery of possession in execution thereof is no evidence of possession).
(1905) 2 Cri. L. Jour. 236 (237) (All.), *Baldeo Baksh Singh* v. *Raj Ballam Singh* (Do.).
(1920) 1920 Pat. 483 (484), *Kulbans Narain Singh* v. *Ramsidh Singh* (Do.).
(5) (1917) 18 Cri. L. Jour. 718 (719): 1918 Cal. 662, *Hazari Khan* v. *Nafir Chandra Pal Chowdhury.*
(1915) 16 Cri. L. Jour. 736 (736): 1916 Mad. 640, *Ramalingam* v. *Rajah of Ramnad.*
(1879) 4 Cal. 378 (379), *Mackenzie* v. *Shere Bahadur Shahai.*
(1906) 4 Cri. L. Jour. 503 (504) (Cal.), *Bloomfield* v. *Gangadhar Kundu.*
(6) (1910) 11 Cri. L. Jour. 184 (185) (Cal.), *Gopal Chandra* v. *Uma Charan Ghosh.*

possession simply on the ground that there has been a previous delivery of possession in respect of the property.[7]

As to the effect of a previous order under this section or proceedings under this section *see* Note 56, *infra*.

45. Joint possession.—*See also* Note 13, *ante*.

It was held in the undermentioned cases[1] that where the parties had joint rights to possession of the property in dispute the Magistrate had no *jurisdiction* to institute proceedings in such cases as the dispute was between co-owners regarding the mode of possession and was not therefore one contemplated by this section. It is submitted that this view is not correct. On being satisfied that a dispute exists concerning land or water or the boundaries thereof (*See* Note 11, *ante*) the Magistrate acquires *jurisdiction* to inquire into the *fact of actual* possession. He cannot consider the question whether the parties have a *title* to possession jointly or have a *title* to separate possession.[1-a] (*See* Note 43, *supra*). In the inquiry into actual possession, however, three cases may arise for the Magistrate's consideration:—

Case (*i*).—The Magistrate may decide that one of the parties was in possession in fact on the date of the preliminary order; even though the parties may be entitled only to joint possession. In such a case the Magistrate should uphold the possession of the person in actual possession irrespective of the rights of the parties.[2] Where the managing member of a joint Hindu family is in possession of the property his possession being exclusive can be main-

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(1916) 17 Cri. L. Jour. 369 (373): 1916 Pat. 292, *Parmessar Singh* v. *Kailaspati.*

(7) (1918) 1918 Cal. 662 (663), *Hazari Khan and others* v. *Nafer Chandra Pal.*

Note 45.

(1) (1907) 5 Cri. L. Jour. 296 (297) (Cal.), *Makhan Lal Roy* v. *Baroda Kanta Roy.*

(1903) 7 Cal. W. N. 118 (120), *Krista Alhadini Dasi* v. *Radha Saym Panday.*

(1920) 1920 Pat. 513 (514), *Sham Lal Mahton* v. *Rajendra Lal.*

(1900) 4 Cal. W. N. 426 (428), *Tariyan Bibee* v. *Asamuddi Bepari.*

(1920) 1920 Pat. 835 (836), *Joyeswar Dass* v. *Trilochan Das.*

(1922) 1922 Pat. 423 (425), *Rampabitar Singh* v. *Kasim Ali Khan.*

(1904) 1 Cri. L. Jour. 847 (848): 32 Cal. 249, *Radha Raman Ghose* v. *Baliram.*

(1912) 13 Cri. L. Jour. 789 (790) (Cal.), *Manick Chandra Chakravarthy* v. *Pronath Koer* (Where public claim right of possession both parties are included in that term "public" and therefore possession being joint S. 145 does not apply).

[See also (1878) 2 Cal. L. R. 62 (62), In the matter of *Ram Coomar Singh*

(1925) 1925 Pat. 618 (619), *Basudeo Singh* v. *Mahdeo Lal* (But where parties claim exclusive possession S. 145 will apply).]

(1-a) (1913) 14 Cri. L. Jour. 269 (271): 40 Cal. 982, *Basanta Kumari Dasi* v. *Mohesh Chandra Laha.*

(2) (1934) 1934 Nag. 196 (197): 30 Nag. L. R. 300, *Emperor* v. *Ramzan.*

(1916) 17 Cri. L. Jour. 251 (252): 1917 Cal. 404, *Baijnath Marwari* v. *W. S. Street.*

(1924) 1924 Cal. 444 (445), *Jayamangal Singh* v. *Kanta Gope.*

(1915) 16 Cri. L. Jour. 284 (286): 1915 Mad. 1105, *Balkis Bivi* v. *Nagoor Kanai Rowther.*

(1913) 14 Cri. L. Jour. 269 (271): 40 Cal. 982, *Basanta Kumari Dasi* v. *Mohesh Chandra Laha.*

(1876) 25 Suth. W. R. 16 (16), *Byjnath Sahoo* v. *Ragoonath Pershad.*

(1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer.*

(1900) 27 Cal. 261, *Anonymous.*

(1900) 27 Cal. 259 (260, 261), *Sri Mohan* v. *Narasingh Mohun.*

(1905) 2 Cal. L. Jour. 69 (n.), *Kali Kumar* v. *Badia.*

[But see (1904) 1 Cri. L. Jour. 847 (848): 32 Cal. 249, *Radha Raman Ghose* v. *Baliram Ram* (The possession of a co-owner of the entire property is only that of an agent as far as the other sharers are concerned and being only permissible cannot be maintained against the other co-owners who are concerned under S. 145).

(1906) 4 Cri. L. Jour. 215 (216) (Cal.), *Nritha Gopal Singh* v. *Chandi Charan Singh.*]

S. 145, Note 45.

tained against the other members of the coparcenary.[3] Even in cases where one member is in *fact* in actual possession, an order should be passed upholding his possession even as against the other members who may be entitled to joint possession.[4]

Case (ii).—The Magistrate may find that one party was in actual possession of a specific portion of the property or of some particular items and that the other party was in possession of the rest and that the possession of one party is not likely to interfere with the possession of the other. In such a case each separate portion or plot should for the purposes of this section be considered as a separate subject-matter of dispute and orders should be passed under sub-S. (6) maintaining the possession of the parties in respect of their respective portions.[5]

Case (iii).—The Magistrate may find that on the date of the preliminary order, both the parties were in *joint* possession of the property. In such a case he cannot pass an order under sub-S. (6) upholding the possession of one of the parties to the exclusion of the other, nor can he uphold such *joint* possession.[6] The reason is that the words such possession in sub-S. (6) refer to "*actual*" possession in sub-S. (1) and therefore an order under sub-S. (6) can be passed only in cases where one of the parties is

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(3) (1908) 8 Cri. L. Jour. 205 (206, 207): 31 Mad. 318, *Kesavarayadu* v. *Chalapatirayadu.*
(1930) 1930 Bom. 172 (173, 174), *Venkataraman Rama Hedge* v. *Emperor.*
(1927) 1927 Oudh 316 (316): 1 Luck. 201, *Jeolal* v. *Changa Lal.*

(4) (1913) 14 Cri. L. Jour. 269 (271): 40 Cal. 982, *Basanta Kumari Dasi* v. *Mohesh Chandra Laha.*

(5) (1901) 5 Cal. W. N. 710 (712, 713), *Sardar Ali* v. *Abdul Karim.*
(1913) 14 Cri. L. Jour. 269 (271): 40 Cal. 982, *Basanta Kurami Dasi* v. *Mohesh Chandra Laha.*
(1907) 5 Cri. L. Jour. 490 (491) (Cal.), *Kangali Das* v. *Moti Lal.*
(1923) 1923 Pat. 369 (371), *Ramjharia* v. *Piar Koeri.*
(1915) 16 Cri. L. Jour. 284 (286): 1915 Mad. 1105, *Bulkis Bivi* v. *Nagoor Kanni Rowther.*
(1875) 24 Suth. W. R. 73 (74), *Rakhal Das* v. *Rajah Sheo Pershad.*
(1910) 14 Cal. W. N. lxxix.
[But see (1892-1896) 1 U. B. R. 23 (23), *Criminal Revision Case No.* 496 of 1892 (Where two parties were in occupation of different portions of the same house, the Magistrate in a proceeding under S. 145 ordered one of the parties to clear out. *Held*, the order was without jurisdiction).]

(6) (1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswami Iyer.*
(1913) 14 Cri. L. Jour. 495 (496): 36 All. 19, *Dan Pershad* v. *Ganesh Pandey.*
(1914) 15 Cri. L. Jour. 572 (573): 1915 Mad. 396, *Muhammad Koolayappa Rowther* v. *Abdul Khader Rowther.*
(1901) 5 Cal. W. N. 710 (712, 713), *Sardar Ali* v. *Abdul Karim.*
(1934) 1934 Oudh 158 (158), *Ram Saroop* v. *Khurram Singh.*
(1916) 1916 Mad. 495 (495), *Kandasamy Asari* v. *Narayana Asari.*
(1916) 1916 Mad. 967 (968), *Narayana Asari* v. *Kandasamy Asari.*
(1919) 1919 Mad. 812 (813), *Sankara Kylasa Mudaliar* v. *Kuthalinga Mudaliar.*
(1916) 17 Cri. L. Jour. 76 (76): 1917 Mad. Mad. 509, *Veerabhadra Pillai* v. *Shunmugham Pillai.*
(1906) 4 Cri. L. Jour. 215 (216, 217) (Cal.), *Nritta Gopal Singh* v. *Chandi Charan Singh.*
(1923) 1923 Pat. 546 (546, 547), *Nand Kishore Misir* v. *Kalika Missir.*
(1930) 1930 Bom. 172 (173), *Venkataraman Rama Hedge* v. *Emperor.*
(1910) 11 Cri. L. Jour. 28 (29): 36 Cal. 986, *Akaloo Chandra Das* v. *Mohesh Lal.*
(1904) 1 Cri. L. Jour. 367 (368) (Cal.), *Dharani Kanta Lahiri Chowdhury* v. *Girija Kanta Lahiry Chowdhury.*
(1920) 1920 Cal. 894 (894), *Ram Bistu Majahi* v. *Joy Ram Majahi.*
(1911) 12 Cri. L. Jour. 408 (409): 38 Cal. 889, *Guru Das Kundu* v. *Kedar Nath Kundu.*
(1901) 5 Cal. W. N. 105 (106), *Denmoni Chowdhrani* v. *Mozafar Ali Khan.*
(1877-78) 3 Cal. 573 (579), *Empress* v. *Rajcoomar Singh.*
(1921) 1921 Oudh 6 (11): 24 Oudh Cas. 167, *Arjun Singh* v. *Chandan Khan.*

found to be in *actual* or *exclusive* possession of the property.[7]

S. 145 Notes 45—46.

As to whether an order can in such cases be made under S. 146, *see* S. 146, *infra*.

46. Forcible and wrongful dispossession 'within two months next before date of order'.—There was no provision under the Codes of 1861, and 1872 corresponding to the first proviso to sub-S. (4). It was held in cases decided under those Codes that the Magistrate should find who was in *peaceable* possession of the property and should not therefore uphold the possession of a trespasser who by virtue of sheer force obtained possession—or in other words that the Magistrate should find who was in actual possession at the time the *dispute originated*.[1] It was also held in other cases that it was the duty of the Magistrate to uphold the possession of the person who was in exclusive possession at the date of the order even though such possession was obtained on forcibly dispossessing the other party.[1-a] These cases are no longer of any practical importance in view of the first proviso to sub-S. (4).

The Magistrate should first decide who was in actual possession of the property in dispute on the date of the preliminary order. If however such a party, in *de facto* possession of the property, is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next before the date of the preliminary order, the Magistrate should treat the party so dispossessed as if he had been in possession at such date and restore to possession such party under sub-S. (6).[2] The proviso is based on the principle that a forcible and wrongful dispossession cannot be recognised under criminal law[3] and merely recites the circumstances under which a presumption of possession may be made in favour of the dispossessed party.[4]

The Magistrate should find the *actual date* of dispossession in respect of every item of the property in dispute before proceeding to apply the proviso.[5] Where a person dispossessed of the property, moves the Criminal Court to take action under this section within two months of such dispossession, but the Court does not pass the preliminary order until after the expiry of two months of such dispossession, has the Court power to restore to possession such party under this section? The High Court of Madras[6] has held that the object of S. 145 being to provide against forcible and wrongful dispossession, a liberal interpretation consistent with such object ought to be adopted, and therefore that the Magistrate has power, under the section to restore the possession of such

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(7) (1914) 15 Cri. L. Jour. 572 (573): 1915 Mad. 396, *Muhammad Koolayappa Rowthen* v. *Abdul Khadir Rowthen.*
(1913) 14 Cri. L. Jour. 495 (496): 36 All. 19, *Ram Pershad* v. *Ganesh Pandey.*
(1902) 24 All. 17 (25): 28 Ind. App. 248: 8 Sar. 133 (P. C.), *Batul Begum* v. *Mansur Ali Khan.*

Note 46.

(1) (1879) 4 Cal. 417 (419), In the matter of *Mohesh Chandra Khan.*
(1889) 16 Cal. 281 (286), *Jagat Kishore Acharyya* v. *Khajah Ashanulla.*
(1895) 22 Cal. 297 (304, 306), *Katras Jherriah Coal Company* v. *Subkrishna Daw and Company.*
(1876) 1876 Pun. Re. No. 8, *Ram Singh* v. *Dalla.*
(1-a) (1869) Rat. Un. Re. Cri. Cas. 27 (28), In re *Girdhar Dhanji.*
(2) (1932) 1932 Sind 145 (148): 26 S.L.R. 353, *Natho Khan* v. *Emperor.*
(1933) 1933 Cal. 424 (426), *Mehr Ali Mia* v. *Bidyut Barn Mukkerjee.*
(3) (1928) 1928 Cal. 610 (638, 639), *Agni Kumar Das* v. *Mantazaddin.*
(4) (1913) 14 Cri. L. Jour. 223 (225) (All.), *Sheoraj Singh* v. *Emperor.*
(5) (1917) 18 Cri. L. Jour. 660 (662): 1917 Lah. 171, *Kaku* v. *Harnaman.*
(6) (1929) 1929 Mad. 198 (198): 52 Mad. 66, *Srinivasa Reddy* v. *Dasaratha Ram Reddy.*
(1927) 1927 Mad. 816 (816), *Krishna Raju* v. *Chintalaswamy Naidu.*

S. 145, Notes 46—48.

party. The High Courts of Lahore[7] and Allahabad[8] the Judicial Commissioner's Court of Nagpur[9] and Oudh[10] have however held that such considerations cannot alter the plain interpretations of the words of the statute and that therefore the Magistrate has no power to interfere in such cases. Where however no preliminary order at all was passed, the Magistrate has no power to apply the first proviso to sub-S. (4).[11]

In calculating the period of two months, the period during which one party was restrained by an injunction from entering into the property by an order under S. 144 cannot be excluded.[12] As to the power of the Magistrate to restore possession, *see* Note 54, *infra*.

47. "Forcible and wrongful", meaning of.—The dispossession should be *both* forcible and wrongful.[1] A distinction is drawn in this section between forcible entries which are *rightful* and forcible entries which are *wrongful*, and it depends upon whether the person entering was *entitled* to use force and not merely on the question whether he had a *legal right to possession*. Thus where a person armed with a warrant of delivery of possession makes a forcible entry into the property, it is not a case of *wrongful* dispossession; but if the person had only a *right* to possession and taking the law into his own hands makes a forcible entry, it is a case of *wrongful* and forcible dispossession.[2] The word "wrongfully" thus means no more than "otherwise than in due course of law."[3] (*See* Specific Relief Act, S. 9.)

In order that a dispossession should be "forcible", it is enough if it is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resistance: it is not necessary that *actual* force or violence should be used.[4] But, where a person enters upon the land of another in his *absence* removes his things and enters into possession, it has been held that such a dispossession is not "forcible" within the meaning of this section.[5]

48. Cancellation of the preliminary order—Sub-S. (5).—It has already been seen in Note 15, *ante*, that the existence of a dispute likely to cause a breach of the peace is a condition precedent necessary to give the Magistrate jurisdiction to institute proceedings under this section. If in the course of such proceedings the Magistrate finds at any stage that there is, or has been no dispute, his jurisdiction ceases and he should cancel the preliminary order and stay all further proceedings thereon.[1] A party to the proceeding is not in the

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(7) (1906) 4 Cri. L. Jour. 425 (426) (Lah.), *Mt. Lakhan* v. *Mt. Begam.*
(8) (1935) 36 Cri. L. Jour. 102 (104) (All.), *Meharban Singh* v. *Bhola Singh.*
(9) (1931) 1931 Nag. 38 (39): 26 Nag. L. R. 377, *Emperor* v. *Parashram.*
(1926) 1926 Nag. 371 (371, 372), *Nago* v. *Atmaram.*
(10) (1929) 1929 Oudh 526 (526), *Empress* v. *Baijnath.*
(11) (1933) 1933 Lah. 143 (144), *Ghulam Hussain* v. *Sajawal Shah.*
(12) (1917) 18 Cri. L. Jour. 301 (301): 1917 Cal. 100, *Srinath Roy* v. *Probhat Chandra.*

Note 47.

(1) (1925) 1925 Pat. 33 (34): 3 Pat. 809, *H. V. Low and Co., Ltd.* v. *Manindra Chandra.*
(2) (1926) 1926 Bom. 91 (93, 94), *Bai Jai Ba* v. *Chandulal Amabalal.*
(3) (1926) 1926 Bom. 91 (93, 94), *Bai Jai Ba* v. *Chandulal Ambalal.*
(1921) 1921 Cal. 553 (554), *Sitanath Shaha Bhowmic* v. *Harvey.*
(1927) 1927 Cal. 944 (944), *Nekunja Behari* v. *Usobate Devi* (Taking possession under S. 87 of the Bengal Tenancy Act is not wrongful dispossession).
(4) (1921) 1921 Cal. 553 (554), *Sitanath Shaha Bhowmic* v. *A. Harvey.*
[See (1916) 17 Cri. L. Jour. 449 (450): 1917 Cal. 173, *Manmotha Nath* v. *Ganga Gir.*]
(5) (1927) 1927 Cal. 261 (262), *Collector of Howrah* v. *Santak Das.*

Note 48.

(1) (1923) 1923 Cal. 577 (577), *Muhammad Khandu Sarkar* v. *Sadak Ali Sheikh.*
(1901) 25 Bom. 179 (184, 185), In re-

S. 145, Note 48.

position of a plaintiff in a civil suit and has no right to require a decision on the points in dispute.[2] Sub-S. (5) provides for a *special* case in which the parties to the proceedings and even third parties ("persons interested") are given the right to show that no such dispute exists or has existed.[3] But the sub-section does not take away the power of the Magistrate to drop the proceedings *suo motu* on satisfying himself on proper materials from any source whatever that the state of things does not exist which alone would give him jurisdiction to proceed with the inquiry.[4] Thus where one of the parties files a suit in respect of the property and the Civil Court appoints a receiver thereof, there can be thereafter no dispute likely to cause a breach of the peace, and the Magistrate is justified in dropping the proceedings under this section.[5] But the mere institution of a civil suit[6] or the fact that a decision as to possession was incidentally arrived at in a criminal case,[7] or the fact that one of the parties gives an undertaking not to enter the land[7-a] does not *per se* put an end to the dispute likely to cause a breach of the peace.

The question whether upon the materials before him the proceedings should be dropped is one entirely within the Magistrate's discretion.[8] It is not obligatory on him in case he proceeds *suo motu* to record any evidence or to afford opportunities to the parties to adduce evidence to the contrary[9] and it is not open to any party to question the propriety of the order dropping the proceedings in revision.[10] Where however the Magistrate passes such an order *without any materials* whatever, the order being *without jurisdiction* can be set aside in revision.[11]

On the making of an order dropping the proceedings, the Magistrate is *functus officio* and has no *jurisdiction* thereafter to pass any order relating to

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Pandurung Govind Pujari.
(1929) 1929 Cal. 328 (329), *Abdur Rahman* v. *Dinesh Haldar.*
(1920) 1920 Lah. 286 (287): 1 Lah. 451, *Khushi Ram* v. *Emperor.*
(1916) 17 Cri. L. Jour. 138 (139): 1917 Mad. 237, *Kumalammal Avergal* v. *Vavu Rowther.*
(1925) 1925 Mad. 1252 (1252): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1928) 1928 Mad. 859 (859, 860), *Mamidapalli Sattayya* v. *Sankara Kutumbara Rao.*
(2) (1903) 30 Cal. 112 (117), *Manindra Chandra Nandi* v. *Barada Kanta Chowdhury.*
(1925) 1925 Mad. 1252 (1252): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(3) (1925) 1925 Mad. 1252 (1253, 1254): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1907) 5 Cri. L. Jour. 91 (92, 93): 29 Mad. 561, *Raja of Karvetinagar* v. *Lodd Govind Doss* (The parties or any person interested has a right to adduce evidence to show that no dispute exists).
(1921) 25 Cal. W. N. lvi.
(1932) 1932 Oudh 21 (22), *Mannu* v. *Emperor.*
(4) (1925) 1925 Mad. 1252 (1253): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1902) 6 Cal. W. N. 417 (420): 30 Cal. 112, *Manindra Chandra Nandi* v. *Barada Kanta Chowdhury.*
(1924) 1924 Pat. 689 (691), *Sastu Sahu* v. *Nathuni Thakur.*
(1921) 1921 Lah. 92 (92, 93): 2 Lah. 864, *Santokh Singh* v. *Ram Singh.*
(5) (1935) 36 Cri. L. Jour. 464 (465) (Oudh), *Makhana Devi* v. *Kamala Pat Ram.*
(6) (1935) 36 Cri. L. Jour. 464 (465) (Oudh), *Makhana Devi* v. *Kamala Pat Ram.*
(7) (1925) 1925 Pat. 593 (594, 595), *Abdul Shakoor* v. *Aby Sayeed.*
[See also (1914) 15 Cri. L. Jour. 700 (701): 1915 Cal. 157, *Prabhat Chandra Chatterjee* v. *Prasanna Kumar Sen.*]
(7-a) (1917) 18 Cri. L. Jour. 1024 (1026): 1918 Cal. 901, *Yar Mohammad Saha* v. *Hayat Muhammad Saha.*
(8) (1924) 1924 Mad. 795 (795, 796): 47 Mad. 713, *Suriyanarayana* v. *Aukineed Prasad.*
(9) (1924) 1924 Mad. 795 (795, 796): 47 Mad. 713, *Suryanarayana* v. *Aukineed Prasad.*
(1929) 1929 Cal. 328 (329), *Abdur Rahman Bhima* v. *Dinesh Haidar.*
(1925) 1925 Mad. 1252 (1253): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(10) (1925) 1925 Mad. 1252 (1253): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1929) 1929 Cal. 328 (329), *Abdur Rahman Bhima* v. *Dinesh Haldar.*
(1903) 30 Cal. 112 (117), *Manindra Chandra Nandi* v. *Barada Kanta Chowdhury.*
(11) (1909) 10 Cri. L. Jour. 560 (562, 563) (Cal.), *Tara Charan* v. *Bengal Coal Co.*
(1924) 1924 Pat. 689 (691), *Sastu Sahu* v. *Nathuni Thakur.*

S. 145, Notes 48—50.

the claims of the parties[12] or to the disposal of the property[12-a] or the crops thereon[13] and the parties should be left to settle their rights in a competent Court or in any manner they choose.[14] Any attachment effected in the course of the proceedings automatically ceases, and the position of the parties is precisely the same as if no proceedings had been instituted at all under this section.[15] Where the profits, rents or realisations from the attached property are in Court deposit, the proper course to adopt, on the cancellation of the preliminary order, would be to keep the amount in Court deposit, until the party entitled to it has established his rights in a proper proceeding;[16] the Magistrate has no power to pass an order under S. 517, *infra*.[17]

Where the proceedings are dropped under sub-S. (5), the Magistrate has no jurisdiction to revive the proceedings on any ground whatever.[18] However, he can start fresh proceedings if there are fresh materials sufficient to give him jurisdiction to do so.[19]

49. Finality of the preliminary order.—The preliminary order passed under sub-S. (1) is *final*. Unless it is cancelled as stated in Note 48 above, and the Magistrate has no jurisdiction to strike off proceedings on any other ground.[1] It is not, therefore, necessary for the Magistrate at the time of the final order, to come to a finding that there is or was no likelihood of a breach of the peace.[2]

50. "Any person interested."—The "person interested" who is enabled under sub-S. (5) to show that no dispute exists or has existed comes in for the limited purpose—that of bringing the proceedings to an end and does not thereby become a "party" to the proceedings.[1] The Magistrate cannot

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(1918) 1918 Pat. 500 (501, 502), *Himonat Mian* v. *Emperor.*
(1919) 1919 Pat. 37 (37), *Trilochandas* v. *Jogeshwar Das.*

(12) (1916) 17 Cri. L. Jour. 286 (287): 1916 Pat. 418, *Hardeo Singh* v. *Ramcharitar Singh.*
(1925) 1925 Mad. 1252 (1253): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1926) 1926 Oudh 182 (183), *Nawab Singh* v. *Mangad Singh* (Held the Magistrate was not precluded from recording the results of his enquiry, though he cancelled the preliminary order).

(12-a) (1930) 1930 Mad. W. N. 771, *Parandhamayya* v. *Viravayya.*
(1925) 1925 Nag. 297 (298): 21 Nag. L. R. 191, *Dasharathi* v. *Tarachand.*

(13) (1925) 1925 Mad. 1252 (1253, 1254): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1906) 3 Cri. L. Jour. 466 (467) (Cal.), *Karimuddi Fakir* v. *Naimuddi Kaviraj.*
See also cases under foot-note (16).
[But see (1902) 2 Weir 108 (108), *Swaminatha Pillai* v. *Swami Royar.*]

(14) (1925) 1925 Mad. 1252 (1254): 49 Mad. 232, *Narasayya* v. *Chiluguri Venkiah.*
(1928) 1928 Mad. 859 (859, 860), *Mamidapalli Sattayya* v. *Sankara Kutumbara Rao.*

(15) (1903) 30 Cal. 112 (118), *Manindra Chandra Nandi* v. *Barada Kanta Chowdhry.*
[See also (1906) 5 Cal. L. Jour. 447 (451, 452), *Maigh* v. *Ambica.*]

(16) (1925) 1925 Mad. 327 (328), *Natesa Naicker* v. *Raghavachariar.*
(1915) 16 Cri. L. Jour. 104 (104): 1915 Mad. 588, *Chenga Reddy* v. *Ramasamy Goundan.*

(17) (1906) 3 Cri. L. Jour. 466 (467) (Cal.), *Karimuddi Fakir* v. *Narimuddi Kaviraj.*
(1923) 1923 Lah. 81 (81): 3 Lah. 401, *Ghulam Muhammad* v. *The Crown.*

(18) (1893) 20 Cal. 867 (869, 870), *Tarini Charan Chowdhry* v. *Amulya Ratan Roy.*
(1923) 1923 Cal. 314 (314), *Samad Ali* v. *Abdul Majid.*
(1921) 1921 Pat. 176 (177), *Khubi Singh* v. *Darbari Mahton.*

(19) (1902) 6 Cal. W. N. 923, *Manik* v. *Azimuddi.*
(1893) 20 Cal. 867 (869, 870), *Tarani Charan Chowdhry* v. *Amulya Ratan Roy.*
(1917) 1917 Pat. 368 (369), *Deonandan Singh* v. *Ramajodhya Singh.*
(1921) 1921 Pat. 176 (177), *Khubi Singh* v. *Darbari Mahton.*

Note 49.

(1) (1918) 1918 Pat. 500 (501, 502), *Himmat Mian* v. *Emperor.*
(1909) 10 Cri. L. Jour. 560 (562, 563), *Tara Charan Sarkar* v. *Bengal Coal Co., Ltd.*
(1919) 1919 Pat. 37 (37), *Trilochan* v. *Jogeshwar.*
(1924) 1924 Pat. 689 (691), *Sastu Sahu* v. *Nathuni Thakur.*

(2) (1921) 1921 Cal. 631 (632), *Ranada Ranjan Battacharja* v. *Barat Chandra Saha.*
(1927) 1927 Oudh 359 (359, 360), *Ram Prasad* v. *Ram Adhar.*
(1920) 1920 Pat. 745 (746), *Isri Prasad Chawdhri* v. *Warasat Hussain.*

Note 50.

(1) (1903) 30 Cal. 155 (199), *Krishna Kamini* v. *Abdul Jubbar.*

therefore pass the final order under sub-S. (6) in his favour.[2]

S. 145, Notes 50—51.

A tenant of part of the property in dispute is a person interested within the meaning of sub-S. (5).[3]

51. Order under this section.—A final order under sub-S. (6) should satisfy the following requirements:—

(*a*) It should decide that one of the parties was in possession or should be deemed to be in possession under the proviso to sub-S. (4), *ante*.

(*b*) It should declare that such party is entitled to possession until evicted in due course of law. *See* Note 52, *infra*.

(*c*) It should forbid disturbance of possession until such eviction.

(*d*) In case the Magistrate proceeds under the first proviso to sub-S. (4), it should restore possession to the party dispossessed. *See* Note 54, *infra*.

It is not necessary for the Magistrate to record a finding as to the likelihood of a breach of the peace.[1] He should however give a definite finding as to *which of the parties was in possession* of the subject of the dispute on the date of the preliminary order.[2] Such a finding should be based on proper inquiry and on a consideration of the effect of the evidence both oral and documentary adduced before him,[3] and should also be supported by a statement of the reasons which have influenced the Magistrate in coming to such a conclusion.[4] The Magistrate has no general powers to pass any final order except as provided by sub-S. (6).[5] Thus he cannot direct that a bond which is subject of the dispute should be removed,[6] or that superstructures standing on the land in dispute should be demolished.[7]

The final order should accurately specify the property in dispute with boundaries descriptions, *etc.*, in respect of which it is passed.[8] The Magis-

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(2) (1918) 19 Cri. L. Jour. 653 (654, 655): 1918 Cal. 117, *Radhamohan Rai* v. *Naimuddi Molla*.
(3) (1910) 11 Cri. L. Jour. 371 (371): 37 Cal. 285, In re *Haran Mandal*.

Note 51.

(1) (1923) 1923 Lah. 253 (253), *Ganga Ram* v. *Murad Shah*.
(1932) 1932 All. 683 (684), *Chiranji Lal* v. *Mahadeo Prasad*.
(1925) 1925 Oudh 605 (606), *Mt. Maqim-un-Nissa* v. *Mt. Ahmad-Un-Nissa*.
(2) (1923) 1923 Mad. 24 (24, 25), *Sinnannan Shukulathi Rowthen* v. *Gulam Moideen Rowther*.
(1908) 7 Cri. L. Jour. 336 (337) (Cal.), *Arju Mea* v. *Armen Mea*.
(1917) 18 Cri. L. Jour. 23 (23): 1917 Mad. 610, *Krishnappa Naidu* v. *Alamelu Ammal* (Where a Magistrate gave a finding as regards possession—It refers only to the date of preliminary order—And the mere omission of the words on the date of preliminary order does not vitiate the order).
(1923) 1923 Mad. 180 (181), *Virappa* v. *Kathayee Ammal*.
(8) (1921) 1921 Pat. 483 (484), *Hanuman Singh* v. *Sheo Chandra Singh*.
(1913) 14 Cri. L. Jour. 138 (139) (Lah.), *Bogha* v. *Emperor*.
(1876) 25 Suth. W. R. 21 (22), *Shoindoo Nosyo* v. *Ringlall*.
(1928) 1928 Mad. 180 (181), *Veerappa Chettiar* v. *Kathayee Ammal*.
(1884) 7 Mad. 460 (465, 466), *Subba Nayak* v. *Trincal* (An order without proper inquiry is bad).
(1920) 1920 Pat. 245 (246), *Kailash Behari Lal* v. *Jai Narain Rai*.
(1928) 1928 Nag. 255 (256), *Emperor* v. *Reghunath*.
(1923) 1923 Pat. 588 (588), *Lakpal Gope* v. *Emperor*.
(1927) 1927 Pat. 301 (302), In the matter of *Adbud Misser*.
(4) (1924) 1924 Cal. 848 (849), *Motaherali* v. *Eshaque*.
(1925) 1925 Cal. 1040 (1045), *Ishan Chandra Sanmanta* v. *Haridoy Krishna Bose*.
(1922) 1922 Cal. 382 (382): 49 Cal. 187, *Bhuban Chandra Hazara* v. *Nibaran Chandra Santra*.
(5) (1868) 9 Suth. W. R. 20 (21), *Queen* v. *Hemendronath Tagore*.
(1915) 16 Cri. L. Jour. 434 (435): 1915 Bom. 98, In re *Dyawappa Basgunda Patil* (An order merely stating "not to obstruct" is not a final order under sub-S. 6).
(6) (1905) 2 Cri. L. Jour. 552 (554): 32 Cal. 602, *Prayag Mahton* v. *Gobind Mahton*.
(7) (1913) 14 Cri. L. Jour. 138 (139) (Lah.), *Boghe* v. *Emperor*.
(8) (1920) 1920 Cal. 904 (905), *Abdul Hamid* v. *Yasin Munshi*.

S. 145, Notes 51—53.

trate has no jurisdiction to pass a final order in respect of lands not covered by the preliminary order[9] nor in respect of any moveable property.[10] If however the order is passed in respect of both moveable and immovable property, that part of the order relating to immovable property is valid.[11] As to the effect of an order under this section, *see* Note 56, *infra*.

The Magistrate should pass his final order as far as possible in accordance with Form No. 22 in Sch. V "with such variations as the circumstances of the case require" (S. 555) but the use of the form however is not *obligatory*.[12]

52. **"Declare that such person is entitled to possession".**—The Magistrate should declare that the person found to be in possession on *the date of the preliminary order* is entitled to the possession of the property until evicted in due course of law.[1] He has no jurisdiction to order that one party should be in possession throughout the year but that during certain seasons they should be in joint possession with the other party[1-a] or that one party should be in possession until he reaped the harvest and then surrender possession to the other party.[2] Similarly having found possession with one party he cannot declare possession of a portion only of the property leaving out the other portions for pathways.[3] Nor can he permit the other party to cultivate the land pending establishment of his possessory rights[4] nor can he order division of the crops on the land.[5] But he can find possession of the property restricted in its enjoyment by a right of way over it in favour of the other party and declare such restricted possession.[6] Similarly a declaration of a right to possess a temple subject to performance of puja in it by the other party is permissible.[7]

53. **Evicted in due course of law.**—A final order under sub-S. (6) is intended to be effective only up to the time a competent Court takes *seisin* of the matter and passes an order of delivery of possession to the unsuccessful party to the proceedings, or passes such orders as may be necessary for the protection of the property.[1] Thus an order of a Civil Court appointing a receiver in respect of the property[2] or awarding restitution of the property under S. 144 of the Civil

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(9) (1907) 11 Cal. W. N. xliii, *Chaman Singh* v. *G. P. Cook*.
(1924) 1924 Pat. 589 (591): 3 Pat. 288, *Uttim Singh* v. *Jodhan Raja*.
(1923) 1923 Pat. 528 (529), *Sukhari Naina* v. *Ramkhelwan*.
(1914) 18 Cal. W. N. xci (xcii).
(10) (1907) 6 Cri. L. Jour. 291 (292): 4 L. B. R. 75, *San Da* v. *Emperor*.
(11) (1917) 1917 Pat. 183 (185), *Sundar Mall* v. *Jhari Lal*.
(12) (1918) 1918 Cal. 901 (903), *Yar Mohammad Saha* v. *Hayat Mohammad Saha*.

Note 52.

(1) (1921) 1921 Pat. 176 (178), *Khubi Singh* v. *Darbari Singh*.
(1864) 1 Suth. W. R. 25 (25), *Queen* v. *Sager Mohamed* (When the Magistrate found possession with one party he should not pass an order in favour of the other party).
(1918) 1918 Cal. 117 (118), *Radhamogan Rai* v. *Nimuddi Molla* (An order cannot be made in favour of a person who has been allowed by Magistrate to come in under sub-S. 5).
(1902) 6 Cal. W. N. 104 (105), *Rajah Rameshwar Prasad Narain Singh* v. *Harbans Singh* (Magistrate cannot declare possession of a person not claiming possession).
(1-a) (1926) 1926 Cal. 1022 (1025), *Rahini Nandan Chaudhury* v. *Jadunandan Chaudhuri*.
(2) (1878) 1 Cal. L. R. 136 (139, 140), *Bunwari Lall* v. *Rajah Radha Prashad*.
(3) (1913) 14 Cri. L. Jour. 391 (392) (Cal.), *Asit Mohan Ghose Moulik* v. *Sarat Chandra Ghose Malik*.
(4) (1872) 18 Suth. W. R. 27 (27), *Shib Churn* v. *Ishen Chunder*.
(5) (1908) 8 Cri. L. Jour. 387 (388) (Cal.), *Ram Narain Sahu* v. *Kailash Singh*.
(6) (1924) 1924 Bom. 452 (453): 48 Bom. 512, *Amarsang Shivasangji*, In re.
(7) (1916) 17 Cri. L. Jour. 235 (236): 1917 Mad. 840, *Palaniyandi Pandaram* v. *Palaniappa Thevan*.

Note 53.

(1) (1932) 1932 Cal. 29 (31): 58 Cal. 1070, *Rajjabali Khan Talukdar* v. *Faku Bibi*.
(1900) 22 All. 214 (215, 216), *Barkat-Un-Nissa* v. *Abdul Aziz*.
(2) (1900) 22 All. 214 (215, 216), *Barkat-Un-Nissa* v. *Abdul Aziz*.

Procedure Code,[3] is an order evicting the person in possession within the meaning of this section. It is not necessary however that the order should be by a Civil Court. It should be passed by a Court acting under statutory authority to *award* possession.[4] An order of the Settlement officer merely *recording* possession is not such an order[5] while a decree in ejectment passed under the provisions of the Agra Tenancy Act will amount to eviction "in due course of law."[6] S. 145, Notes 53—56.

The terms "evicted" applies to cases where a person in possession is found to be disentitled to possession altogether as well as to cases where he is found disentitled to the extent of possession awarded to him by the Magistrate.[7] The term evicted means "*dispossessed*"; it is not enough if the unsuccessful party to the proceedings succeeds in getting a suit for confirmation of possession filed by the other party, dismissed: his remedy is to bring a suit for recovery of possession.[8]

54. Restoration of possession.—Previous to the amendment of 1923 there was no express provision of law authorising the Magistrate to restore to possession the person forcibly and wrongfully dispossessed (Notes 46, 47, *ante*), and it was held that though the Magistrate had power in such cases to declare the possession of the person, he had no power to order restoration of possession,[1] except in cases to which S. 522 was applicable.[2] The introduction in 1923 of the words "where he proceeds under the first proviso to sub-S. (4) may restore to possession, the person forcibly and wrongfully dispossessed" in sub-S. (6), enables the Magistrate now to put such person in actual possession.[3]

55. Power to award costs.—*See* S. 148, *infra*. The Magistrate has no power to award damages or costs to the other party except as provided by S. 148, *infra*.[1]

56. Effect of order under this section.—An order under this section is *final* and conclusive and is intended to be effective until the party in whose favour the order is made is evicted in due course of law.[1] The remedy of the unsuccessful party is thus only to file a suit; the Magistrate has no power to institute proceedings again in respect of the subject of dispute while the previous order is in force.[2] There is no express provision however authorising the Court to *place* the successful party in possession (except in cases to which the first pro-

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(3) (1932) 1932 Cal. 29 (31): 58 Cal. 1070, *Rajjabali Khan* v. *Faku Bibi*.
(4) (1917) 1917 Pat. 220 (220), *Krishna Dayal Gir* v. *Nirmali*.
(5) (1917) 1917 Pat. 220 (220), *Krishna Dayal Gir* v. *Nirmali*.
(6) (1925) 1925 All. 210 (211), *Iqbal Ahmed* v. *Suraj Bali*.
(7) (1920) 1920 Mad. 209 (211), *Gopala Aiyar* v. *Krishnaswamy Iyer*.
(8) (1869) 11 Suth. W. R. (Cr.) 43 (44), *Juggesh Prakash Ganguli* v. *Nilkamal Mookerjee*.

Note 54.

(1) (1915) 1915 All. 377 (378): 37 All. 654, *Tulsiram* v. *Abrad Ahmad*.
(1924) 1924 Lah. 411 (412), *Bahawala* v. *Duni Chand*.
(1917) 18 Cri. L. Jour. 660 (661, 662): 1917 Lah. 171, *Kaku* v. *Harnaman*.
(1864) 1864 Suth. W. R. Sp. 5 (5), *Ramjeebun* v. *Luchmonee Debea*.
(2) (1915) 1915 All. 377 (378): 37 All. 654, *Tulsiram* v. *Abrad Ahmad*.
(3) (1927) 1927 Mad. 304 (306), *Ismalsa Rowther* v. *Sadasiva Asary*.

Note 55.

(1) (1905) 2 Cri. L. Jour. 552 (554): 32 Cal. 602, *Prayag Mahaton* v. *Gobind Mahton*.

Note 56.

(1) (1921) 1921 Oudh 119 (119): 24 Oudh Cas. 21, *Emperor* v. *Bandi Din*.
(1932) 1932 Cal. 29 (31): 58 Cal. 1070, *Rajabali Khan Talukdar* v. *Faku Bibi*.
(1878) 2 Cal. L. R. 62 (67), *Rajcoomar Singh*, In re.
(1881) 5 Bom. 387, *Lilu Bin Raghushet* v. *Annaji Parashram*.
(1925) 1925 Pat. 593 (594), *Abdul Shakur* v. *Abu Syeed*.
(2) (1923) 1923 Cal. 95 (96), *Aran Sordar*

S. 145, Note 56.

viso to sub-S. (4) applies—*See* Note 54, *ante*) or to pass consequential orders by way of the execution of the final order,[3] but the practical result of his order is to enable the successful party to take possession of the property,[4] and the Magistrate should *enforce* his order against persons disobeying it either by instituting proceedings against them under S. 188, Penal Code,[5] or by proceedings under S. 144 or 107, *ante*.[5-a]

A final order under this section does not in any manner affect the rights of the parties[6] nor does it give rise to a presumption in a Civil Court in favour of the successful party.[7] It is not necessary for the unsuccessful party to the proceedings to sue to vacate the order of the Magistrate.[8] The onus is, however, on him to show that he has a better title to the property than the person whose possession has been declared by the Magistrate.[9] The order of the Magistrate is admissible in evidence in the subsequent civil suit to prove the fact of the dispute, to show how it was settled, who were the parties thereto, and who was placed in possession by the Magistrate,[10] but the findings of the Magistrate on questions of fact relating to possession are inadmissible.[11]

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v. *Hara Sundar Mazumdar*.
(1920) 1920 Pat. 211 (212), *Bojit Lal Patatar* v. *Harakh Singh*.

(3) (1908) 7 Cal. L. Jour. 547 (551), *Leo Moore* v. *Manoranjan Guha*.
(1910) 11 Cri. L. Jour. 26 (Cal.), *Ronendra Narain* v. *Kishori Lal*.

(4) (1908) 7 Cal. L. Jour. 547 (551), *Leo Moore* v. *Manoranjan Guha*.

(5) (1934) 1934 Nag. 114 (116, 117), *Emperor* v. *Moulvi Zahirus Said Alvi*.
(1908) 7 Cal. L. Jour. 547 (549, 551), *Leo Moore* v. *Manoranjan Guha*.
(1886) 13 Cal. 175 (178), *Goluck Chandra Pal* v. *Kali Charun De*.
(1913) 14 Cri. L. Jour. 63 (64) (Lah.), *Sardara* v. *Emperor* (But if the order under S. 145 is illegal there can be no conviction under S. 188).
(1865) 3 Suth. W. R. 19 (19), *Queen* v. *Seadut Khan* (The person who disobeyed was punished for trespass).
[But see (1875) 24 Suth. W. R. 20 (21), *Unnoda Proshad Dutt* v. *Banee Shama Soonduree* (Case under 1872 Code—Order which does not direct any body to abstain from any act or to take any order with any property in his possession, but merely declares that, as between the parties to a contention, a certain land in dispute does not belong to the public, such order is not one the contravention of which can form the subject of an order under the Indian Penal Code, S. 188).]

(5-a) (1922) 1922 Pat. 210 (211), *Raghunanden Pandey* v. *Kishin Mohan Singh*.

(6) (1901) 25 Bom. 179 (184), In re *Pandurung Govind Pujari*.
(1933) 1933 Lah. 409 (412): 14 Lah. 615, *Prem Kaur* v. *Bensari Das*.
(1923) 1923 All. 77 (78): 45 All. 162, *Gopi Dass* v. *Madho Lal* (Only the question of possession at the time was settled).

(7) (1923) 1923 Pat. 401 (402), *Mt. Gantra Koer* v. *Aligjan*.

(8) (1924) 1924 Mad. 224 (225), *Muhammad Shamsgoya Rowther* v. *Omandu Pillai*.
(1874) 21 Suth. W. R. 79 (80), *Kalee Narain Bose* v. *Anund Moyee Goopta*.
(1912) 14 Ind. Cas. 566 (567) (Lah.), *Bhagwan Das* v. *Bhana Mal*.
(1864) 1864 Suth. W. R. Act X, 54 (55), *Sreemutty Lukhee Debca Chowdharain* v. *Gooroo Doss Sein*.

(9) (1923) 1923 P. C. 128 (130): 2 Pat. 676: 50 Ind. App. 183 (P. C.), *Indrajit Pratap Bahadur* v. *Amar Singh*.
(1902) 29 Cal. 187 (198, 199): 8 Sar. 224: 29 Ind. App. 24 (P.C.), *Dinomani* v. *Brojo*.
(1882) 9 Cal. L. R. 305 (315), *Nobo Coomar Das* v. *Gobind Chunder Roy*.
(1918) 45 Ind. Cas. 408 (409): 1919 Cal. 672, *Manindra Chandra Nandi* v. *Sarabindu Ray*.
(1924) 1924 Mad. 224 (225), *Md. Shamsgoya Rowther* v. *Omandu Pillai*.
(1900) 27 Cal. 943 (947): 5 Sar. 714: 27 Ind. App. 136, *Radhamoni Debi* v. *The Collector of Khulna*.
(1925) 1925 Pat. 168 (170), *Hargobind Ray* v. *Keshwa Prasad*.
(1864) 1864 Suth. W. R. Gap No. 295 (295), *Shib Pershad Roy* v. *Rughoo Nath Singh*.
(1874) 21 Suth. W. R. 79 (80), *Kali Narain Bose* v. *Anund Moyee Goopa*.

(10) (1902) 29 Cal. 187 (198, 199), *Dinomoni Chowdhrani* v. *Brojo Mohini Chowdhrani*.
(1915) 31 Ind. Cas. 965 (977): 1916 Cal. 582, *Mohunt Krishen Doyal Gur* v. *Irshad Ali Khan*.
(1917) 39 Ind. Cas. 356 (359): 1917 Cal. 79, *Barkat Ali* v. *Basant Numia*.
(1924) 1924 Cal. 1046 (1046), *Hasim Ali* v. *Abjal Khan*.
(1927) 1927 Cal. 701 (702), *Rakhal Dolin* v. *Maham Lal*.
(1930) 1930 Cal. 450 (452): 57 Cal. 987, *Jogendranath Sen* v. *Behari Lal Das*.

(11) (1882) 9 Cal. L. R. 305 (315), *Nobo Coomar Dass* v. *Gobind Chunder Roy*.
(1915) 31 Ind. Cas. 965 (977): 1916 Cal. 582, *Krishen Doyal Gir* v. *Irshed Ali Khan*.
(1930) 1930 Cal. 450 (452): 57 Cal. 987, *Jogendra Nath Sen* v. *Mahima Chandra Dass* (But as between parties to the proceeding such an order is admissible as evidence regarding possession before two months of the date of the order).

S. 145, Notes 56—57.

An order under sub-S. (6) dispossessing a person will not be a ground for a suit under S. 9 of the Specific Relief Act as such dispossession is not "otherwise than in due course of law" within the meaning of that section.[12] But where the dispossession occurred long before the institution of the proceedings, it has been held an order under this section will not be a bar to a suit under S. 9 of the Specific Relief Act[13] or under the Mamlatdar's Act.[14]

The Magistrate has no power to *review* the final order passed by him under sub-S. (6)[15] but he can at any time correct clerical or arithmetical mistakes in the order or errors arising therein from any accidental slip or omission.[16]

An order under this section is no bar to the Magistrate deciding in a case of rioting, who was at that time in possession of the subject of dispute.[17]

Similarly, such an order is no bar to the initiation of *fresh proceedings* under this section as the question to be taken into consideration by a Criminal Court under this section is that as to the *present* possession of the parties concerned.[18]

57. **Effect of an order under this section on limitation.**—Under Art. 47 of the Limitation Act, 1908, a person bound by an order of the Magistrate respecting immovable property has to bring a suit to recover the property comprised in the order within three years of the date of the final order.[1] If no suit is brought within three years by any person bound by such order, his right to possession of the property is extinguished under S. 28 of the Limitation Act.[2]

Article 47 has however no application in the following cases:—

(*i*) Where the order of the Magistrate is without jurisdiction.[3]

(*ii*) Where the suit is for redemption of the property, and not for recovery of the property.[4]

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(12) (1908) 7 Cal. L. Jour. 547 (549, 551), *Leo Morre* v. *Manoranjan Guha*.

(13) (1908) 30 All. 331 (333), *Emperor* v. *Mata Prasad*.
(1873) 20 Suth. W. R. 12 (12), *Chytun Chunder Roy* v. *Brojo Kant Roy*.
(1929) 1929 Rang. 21 (22): 6 Rang. 667, *U Kyaw Lu* v. *U Shwe So*.

(14) (1902) 26 Bom. 353 (357, 359), *Nagappa* v. *Sayad Badruddin*.

(15) (1908) 7 Cri. L. Jour. 401 (403): 35 Cal. 350, *Parbiti Charan Roy* v. *Sajjad Ahmad Chowdhury*.

(16) (1918) 1918 Cal. 472 (472), *Gagan Chand Naskar* v. *Peary Mohan Naskar*.
(1890) 2 Weir 107 (107), *Baboo Reddi* v. *Koolappa Nattan*.
(1905) 9 Cal. W. N. ccxcix, *Tarai* v. *Mesher*.
(1918) 1918 Cal. 238 (238), *Natabar Dutta* v. *Biseswar Bakhit* (Where Magistrate omitted to mention the privy in making the final order—Held, he could correct the mistake after notice to the parties).

(17) (1926) 1926 Cal. 945 (946): 53 Cal. 471, *Surandra Nath Singh* v. *Janki Nath Ghose*.

(18) (1935) 1935 Cal. 494 (494), *Haripado Mazumdar* v. *Dhani Ahmed Sarkar*.

Note 57.

(1) (1918) 1918 Cal. 901 (902, 903), *Yar Muhammad Saha* v. *Hayat Mohammad Saha*.
(1881) 6 Cal. 709 (710), *Kangali Churn Sha* v. *Zomurrudonnissa Khatoon*.
(1867) 8 Suth. W. R. 490 (491), *Gobind Chander Shaha* v. *Ashruf Ali Meah* (In respect of orders under S. 318 of Code of 1861 there was no provision in the Limitation Act for trying a suit for possession).
(1868) 9 Suth. W. R. 480 (481), *Undhoeb Narain* v. *Chutter Dharee Singh* (Do.).

(2) (1927) 1927 Mad. 304 (306), *Ismalsa Rowther* v. *Sadasiva Asari*.
(1912) 15 Ind. Cas. 24 (25) (Mad.), *Devasikamani* v. *Muthian Chetty*.
(1935) 1935 Pat. 164: 14 Pat. 424, *Nando Kahar* v. *Sri Bhup Narain Singh*.

(3) (1921) 60 Ind. Cas. 860 (862): 1920 Cal. 820, *Bharat Chandra Deb* v. *Ram Sundar Chowdhury*.
(1913) 21 Ind. Cas. 564 (564, 565): 38 Mad. 432, *Parasuramayya* v. *Ramachandradu*.
(1911) 12 Cri. L. Jour. 47 (48) (Mad.), *Gangadharam Iyer* v. *Sankarappa Naidu* (Where the order is not without jurisdiction Artic'e will apply).
(1918) 1918 Cal. 901 (902, 903), *Yar Muhammad Saha* v. *Hayat Mohammad Saha*.

(4) (1928) 1928 Nag. 97 (98): 23 Nag. L. R. 164, *Linganna Naganna* v. *Ahamadshah*.

S. 145, Notes 57—58.

(*iii*) Where the suit is brought by a person in whose favour the order is passed.[5]

(*iv*) Where there is no existing right to sue for possession on the date of the Magistrate's order.[6]

(*v*) Where an application under S. 145 is dismissed or where the proceedings are dropped under sub-S. (5) and consequently no order respecting immovable property is passed.[7]

The period of three years has to be completed from the date of the order and not from the date of the order of the High Court dismissing an application for revision of the order.[8]

As to who are the persons bound by the order, *see* Note 58, *infra*.

58. **Persons bound by the order**.—There is a conflict of opinion on the question whether persons not *actually parties* to the proceeding under this section are bound thereby. In *Nathubhai Brijlal*, In re.[1] Chandavarkar, J., expressed the view that the requirement in sub-S. (3) as to a copy of the order being published near the property, indicated that the binding character of the order was not confined to the persons who were actually parties to the proceedings but extended to all persons concerned in the dispute who had *notice* of the proceedings. This view has been followed in the undermentioned cases.[2] In *Ram Sahai* v. *Benode Behari Ghosh*[3] it was held by the High Court of Allahabad that an order against the *manager* of a joint Hindu family is binding upon all the members though they were not actually parties to the proceeding and this decision has been followed by the High Court of Madras.[4] According to the High Court of Patna, an order against the *representative of a community* is binding on all the members of the community.[5] The same High Court has also held that the order is binding on all the persons who are *interested in the possession of the property*.[6] Nothing was stated as to whether such parties should have *notice* of the proceeding. The principle on which these decisions proceed are not however clear. The High Court of Lahore has held that an order under this section binds only the *actual* parties to the proceeding and none others.[7] It has dissented from the view expressed in *Nathubhai Brij Lal's case* and distinguished the case of an order against the manager of the family on the ground, that in such cases, the other members *ipso facto* become parties to the proceeding. *See also* the undermentioned cases.[7-a]

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(5) (1927) 1927 Mad. 304 (305, 306), *Ismalsa Rowther* v. *Sadasiva Asari*.
(6) (1892) 19 Cal. 646 (650), *Bolai Chand Ghosal* v. *Samiruddin Mandal*.
(7) (1926) 1926 Cal. 1022 (1025), *Rahini Nandan Chaudhuri* v. *Jadunandan Chaudhuri*.
(1912) 16 Ind. Cas. 735 (736) (Cal.), *Thakan Chowdhury* v. *Manrup Mahton*.
(8) (1918) 1918 Pat. 504 (504, 505), *Lachman Singh* v. *Diljan Ali*.
(1908) 12 Cal. W. N. 840 (841), *Jagannath Marwari* v. *Ondal Coal Co., Ltd*.

Note 58.

(1) (1909) 10 Cri. L. Jour. 64 (64) (Bom.), In re *Nathubhai Brij Lal*.
(2) (1930) 1930 Cal. 63 (64), *Satya Charan De* v. *Emperor*.
(1930) 1930 Mad. 48 (49): 52 Mad. 787, *Venkatasomaraju* v. *Varahalaraju* (*Per* Odjers, J.).
(3) (1923) 1923 All. 151 (152): 45 All. 306, *Ramshai* v. *Binode Behari Ghosh*.
(4) (1930) 1930 Mad. 48 (49, 51): 52 Mad. 787, *Venkatasomaraju* v. *Varahalaraju*.
(5) (1918) 1918 Pat. 504 (504, 505), *Lachman Singh* v. *Diljan Ali*.
(6) (1929) 1929 Pat. 505 (506), *Jainath Pati* v. *Ramlakhan Prasad*.
(7) (1935) 1935 Lah. 115 (118), *Mt. Maya Devi* v. *Diwan Chand*.
(7-a) (1869) 3 Ben. L. R. A. C. 13 (13), In the matter of *Gopal Burnawar* (Order binding only on the actual

Where a person is "bound by the order" under this section, he or a person claiming through him should, under Art. 47 of the Limitation Act, file a suit to recover the property within three years from the date of such order.[7-b] Otherwise, by the operation of S. 28 of the Limitation Act, his rights will become extinguished. This however does not imply that the order operates as a judgment *in rem* in favour of the party in whose favour possession was maintained[8] and does not create any title by prescription against parties not bound by the order.[9]

59. **Power to proceed under S. 107.**—*See* Note 3, *ante*, and Note 60, *infra*.

60. **Conversion of proceedings.**—It has been seen already that the jurisdiction of the Magistrate to institute proceedings under S. 107 is not ousted by the mere fact that the dispute relates to immovable property.[1] Whether the Magistrate may institute proceedings under S. 107 in addition to proceedings under S. 145 or whether it would be proper for him to act under S. 145 after instituting proceedings under S. 107 would depend only upon the circumstances of each case.[2] But it would be very undesirable to institute *simultaneous* proceedings under both the sections when each section provides by itself sufficient remedies for the prevention of a breach of the peace.[3] In any case, a proceeding under S. 107 cannot be *converted* into one under S. 145 as the conditions necessary to give the Magistrate jurisdiction to proceed under S. 145 have to be satisfied and the procedure indicated in the section have to be followed.[4] Similarly in a proceeding under S. 145, the Magistrate cannot take security from any or all of the parties since an order as to security could only be made after compliance with the provisions of Ss. 107—117, *ante*.[5] Where however the Magistrate initiated a proceeding under S. 144, but subsequently converted it into one under this section, in the presence of the parties who took active part thereupon in the subsequent inquiry into possession, it was held that

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parties to the proceeding).
(1895) 18 Mad. 51 (53), *Queen-Empress* v. *Kuppayyar* (A person merely examined as a witness—Not a party bound by the order).
(7-b) (1896) 23 Cal. 731 (737) (F.B.), *Jogendra Kishore Roy Chowdhury* v. *Brojendra Kishore Roy Chowdhury*.
(8) (1929) 1929 Pat. 505 (506), *Jainath Pati* v. *Ramlakhan*.
(9) (1880) 6 Cal. L. R. 249 (255, 256): 4 Sar. 127: 7 Ind. App. 73 (P.C.), *Wise* v. *Ameerunnissa Khatoon*.
(1927) 1927 Mad. 304 (306), *Ismalsa Rowther* v. *Sadasiva Asary*.
[See also (1920) 56 Ind. Cas. 675 (676): 1920 Mad. 545, *Solai Ammal* v. *Jogi Chetty*.]

Note 60.

(1) (1905) 2 Cri. L. Jour. 272 (273) (Cal.), *Jafar Mondol* v. *Jaribullah Saha*.
(1911) 12 Cri. L. Jour. 569 (571): 39 Cal. 150 (F.B.), *Emperor* v. *Abbas*.
(1923) 1923 Nag. 54 (54), *Dhuma* v. *Emperor*.
(1915) 16 Cri. L. Jour. 211 (212): 1916 Mad. 621, *Suppa Thevan* v. *Ramaswamy Iyer*.
(2) (1911) 12 Cri. L. Jour. 569 (571): 39 Cal. 150, *Emperor* v. *Abbas*.
(1912) 13 Cri. L. Jour. 526 (526): 34 All. 449, *Thakur Pandey* v. *Emperor*.
(1917) 18 Cri. L. Jour. 129 (129): 1917 Cal. 226, *Naisuruddin Sarkar* v. *Gofuruddin Mahamed*.
(1912) 13 Cri. L. Jour. 142 (143): 39 Cal. 469, *Baisnab Charan Manjihi* v. *Gatinath Munshi*.
(1913) 14 Cri. L. Jour. 559 (562): 36 Mad. 315, *Muthiah Mootan*, In re.
(1912) 13 Cri. L. Jour. 566 (566) (All.), *Faizaz Ali* v. *Ewaz Ali*.
[See also Note 4 *ante*.]
(3) (1915) 16 Cri. L. Jour. 235 (237): 1914 Sind 8: 8 S. L. R. 207, *Farid* v. *Piru*.
(1919) 1919 Cal. 465 (465), *Abinash Chandra Mandal* v. *Lokenath Gani*.
(1917) 1917 Pat. 632 (633), In re *Udit Narain*.
(4) (1918) 1918 Pat. 625 (625), *Sahdeb Singh* v. *Jumon Jolaha*.
(1904) 1 All. L. Jour. (N.) 185 (185), *Tu'la* v. *Ganeshi*.
(1906) 10 Cal. W. N. clxx, *Ramdhan* v. *Ram*.
(5) (1916) 17 Cri. L. Jour. 527 (528): 1916 All. 237, *Sri Deo* v. *Emperor*.

S. 145, Notes 60—61.

the Magistrate's action is not illegal as the parties were not prejudiced by such conversion of proceedings.[6] But where the Magistrate converted a proceeding under S. 147 into one under this section without notice to the parties and without passing a preliminary order as required by this section it was held that the order should be set aside as it had operated to the prejudice of the parties.[7]

61. Revision.—*See also* Ss. 435—439, *infra*. Ss. 435, 438 and 439, *infra*, provide for revision by the High Court of orders passed by Magistrates under this chapter. Previous to the Amendment Act of 1923, the High Court had no power of revision of such orders, as sub-S. (3) to S. 435 precluded the application of S. 435 to proceedings under this chapter.[1] It was however held (in cases decided before the Amendment Act of 1923), that if there was an initial *want of jurisdiction*, a proceeding purporting to be one under this section is not really one under it and inasmuch as sub-S. (3) to S. 435 would not apply to such cases the High Court had the power to interfere in revision in such cases under S. 439,[2] but that such power should be exercised only in exceptional cases.[2-a]

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(6) (1918) 1918 Pat. 481 (481). *Chandari Ahir* v. *Raja Ram Singh*.
(7) (1909) 9 Cri. L. Jour. 565 (565) (Mad.), *Subramaniya Pillai* v. *Sannasi Pillai*.

Note 61.

(1) (1922) 1922 All. 31 (31), *Babu Singh* v. *Angnu Kewat*.
(1901) 1901 All. W. N. 154 (155), *Karan Singh* v. *Sri Kishen Das*.
(1909) 9 Cri. L. Jour. 382 (382, 383): 31 All. 150, *Jhingal Singh* v. *Raw Partap*.
(1912) 13 Cri. L. Jour. 495 (496) (All.), *Shohrat Singh* v. *Daryoo Singh*.
(1914) 15 Cri. L. Jour. 572 (572): 36 All. 233: 1914 All. 71, *Syeda Khatun* v. *Lal Singh*.
(1871) 15 Suth. W. R. 86 (86), *Bharut Chunder Bose* v. *Dwarkanath Chowdhury*.
(1917) 18 Cri. L. Jour. 418 (419): 1917 All. 396, *Mutsaddi Lal* v. *Tarif*.
(1917) 18 Cri. L. Jour. 828 (831): 1917 All. 220: 39 All. 612, *Mithukdhari Singh* v. *Jaisari*.
(1905) 2 Cri. L. Jour. 236 (237) (All.), *Baldeo Baksh Singh* v. *Raj Ballam Singh*.
(1904) 1 Cri. L. Jour. 339 (341): 26 All. 144, *Maharaja Tewari* v. *Har Charan Rai*.
(1918) 1918 Upp. Bur. 4 (4): 3 U. B. R. 35, *Nga Hpay* v. *Nga Aung Baw*.
(1904) 17 C. P. L. R. 133 (138), *Murat Singh* v. *Mt. Paika Bai*.
(1915) 16 Cri. L. Jour. 541 (542): 18 Oudh Cas. 69: 1915 Oudh 208, *Ibadullah Khan* v. *Rahatullah Khan*.
(1912) 13 Cri. L. Jour. 753 (757): 36 Mad. 275, *Kamal Kutty* v. *Udaya Varma Raja*.
(1921) 1921 Lah. 92 (92, 93): 2 Lah. 364, *Santokh Singh* v. *Ram Singh*.
(1915) 16 Cri. L. Jour. 235 (235, 236): 8 S. L. R. 207: 1914 Sind 8, *Farid* v. *Piru*.
(1917) 18 Cri. L. Jour. 23 (24): 1917 Mad. 610, *Krishnappa Naidu* v. *Alamelu Ammal*.
(1914) 15 Cri. L. Jour. 669 (670): 1915 Mad. 27, *Vaithinatha Iyer* v. *Suppalu Ammal*.
(1915) 16 Cri. L. Jour. 224 (224): 1915 All. 9, *Ram Behari* v. *Muneshar*.
(2) (1923) 1923 Mad. 60 (62), *Thyalyee* v. *Srirangaroya*.
(1900) 24 Bom. 527 (531, 532), *In re Pandurang Govind Pujari*.
(1920) 1920 All. 225 (227): 42 All. 214, *Mahadei* v. *Beni Prasad*.
(1899) 26 Cal. 625 (629), *Doulal Koer* v. *Rameswari Koeri*.
(1902) 5 Oudh Cas. 1 (5), *Azizur* v. *Mohamad*.
(1918) 1918 U. B. 4 (4): 3 U. B. R. 35, *Nga Hpay* v. *Nga Aung Baw*.
(1903) 1903 P. L. R. 115, *Malik Sultan* v. *Mt. Bano*.
(1919) 1919 Nag. 158 (159), *Abdul Rashid Khan* v. *Khandu*.
(1909) 9 Cri. L. Jour. 265 (266): 1 S. L. R. 25, *Crown* v. *Jamal Walad Pirmahomed*.
(1917) 18 Cri. L. Jour. 100 (103): 1917 Oudh 400: 19 Oudh Cas. 136, *Udai Bhan Pratab Singh* v. *Ram Samajh* (Even a non-chartered High Court can revise under S. 439 when there is initial want of jurisdiction).
(1917) 18 Cri. L. Jour. 660 (662): 1917 Lah. 171, *Kaku* v. *Harnaman*.
(1905) 2 Cri. L. Jour. 451 (453) (Bom.), In re *Rasul Jamal*.
(1899) 1899 Pun. Re. No. 2 (Cr.), *Dewan Chand* v. *Empress*.
(1916) 17 Cri. L. Jour. 145 (146): 1916 All. 304, *Sheorani* v. *Bali Nath*.
(1916) 17 Cri. L. Jour. 527 (527, 528): 1916 All. 237, *Sri Deo* v. *Emperor*.
(1918) 1918 Pat. 578 (580, 581), *Ram Sahai Chowdhury* v. *Deonandan Prasad*.
(1924) 1924 Oudh 331 (333), *Hiralal* v. *Emperor*.
(1913) 14 Cri. L. Jour. 277 (278) (All.), *Jhengar* v. *Baijnath*.
(1910) 11 Cri. L. Jour. 422 (423) (Lah.), *Haider Ali Shah* v. *Emperor*.
(1919) 1919 Nag. 98 (99), *Shankar* v. *Bhayaji*.
(1922) 1922 Pat. 77 (78), *Basawan Pandey* v. *Tilak Gope*.
(1919) 1919 Nag. 115 (116), *Balwant Ragho* v. *Balakrishna Vishoba* (Departure from procedure so grave as to amount to want of jurisdiction).
(1874) 21 Suth. W. R. 32 (34), *Run Bahadoor Singh* v. *Hur Doyal Singh*.
(2-a) (1916) 17 Cri. L. Jour. 286 (287): 1916 Pat. 418, *Hardeo Singh* v. *Ram Chariter Singh*.

S. 145, Note 61.

It was also held that the Chartered High Courts had the power of interference under the provisions of S. 107 of the Government of India Act (which replaced S. 15 of the High Courts Act, 1861) in such cases[3] and even in cases where the proceedings though properly started were vitiated on the ground of serious irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it.[3-a] These cases are no longer of any practical importance as sub-S. (3) to S. 435 has been omitted by S. 116 of Act XVIII of 1923, thus making the orders under this chapter open to revision as in the case of other proceedings.[4]

An application for revision of an order under this section should be made without unreasonable delay[5] and should be made only by persons who have a *present* claim to the *possession* of the property in dispute and not by persons having only *contingent* or *future* rights to possession.[6] It should be made in the *first* instance to the Sessions Judge or the District Magistrate and not to the High Court even though the High Court has concurrent jurisdiction under S. 435 to call for and examine the records of the proceedings.[7] The District Magistrate or the Sessions Judge has power only to make a report under S. 438, *infra* and has no power to revise the orders[8] or to order further inquiry under Ss. 436 or 437.[9]

The High Court will not interfere if final orders had not been passed by the Magistrate.[10] When the High Court is exercising revisional jurisdiction it is not exercising the powers of a Magistrate under Chapter XII and therefore has no power to appoint a receiver pending disposal of the revision application[11]

(1912) 13 Cri. L. Jour. 719 (719), *Sri Ram* v. *Fanjdar Singh.*

(1916) 17 Cri. L. Jour. 144 (144): 1917 Mad. 204, In re *Lingaraja Misro.*

(1917) 18 Cri. L. Jour. 23 (24): 1917 Mad. 610, *Krishnappa Naidu* v. *Alamelu Ammal.*

(3) (1899) 26 Cal. 188 (193), *Hurbullubh Narain Singh* v. *Luchmeswar Prosad Singh.*

(1921) 60 Ind. Cas. 325 (328): 48 Cal. 522, *Ali Muhammad Mandal* v. *Piggot.*

(1918) 1918 All. 186 (188): 40 All. 364, *Sunder Nath* v. *Emperor.*

(1917) 18 Cri. L. Jour. 557 (559): 1917 All. 262, *Nathu Ram* v. *Emperor.*

(1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer.*

(1912) 13 Cri. L. Jour. 753 (757): 36 Mad. 275, *Kamal Kutty* v. *Udaya Varma Raja.*

(1902) 24 All. 315 (316, 317), In the matter of *Nathu Mal.*

(1905) 2 Cri. L. Jour. 569 (570-572), *Nawab Khajah Solemolla Bahadur* v. *Ishan Chandra Das Sarkar.*

(1905) 2 Cri. L. Jour. 679 (687): 32 Cal. 1093, *Tara Pada Biswas* v. *Nural Huque Mia* (Power of superintendence under S. 15 of the Charter Act should be exercised with great caution).

[But see (1919) 1919 All. 357 (358, 359): 41 All. 302, *Sakhawat Ali* v. *Emperor.*]

[But see (1904) 1 Cri. L. Jour. 339 (341): 26 All. 144, *Maharaj Tewari* v. *Haricharan Rai.*]

(3-a) (1923) 1923 Mad. 60 (62), *Thayalyee Ammal* v. *Srirangaroya Goundan.*

(1914) 15 Cri. L. Jour. 509 (510): 1915 Mad. 10, *Palni Chetty* v. *Rathina Chetty.*

(1901) 28 Cal. 416 (418), *Jagomohan Pal* v. *Ram Kumar Gope.*

(1916) 17 Cri. L. Jour. 369 (371, 373): 1916 Pat. 292, *Parmessar Singh* v. v. *Kailasapati.*

(1929) 1929 Mad. 847 (848), *Chinnappareddigari* v. *Desari Adigadu.*

(4) (1929) 1929 Mad. 847 (848), *Chinnappareddigari* v. *Desari Adigadu.*

(5) (1873) 19 Suth. W. R. 39 (39, 40), *Gogun Pramanaick* v. *Rance Surnomoyee.*

(6) (1902) 24 All. 443 (445), In the matter of the petition of *Behari Lal.*

(7) (1926) 1926 Nag. 285 (286), *Bajirao* v. *Mt. Dadibai.*

(8) (1925) 1925 Cal. 1234 (1234), *Esaruddi Howaldar* v. *Otaruddi Akon.*

(1917) 18 Cri. L. Jour. 488 (488): 1916 Pat. 132, *Rash Behari Singh* v. *Emperor.*

(1922) 1922 Pat. 449 (450), *Jagupal* v. *Makunda Koer.*

(1902) 1902 Pun. Re. No. 23 (62, 63), *Dhaniram* v. *Bholanath.*

(9) (1917) 18 Cri. L. Jour. 488 (488): 1916 Pat. 132, *Rash Behari Singh* v. *Emperor.*

(1893) 20 Cal. 729 (732), *Chattu Rai* v. *Niran Jan Rai.*

(1928) 1928 Rang. 292 (292), *Maung Sen E.* v. *Maung My De.*

(10) (1918) 1918 Mad. 164 (165), *Ravi Manikyam*, In re.

(11) (1926) 1926 Mad. 139 (140), *Marudayya Thevar* v. *Shunmugasundara Thevar.*

S. 145, Note 61.

or to award costs in respect of the application.[12] But it has been held that the High Court in its powers of superintendence conferred by S. 107 of the Government of India Act, is competent not only to revise the orders of Magistrates but also to give such other consequential directions as may be found necessary in the circumstances of the case.[13] As to when the powers of revision will be exercised by the High Court, *see* S. 439, *infra*.

Mere delay in drawing up the formal proceedings under this section after the receipt of the police report is no ground for interference in revision where there is no injustice caused by the Magistrate's order.[14]

A judgment of a single judge passed in revision is not open to appeal under Cl. 15 of the Letters Patent as it is not made in a "criminal trial" within the meaning of that clause.[15]

S. 146.

146.* (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is

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***(CODE OF 1882—S. 146.)**

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

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(12) (1925) 1925 Mad. 438 (440) : 48 Mad. 262, *Veerappa Naidu* v. *Avudayammal*.
S. C. Oudh 227, *Parwan Singh* v. *Anant Kuar*.

(13) (1921) 60 Ind. Cas. 325 (328) : 48 Cal. 522, *Ali Muhammad Mandall* v. *Piggot*.

(14) (1933) 1933 Pat. 601 (602), *Dhunmun Singh* v. *Baleshwar Prasad Singh*.

(15) (1907) 5 Cri. L. Jour. 343 (343, 344), *Rajah of Kalahasti* v. *Narasimha Nayani Varu*.

S. 146

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.

satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, *and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court,* appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure:

Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

(CODE OF 1872—S. 531.)

531. If such Magistrate decides that neither of the parties is in possession, or is unable to satisfy himself as to which person is in possession, of the subject of dispute, he may attach it, until a competent Civil Court shall have determined the rights of the parties, or who ought to be in possession.

If previous possession cannot be ascertained Magistrate may attach subject of dispute.

(CODE OF 1861—S. 319.)

319. If the Magistrate or other officer as aforesaid shall decide that neither of the parties is in possession, or shall be unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach the subject of dispute until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

If previous possession cannot be ascertained, Magistrate may attach subject of dispute.

S. 146, Notes 1—2.

SYNOPSIS.

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Conditions precedent. See Note 3, Pt. 1. 6-8.
Damages resulting from attachment. See Note 9, Pt. 10.
Duration of attachment. See Note 9, Pts.
Magistrate to take evidence. See S. 145. Notes 37 and 38.

1. Legislative Changes.—

Changes introduced in 1898—

The word "civil" which occurred in S. 146 of the Code of 1882, has been now omitted in this section. *See* Note 7, *infra*.

Changes introduced in 1923—

(1) In sub-S. (1), the proviso is new—*See* Note 11, *infra*.

(2) In sub-S. (2), the words "and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court" are new—*See* Note 13, *infra*.

(3) The proviso in sub-S. (2), is new—*See* Note 13, *infra*.

2. Scope of the section.—If, in the inquiry under sub-S. (4) of S. 145, *ante* the Magistrate decides that none of the parties was in actual possession of the subject of dispute on the date of the preliminary order, or if the Magistrate is unable to satisfy himself as to which of them was in such possession, he should attach the property under this section.[1] The object of such an attachment is

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Section 146—Note 2.

(1) (1872) 17 Suth. W. R. 53 (54), *Emam Bandee* v. *Tek Bahadoor*.
(1919) 1919 Cal. 930 (934), *Sajuddimandal* v. *F. L. Cork* (Absence of cogent evidence of possession on either side—It would be more proper to proceed under this section than under S. 145).

to maintain the *status quo*[2] by keeping the property in *custodia legis* so as to prevent the contesting parties from creating a breach of the peace until the rights of the parties are effectively determined by a competent Court.[3] As to the effect of the order of attachment, *see* Notes 7 and 8, *infra*. An order of attachment under this section being in the nature of an act of confiscation, the Magistrate should not make use of this section except on full inquiry and in exceptional cases.[4]

S. 146, Notes 2—4.

3. Inquiry into possession.—As to the scope of the inquiry, *see* S. 145, *ante*.

Before an order of attachment is made under this section it is necessary that proceedings should have been properly instituted under S. 145, the preliminary order duly passed and a proper inquiry made into the question of possession.[1] The Magistrate should, on such an inquiry, decide and give a *finding*, based on the evidence adduced before him, either that none of the parties was in possession of the property on the date of the preliminary order or that he is unable to satisfy himself as to which of them was in such possession. (*See* Notes 4 and 5, *infra*).[2] It is not necessary however that he should give a finding as to the *likelihood of a breach of the peace*.[3]

4. "None of the parties was then in such possession".—The word "parties" refers to the "parties concerned in the dispute" in sub-S. (1) to S. 145. (*See* Notes to S. 145). The Magistrate may attach the property in dispute if he finds that none of the parties was in possession on the date of the preliminary order. He cannot however do so where he *finds* that a third person

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(2) (1905) 2 Cri. L. Jour. 408 (410) (Cal.), *Rajendra Narain Roy* v. *Mahomed Arzumand*.
(3) (1920) 1920 Mad. 209 (211), *Gopal Iyer* v. *Krishnaswamy Iyer*.
(1933) 1933 Lah. 195 (195): 14 Lah. 414, *Mohammad Habit Khan* v. *Badiul-zaman*.
(1926) 1926 Cal. 782 (786), *Abinash Ch. Choudhury* v. *Tarini Charan Chowdhury*.
(1898) 20 All. 120 (121), *Goswami Ranchor Singh* v. *Sri Girdhariji*.
(4) (1924) 1924 Pat. 804 (804), *Ram Bahal Singh* v. *Rang Badadur Singh*.

Note 3.

(1) (1905) 2 All. L. Jour. 149 (150), *Aziz-Ud-Din* v. *Emperor*.
(1914) 1914 Mad. 78 (81), *Subbarama Iyer* v. *Mariya Pillai*.
(1878) 1 Cal. L. R. 86 (88), In the matter of *Ram Soondare Debee*.
(1928) 1928 Cal. 703 (703), *Doulat Ali Molla* v. *Hedait Molla*.
(1868) 4 Mad. H. C. R. App. xx (xx) (An order of attachment without proper inquiry is bad).
(1919) 1919 Nag. 158 (159), *Abdul Rashid Khan* v. *Khandu* (Do.).
(1913) 40 Cal. 105 (108), *Sheobolak Rai* v. *Bhagwat Pandey* (Do.).
(1905) 9 Cal. W. N. 75 (75), *Herendra Nath Roy* v. *Kali Chandra* (Do.).
(1924) 1924 Pat. 804 (804), *Ram Bahal Singh* v. *Rang Bahadur Singh* (Do.).
(1872) 18 Suth. W. R. 4 (4), In re *Mukhoda Dasee* (Do.).
(1865) 3 Suth. W. R. 9 (10), *Queen* v. *Seetanath* (Do.).
(1909) 9 Cri. L. Jour. 272 (273): 1 S. L. R. 33, *Crown* v. *Isakhan* (Do.).
(1914) 1914 Oudh 31 (31), *Inayat-Ullah* v. *Amanant Husain* (Do.).
(1908) 8 Cri. L. Jour. 202 (203) (Cal.), *Sheikh Mansar Ali* v. *Matiullah* (Do.).
(1923) 1923 Nag. 297 (298), *Nilakanth* v. *Suryabhan* (Do.).
(1917) 1917 Pat. 110 (111), *Lachmi Singh* v. *Bhusi Singh* (The Magistrate should not pass an order *ex parte* under this section).
See also foot-note 4 to Note 5.
(2) (1917) 18 Cri. L. Jour. 557 (559): 1917 All. 262, *Nathuram* v. *Emperor*.
(1915) 16 Cri. L. Jour. 239 (240): 1915 Mad. 1176, *Thumbalabed Hampanna* v. *Parise Gangamma*.
(1928) 1928 Nag. 325 (326), *Jan Mohammad* v. *Jivan Khan*.
(1928) 1928 Cal. 703 (703), *Daulat Ali* v. *Hedail Molla*.
(1911) 15 Cal. W. N. lxxi (lxxi), *Mukhim* v. *Nathuni*.
(1872) 18 Suth. W. R. 4 (4), In re *Mukhoda Dassee*.
(1921) 1921 Pat. 166 (166), *Khedan Mahto* v. *Hussaini Kalal*.
(1930) 1930 Mad. W. N. 771 (772), *Patanobhamayya* v. *Virayya*.
(1932) 1932 All. 325 (325), *Brij Pal Singh* v. *Ram Naresh Singh* (But it is not necessary to state the reasons for his finding for the purposes of a revisional tribunal).
(3) (1932) 1932 All. 683 (684), *Chiranji* v. *Mahadeo Prasad*.

S. 146, Notes 4—5.

was in possession of the property in dispute.[1] Nor can he declare the possession of such person under this section.[2] The proper course, in such cases would be to proceed against the parties in dispute under S. 107.[3] Where however such third person does not claim to be in possession, the Magistrate may attach the property under this section.[4]

5. "Unable to satisfy himself as to which of them was in such possession".—As has been seen in the Notes to S. 145, the inquiry by the Magistrate is restricted to a determination of the fact of *actual possession*. The Magistrate cannot consider the *title* of the parties to the property and cannot therefore pass an order under this section on the ground of his inability to decide on the *rights* of the parties to possession,[1] or to understand or interpret the terms of a Civil Court's decree.[2] The doubt upon which the Magistrate can act must be the result of his inability to determine possession upon the *evidence* adduced in the case.[3] The Magistrate cannot, without making a proper inquiry and without receiving evidence offered by the parties, hold that he is unable to decide the fact of possession.[4] But where the parties do not adduce any evidence at all though they are given ample opportunities to do so, there is no obligation imposed on the Magistrate to make any independent inquiry or to hold any local investigation; he is entitled to attach the property on the ground of his inability to decide the fact of possession.[5]

As has also been seen in the notes to S. 145, *ante* the question of possession should be confined to the *date* of the preliminary order. Thus where the posses-

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Note 4.

(1) (1921) 61 Ind. Cas. 848 (848) (Cal.). *Sasi Mohun Kundu* v. *Kailash Chandra De.*
(1902) 2 Weir 106 (107). *Venkatappa* v. *Ramasami.*
(1899) 3 Cal. W. N. 329 (331). *Janoki Nath* v. *Queen.*
[See also (1893) 21 Cal. 404 (414, 415). *Bachu Sheikh* v. *Deb.*
(1875) 24 Suth. W. R. 40 (41). *Peary Mohan Mookerjee* v. *Baboos Rash.*]
(2) (1921) 1921 Pat. 173 (174). *Lachmi Ojha* v. *Birja Missir.*
(3) (1919) 32 Cal. L. Jour. 54 (63): 1920 Cal. 824. *Indian Iron, etc.* v. *Banso.*
(4) (1919) 1919 Pat. 130 (131). *Bhagjogin* v. *Emperor.*

Note 5.

(1) (1910) 11 Cri. L. Jour. 560 (560) (Mad.). *Veyya Manikiyam* v. *Venkaiya.*
(1904) 6 Bom. L. R. 723 (724, 725). In re *Somnath Madhavji.*
(1905) 7 Bom. L. R. 18 (19). In re *Sangambasawa Kom Basappa.*
(1923) 1923 Pat. 363 (363). *Mt. Mahodra Koer* v. *Khuban Panday.*
(1864) Suth. W. R. Supp. 28 (29). *Ramdyal* v. *Chinta Monee.*
(2) (1878) 1 Cal. L. R. 273 (274). In the matter of *Leelanund Singh Bahadoor.*
(1924) 1924 Pat. 711 (712). *Durganand Ojha* v. *Hiranand Ojha.*
(3) (1900) 4 Cal. W. N. 562. *Joyanti Kumar Mookerjee* v. *J. B. Middleton.*
(1921) 1921 Pat. 166 (166). *Khedan Mahato* v. ***Hussaini Kalal*** (Magistrate should discuss the evidence and give reasons for his finding).
(1921) 1921 Pat. 173 (174). *Lachmi Ojha* v. ***Birja Misser*** (Do.).
(1923) 1923 Pat. 588 (588). ***Lakhpat Gope*** v. *Emperor* (Do.).
[See also (1897) 1897 Pun. Re. No. 5, *Queen-Empress* v. *Gauhar Khan.*]
(4) (1912) 15 Ind. Cas. 486 (486, 487): 40 Cal. 105. *Sheo Balak Rai* v. *Bhagwat Pandey.*
(1910) 11 Cri. L. Jour. 90 (90) (Cal.). *Asfandyar Khan* v. *Irshad Khan.*
(1918) 1918 Cal. 284 (285). *Prafulla Nath Tagore* v. *J. Hodding.*
(1907) 6 Cri. L. Jour. 452 (454): 34 Cal. 840. *Kolka Koer* v. *Muneswar Tewari.*
(1922) 1922 Cal. 280 (280). *Sita Nath Bhagat* v. *Ram Kishore Mondal.*
(1870) 6 Mad. H. C. R. iv (iv).
(1910) 14 Cal. W. N. xci (N.).
(1869) 11 Suth. W. R. 9 (9). Re *Golock Chunder.*
(1920) 1920 Pat. 215 (246). *Kailash Behari* v. *Jai Narain Rai.*
(1924) 1924 Pat. 47 (48). *Wayesul Huq* v. *Shobrati Jolaha.*
(1922) 1922 Pat. 544 (545). *Parasuram Rai* v. *Shivjatan Upadya* (Parties did not appear on date fixed for hearing. Held, Magistrate must make inquiries to ascertain possession).
(1917) 1917 Pat. 507 (507). In re *Manrakhan Singh* (Magistrate ought to have allowed reasonable time to parties to adduce evidence).
See also the cases in Foot-Note 1 to Note 3, *ante.*
(5) (1930) 1930 Pat. 29 (30): 9 Pat. 639. *Bengali Parida* v. *Benchhanidhi Panigrahi.*
(1919) 1919 Cal. 884 (885). *Upendranath Bhattacharjee* v. *Prasanna Kumar.*
(1910) 11 Cri. L. Jour. 27 (27) (Cal.). *Bejoy Madhub Chowdhury* v. *Chandra Nath Chuckerbutty.*

sion of one of the parties on the date of the preliminary order is admitted, the Magistrate cannot attach the property under this section, on the ground that he is unable to decide who was in possession for two months before the date of the preliminary order.[6] S. 146, Notes 5—7.

It has further been seen in the Notes to S. 145, that where the evidence on both sides is equally reliable and balanced and the Magistrate is unable to come to a conclusion on such evidence, he is entitled to consider the question of title and to draw a presumption as to possession arising from title. But where the evidence is equally unreliable on both sides, the Magistrate cannot draw any such presumption; he should attach the property under this section.[7]

6. **Joint possession.**—It has been seen already in the Notes to S. 145, *ante* that where the Magistrate decides that one party is in possession of a specific portion of the property and that the other is in possession of the rest, the Magistrate should pass an order under S. 145 maintaining the possession of the parties in respect of the respective portions. In such a case the Magistrate should not pass an order under this section attaching the *entire* property on the ground that he is unable to satisfy himself as to which of them is in possession of the *entire* property.[1]

If however the Magistrate finds that the parties were in *joint* possession on the date of the preliminary order, can he pass an order of attachment under this section? It has been held by the High Courts of Allahabad,[2] Bombay[3] Calcutta[4] and Patna[4-a] that he can on the ground that he is not able to satisfy himself as to which of the parties is in possession of the *entire* property. On the other hand it has been held by the High Court of Madras[5] that he has no power to pass an order under this section and that the proper course in such cases would be to bind over the parties under S. 107.

7. **Decision of a competent Court.**—In S. 146 of the Code of 1882, the words "competent *Civil* Court" were used and it was held in cases decided under that Code that the Magistrate had no jurisdiction to attach the properties if the rights of the parties in dispute could *only* be decided by a *Revenue* Court.[1] The word 'civil' has been omitted in this Code, and it has been held that an order of the Collector under S. 41 of the Bengal Survey Act[2] or an order under S. 40 of the United Provinces Land Revenue Act[3] is an order of a competent Court determining the rights of the parties to possession within the meaning of

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(6) (1930) 1930 Lah. 422 (422, 423), *Gur Das* v. *Narain Das.*
(7) (1923) 1923 Cal. 303 (304), *Ashoy Kumar* v. *Brojeshwar Ghattak.*

Note 6.

(1) (1905) 2 Cri. L. Jour. 408 (410) (Cal.), *Rajendra Narain Roy* v. *Mohomed Arzumand Khan.*
(1883) 2 Weir 108 (109), *Devaji Manalpad* v. *Gotha Sankar Valia Raj.*
(1901) 5 Cal. W. N. 710 (712, 713), *Sardar Ali* v. *Abdulkarim.*
(2) (1932) 1932 All. 683 (684), *Chiranji Lal* v. *Mahadeo Prasad.*
(3) (1930) 1930 Bom. 172 (173), In re *Venkatraman Rama Hedge* v. *Emperor.*
(4) (1901) 5 Cal. W. N. 710 (712, 713), *Sardar Ali* v. *Abdul Karim.*
(1895) 22 Cal. 297 (305), *Katras Jherriah Coal Co.* v. *Sibkrishta Daw.*
(4-a) (1932) 1932 Pat. 366 (368), *Nand Keshwar Prasad Sahi* v. *Sita Saran Sahi.*
(5) (1919) 1919 Mad. 812 (813), *Sankara Kylasa Mudaliar* v. *Kuthalinga Mudaliar.*
[See (1914) 27 Mad. L. Jour. 169 (170, 171), *Muhammad Koolayappa Rowthan* v. *Abdul Khadir Rowthen.*]

Note 7.

(1) (1893) 15 All. 394 (395, 396), *Ganga Prasad* v. *Narain.*
(2) (1910) 11 Cri. L. Jour. 372 (372): 37 Cal. 331, *Ambler* v. *Sami Ahmed.*
(3) (1922) 1922 Oudh 300 (301): 25 Oudh Cas. 242, *Surendra Bikram Singh* v. *King-Emperor.*
(1926) 1926 Oudh 179 (179), *Emperor* v. *Nisar Alikhan.*
(1924) 1924 All. 777 (778): 46 All. 879, *Mt. Ram Sri* v. *Sri Kishun.*

S. 146, Notes 7—9.

this section; though such an order, being mutation proceedings, is not a determination of title to the property.[4] But an order of the Revenue Divisional Officer in Madras deciding the question of registry of immovable property is not an order of a competent Court in respect of the question of the right to possess the subject of the dispute.[5]

The party filing the civil suit should establish his title to the property.[6] Where a competent Court has determined the rights of the parties to possession the Magistrate ceases to have authority to retain control of the property,[7] and he should withdraw the attachment and give possession on the basis of such a judgment.[8] It is sufficient if there is any *adjudication* of the question by a 'competent Court,' even though the judgment is not *inter parties*[9] and is in the nature of an *obiter*.[10] The mere fact that only symbolical possession was decreed in favour of one of the parties,[11] or that an appeal is pending against the judgment[12] or that the period of limitation for the appeal has not expired[13] is no reason for the Magistrate continuing to keep the property in attachment.

8. **Order of attachment.**—The object of an attachment under this section is to keep effective control of the subject of the dispute so as to prevent the contesting parties from creating a breach of the peace in their attempts to obtain physical possession.[1] Therefore *actual taking and keeping of possession* is contemplated when the Magistrate passes an order of attachment under this section,[2] *see* Form No. 22, *infra*.

The Magistrate has power to make an order respecting the management and control of the property during the period of such attachment,[3] and where the property is temple property, he has power to make such arrangements as may be necessary for the performance of the daily puja.[4]

Where the properties of a *Mutt* are attached under this section, the Magistrate has power to pass an order regarding the jewellery[5] or moveable property[6] *appurtenant* to the Mutt.

9. **Effect of an order of attachment.**—Where property is attached under this section it passes into *custodia legis* (*See* Note 2, *ante*), and the

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(4) (1922) 1922 Oudh 300 (301): 25 Oudh Cas. 242, *Surendra Bikram Singh* v. *King-Emperor*.
(5) (1919) 1919 Mad. 953 (954), *Guruvanna Gowd* v. *Govindappa*.
(6) (1862) Suth. W. R. 7 (7) (F. B.), *Moheshur* v. *Rampat*.
(7) (1914) 1914 L. Bur. 218 (219), *Maung Tha Zan* v. *Maung Bagale*.
(1933) 1933 Pat. 224 (231): 12 Pat. 261, *Jurawan Singh* v. *Ram Sarekh*.
(8) (1915) 16 Cri. L. Jour. 481 (482): 1916 Mad. 507, *Maharaja of Venkatagiri* v. *Ambarkana Srinivasa Rao*.
(1893) 1893 All. W. N. 100 (101), In re *Avada Narain Lal*.
(9) (1924) 1924 Cal. 812 (813), *Ashes Kumar* v. *Kessori*.
(1916) 17 Cri. L. Jour. 331 (332): 1917 Mad. 453, *Vithoba Rao* v. *Narasinga Rao*.
(10) (1924) 1924 Cal. 812 (813), *Ashes Kumar* v. *Kessori*.
(11) (1910) 14 Cal. W. N. xci (xci) (N).
(12) (1918) 1918 Lah. 390 (391) *Emperor* v. *Abdul Aziz*.
(1914) 15 Cri. L. Jour. 500 (501): 1914 L. B. 218, *Mg Tha Zan* v. *Mg Bo Gale*.
(13) (1924) 1924 All. 777 (777), *Mt. Ram Sri* v. *Sri Kishuri*.

Note 8.

(1) (1920) 1920 Mad. 209 (211), *Gopal Iyer* v. *Krishnaswami Iyer*.
(1898) 20 All. 120 (121), *Goswami Ranchor Lalji* v. *Srigirdariji*.
(2) (1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswami Iyer*.
(1925) 1925 Nag. 297 (298): 21 Nag. L. R. 191, *Dasarath* v. *Tara Chand*.
(3) (1925) 1925 Nag. 297 (298): 21 Nag. L. R. 191, *Dasarath* v. *Tarachand*.
(1872) 17 Suth. W. R. Cr. 38 (39), In re *Greesh Chunder Doss*.
(4) (1893) 2 Weir 112 (112), In re *Muthuswami*.
(1886) 2 Weir 110 (111, 112), *Neelamegan* v. *Mooroogappa*.
(1883) Weir 776 (777), *Sandara Pandaram*.
(5) (1927) 1927 All. 125 (125), *Gokulnath* v. *Baramnath*.
(6) (1917) 38 Ind. Cas. 319 (320): 1918 Pat. 42, *Barat Das* v. *Ramcharitar Das*.

possession of the Court during the period of attachment enures to the benefit of the person who is ultimately found by a competent Court to be entitled to the property.[1] The legal possession being in the true owner, the attachment does not operate as *dispossession* of the rightful owner.[2] Hence the party claiming the property need only bring a suit for a *declaration* of his right to the property under S. 42 of the Specific Relief Act.[3] He cannot bring a suit for possession against the defendant[4] or claim mesne profits from him during the period of attachment.[5] S. 146, Notes 9—10.

As to the effect of attachment on limitation for such suits *see* Note 10, *infra*.

The order of attachment is effective only up to the time, a competent Court decides the rights of the parties or passes such orders as may be necessary for the protection of the property.[6] Therefore any act done by the Court or by the Receiver during the period of attachment can enure only during such period, and cannot prejudicially affect the rights of the parties found entitled to the property.[7] As the possession is that of the rightful owner, the Government have no right to the profits derived from the property during the period of attachment.[8]

An order passed by the Magistrate after the order of attachment for the purpose of settling the lands attached is only an executive order and is therefore not open to revision by the High Court.[9]

Where the Court passes an order of attachment and the order is subsequently found to be erroneous and without jurisdiction, the person aggrieved by such an order has no cause of action for damages against the party who procured such order as the Court is not an agent of the litigant so as to make that litigant liable for errors of law or procedure which the Court commits.[10]

10. Effect of order of attachment on adverse possession and limitation. —It has been seen already in Notes 2 and 9, *supra*, that on attachment the

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Note 9.

(1) (1929) 1929 Mad. 38 (41, 43), *Alagarswami Thevan* v. *Ramabadra Naidu Garu.*
(1903) 26 Mad. 410 (415), *Raja of Venkatagiri* v. *Ishkapalle Subbayya.*
(1906) 30 Mad. 12 (14), *Ramaswamy Iyyar* v. *Muthusami.*
(1921) 1921 Cal. 584 (586), *Sarat Chandra* v. *Bibhabathi.*
(1916) 20 Cal. W. N. 481 (483): 1916 Cal. 751, *Brojendra Kishore Roy* v. *Bharat Chandra Roy.*
(1922) 1922 Cal. 419 (421): 49 Cal. 544, *Pannalal* v. *Panchu.*
(1905) 32 Cal. 856 (859, 860), *Beni Prasad Koeri* v. *Shahzada Ojha.*
(1933) 1933 Lah. 195 (195): 14 Lah. 414, *Mohammad Habit Khan* v. *Badiulzaman Khan.*
(1926) 1926 Cal. 782 (786), *Abinash Chunder* v. *Tarini.*
(2) (1916) 20 Cal. W. N. 481 (483), *Brojendra Kishore Roy Chowdhury* v. *Bharat Chandra Roy.*
(1903) 26 Mad. 410 (415), *Raja of Venkatagiri* v. *Isakapalli Subbiah.*
(3) (1916) 20 Cal. W. N. 481 (484), *Brojendra Kishore Roy Chowdhury* v. *Bharat Chandra Roy.*
(1922) 1922 Cal. 419 (420): 49 Cal. 544, *Panna Lal Biswas* v. *Panchu Puidas.*
(1933) 1933 Lah. 195 (196): 14 Lah. 414, *Mohammad Habit Khan* v. *Badiulzaman Khan.*
(4) (1929) 1929 Mad. 38 (41), *Alagarswami Thevan* v. *Rambadra Naidu Garu.*
(1922) 1922 Cal. 419 (420): 49 Cal. 544, *Pannalal Biswas* v. *Panchi Puidas.*
(1927) 1927 Nag. 316 (317), *Sakharam* v. *Tukaram.*
(5) (1924) 1924 Cal. 1010 (1012): 15 Cal. 853, *Chhaganmull Agarwala* v. *Amanathulla Mohammad.*
(6) (1900) 22 All. 214 (215), *Barkat-Un-Nissa* v. *Abdul Aziz.*
(7) (1933) 1933 Pat. 224 (231): 12 Pat. 261, *Jurawan Singh* v. *Ram Sarekh Singh.*
(8) (1911) 12 Cri. L. Jour. 403 (403) (Lah.), *Mohar Singh* v. *Emperor.*
(9) (1919) 1919 Pat. 203 (205), *Saheb Tewari* v. *Emperor.*
(10) (1910) 14 Cal. W. N. 96 (99, 100), *Rani Mina Kumari Bibi* v. *Surendra Narain Chakravarthy.*
(1902) 6 Cal. W. N. 882 (883), *Ananda Pershad* v. *Kohoda Bux.*
(1911) 12 Cri. L. Jour. 14 (15) (Cal.), *Mackay* v. *Cave.*
(1883) 6 Mad. 426 (428), *Ammani Ammal* v. *Sellayi Ammal.*

S. 146, Notes 10—11.

property is held in legal custody and such custody should be deemed to be in law the possession of the rightful owner. Therefore if the true owner was in possession at the time of the attachment his possession in the eye of the law is not interrupted; where however the wrong doer was in possession at that date, the effect of the attachment would be to interrupt his possession and to hold the property adversely to him on behalf of the rightful owner.[1]

The question then arises as to what is the period of limitation within which the rightful owner should bring a suit to establish his rights to the property attached under this section.

Art. 47 of the Limitation Act has no application as its application is restricted to cases where an order respecting immovable property has been made in favour of one of the parties[2] (*i.e.*, under sub-S. (6) to S. 145.)

Articles 142 and 144 also can have no application as by an order of attachment under this section there is in law no *dispossession* or *discontinuance of possession* of the true owner,—and as no suit for *possession* could be brought against the other party.[3]

It has been held by the High Court of Madras[4] that a suit for declaration of title to the attached property should be brought within 6 years of the date of attachment under Art. 120 of the Limitation Act but that even if the *suit* is barred under that article, the *title* of the rightful owner is not extinguished under S. 28 of the Act and therefore that the Magistrate should in such a case accept the *finding* in the suit as a determination of the title of the successful party and release the property from attachment. On the other hand it has been held by the High Court of Calcutta[5] and the Judicial Commissioner's Court of Nagpur[6] that Art. 120 would apply to such a case, but that attachment should be treated as a "*continuing wrong*" as far as the rightful owner is concerned under S. 23 of the Limitation Act.

11. Withdrawal of attachment.—Prior to the amendment of 1923, there was no provision for withdrawal of the attachment effected under this section, and it was held in the undermentioned cases that the Magistrate may withdraw the attachment under his inherent powers if he is satisfied that there is no longer any apprehension of a breach of the peace.[1] The proviso to sub-S. (1) gives effect to this view. It has been held that in withdrawing the attach-

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Note 10.

(1) (1921) 1921 Cal. 584 (586), *Saratchandra Maiti* v. *Bibhabati Debi.*
(2) (1929) 1929 Mad. 38 (41), *Alagarswami Theran* v. *Ramabadra Naidu.*
(1898) 20 All. 120 (122, 123), *Goswami Ranchor Lalji* v. *Sri Girdhariji.*
(1877) 1 Mad. 309 (311), *Akilandammal* v. *Periaswami.*
(1901) 28 Cal. 86 (88), *Deo Narain Chowdhury* v. *C. R. H. Webb.*
(1903) 26 Mad. 410 (413), *Raja of Venkatagiri* v. *Isakapalli Subbiah.*
(3) (1903) 26 Mad. 410 (413), *Raja of Venkatagiri* v. *Isakapalli Subbiah.*
(1916) 20 Cal. W. N. 481 (483), *Brojendra Kishore Roy Chowdhury* v. *Bharat Chandra Roy.*
[But see (1898) 20 All. 120 (122, 123), *Goswami Ranchor Lalji* v. *Sri Girdharji.*]
(4) (1903) 26 Mad. 410 (415), *Raja of Venkatagiri* v. *Isakapalli Subbiah.*
(5) (1916) 20 Cal. W. N. 481 (483), *Brojendra Kishore Roy Chowdhury* v. *Bharat Chandra Roy.*
(1922) 1922 Cal. 419 (420, 421): 49 Cal. 544, *Pannalal Biswas* v. *Panchu Ruidoss.*
[See also (1921) 1921 Cal. 584 (586), *Sarat Chandra Maiti* v. *Bibhabati Debi.*]
(6) (1925) 1925 Nag. 236 (237): 20 Nag. L. R. 195, *Yeknath* v. *Bahia.*

Note 11.

(1) (1920) 1920 Lah. 286 (287): 1 Lah. 451, *Khushi Ram* v. *Emperor* (Where one of the parties dies leaving the other as his heir).
(1876) 25 Suth. W. R. Cri. 68 (69), *Queen* v. *Kaly Kishore Roy* (Where the parties have settled their dispute).

ment, the Magistrate may make over possession of the property to any party he thinks fit, and is not bound simply to direct the Receiver to abandon the property leaving the parties to scramble for it—but that in making over possession to any particular party, he should exercise a sound discretion.[2] S. 146, Notes 11—13.

12. Appointment of a Receiver—Sub-S. (2).—The Magistrate may appoint a Receiver if he considers it necessary for the management of the property which he attaches, under this section, but such an appointment can only be made under the circumstances mentioned in the section and after the completion of the enquiry.[1] He has no jurisdiction to appoint a receiver *during* the enquiry.[2] *See* S. 145, *ante*.

As a matter of principle a person who has shown a partiality for one of the parties, or a party to the action should not be appointed unless by consent or unless there are special circumstances justifying his appointment in preference to others,[3] as the possession of the receiver appointed under this section is exclusively the possession of the Court.[4]

13. Powers of the Receiver.—A receiver appointed under this section has, subject to the control of the Court all the powers of a receiver appointed under the Code of Civil procedure.[1] Under O. 40, R. 1, the Court may confer on a receiver such powers of management as it thinks fit. In the absence of any limitation on such power prescribed by the Court, the receiver will have all general powers of management including the power to grant leases.[2] Where a receiver obtained permission from the Court to lease the property, without disclosing all the material facts, and granted a lease for an indefinite period in favour of one of the parties, it was held that the granting of such a lease amounted to a fraud practised upon the Court, and that the Court had jurisdiction to set aside the lease deed.[3] A receiver should obtain directions and instructions from the Magistrate, whenever necessary with regard to the management of the property.[4] The receiver has a right to take possession of such property also as has accreted to the original subject matter of the dispute during the attachment.[5]

It was held in the undermentioned case[6] decided before the amendment of 1923, that a receiver of the property appointed by a Civil Court had no power to remove a receiver appointed under this section, as the possession of the Magistrate continued till the matter was *decided* in a Civil Court, and that the appointment of a receiver, in an interlocutory proceeding was no such decision. This is no longer law under the amended section as the Magistrate has power to appoint a receiver *only* if no receiver has been appointed by a Civil Court;—and even if a receiver is appointed, such receiver should hand over possession to the receiver who may be subsequently appointed by a Civil Court.

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(2) (1926) 1926 Oudh 146 (147), *Ali Bahadur* v. *Emperor.*

Note 12.

(1) (1912) 13 Cri. L. Jour. 536 (536) (Mad.), *Lakshmi Narain Reddy* v. *Gnanaprakasa Reddy.*

(2) (1929) 1929 Lah. 223 (224): 10 Lah. 800, *Diwanchand* v. *Emperor.*

(3) (1927) 1927 Pat. 393 (394): 7 Pat. 1, *Mt. Lachmi Kuar* v. *Gajadhar.*

(4) See Note 2 Pt. (3) and Note 9, *ante.*

Note 13.

(1) (1912) 13 Cri. L. Jour. 295 (295) (Mad.), *Srinivasa Pillai* v. *Sathayappa Pillai.*

(2) (1933) 1933 Mad. 67 (68), *P. S. S. Meyappa Chettiar* v. *Nagammai Achi.*

(3) (1933) 1933 Mad. 67 (69), *Meyappa Chettiar* v. *Nagammai Achi.*

(4) (1914) 18 Cal. W. N. 1245 (1246, 1267): 1915 Cal. 236, *Reajaddin Molla* v. *King-Emperor.*

(5) (1910) 11 Cri. L. Jour. 288 (290) (Cal.), *Shaik Madhu* v. *Shaik Sahar Ali.*

(6) (1913) 40 Cal. 862 (865-867), *Bidya Prosad* v. *Asrafi Singh.*

S. 146, Notes 14—17.

14. Remuneration of the Receiver.—The remuneration to be paid to receivers appointed under this section is in the discretion of the Court but should not exceed the total realisations from the property.[1] The remuneration ordinarily fixed for receivers appointed under O. 40, R. 1, of the Civil Procedure Code does not furnish any criterion for the remuneration to be paid to receivers under this section.[2]

15. Disobedience to an order under this section.—Where the Magistrate attaches the property under this section, it passes into the custody of the Court, and any person entering into the land thereafter is liable for the offence of criminal trespass under S. 447, Penal Code. He is not liable to be punished under S. 188, as in the case of an order under S. 145, sub-S. 6.[1]

16. Review.—A Magistrate has no power to review an order under this section passed by himself or by his predecessor[1] except to correct a clerical error.[2] *See* S. 369, *infra*, and S. 145, *supra*.

17. Revision.—*See* S. 145, *supra* and S. 435, *infra*.

Before the Amending Act of 1923, sub-S. (3) to S. 435 provided that orders under Chap. XII of the Code could not be revised under that section, and it was held that orders passed by the Magistrate under this section, could be revised by the High Court under the powers conferred under S. 107 of the Government of India Act[1] though not under S. 435.[2] But where the order was *without* jurisdiction, the High Court was held not to be precluded by S. 435 from exercising the powers of revision.[3] The omission of sub-S. (3) to S. 435 under the Amending Act of 1923 shows that orders under *this section* are also open to revision under S. 435.

The High Court is not only competent to set aside an erroneous order but also to pass such orders as should have been made by the Magistrate upon the facts proved at the enquiry.[4] Mere brevity of an order is no ground for interference[5] but if it is shown that the Magistrate failed to give full judicial

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Note 14.

(1) (1925) 1925 Nag. 462 (462), *Mt. Yamunabai* v. *Emperor.*
(2) (1925) 1925 Nag. 462 (462), *Mt. Yamuna Bai* v. *Emperor.*

Note 15.

(1) (1898) 8 Mad. L. Jour. 253 (256), *Nagoji Rama Chandra.*

Note 16.

(1) (1917) 1917 Pat. 28 (30), *Ballam Singh* v. *Lal Babu.*
(1917) 1917 Pat. 110 (111), *Lachmi Singh* v. *Bhusi Singh.*
(1913) 14 Cri. L. Jour. 505 (606): 16 Oudh Cas. 192, *Ram Dulare* v. *Ajudhya Singh.*
(1926) 1926 All. 242 (242): 48 All. 258, *Lallan Misir* v. *Ram Richcha.*
[But see (1917) 1917 Pat. 661. *E. B. Clair Smith* v. *Abid Husain.*]
(2) (1917) 1917 Pat. 110 (111), *Lachmi Singh* v. *Bhushi Singh.*

Note 17.

(1) (1920) 1920 Mad. 209 (211), *Gopala Iyer* v. *Krishnaswamy Iyer.*
(1902) 29 Cal. 382 (384), *Lokenath Shah* v. *Nedu Biswas.*
(2) (1904) 1 Cri. L. Jour. 877 (879): 17 C. P. L. R. 133, *Murat Singh* v. *Musammat Paika Bai.*
(3) (1919) 1919 Nag. 158 (159), *Abdul Rahsid Khan* v. *Khandu.*
(1922) 1922 Mad. 437 (439), *Palani Goundan* v. *Kulandaivelu Goundan.*
(1905) 2 Cri. L. Jour. 28 (29) (Bom.), In re *Sanganbasava Kom Basappa.*
(1923) 1923 Nag. 297 (298), *Nilkanth* v. *Suryabhan.*
(1908) 8 Cri. L. Jour. 202 (203) (Cal.), *Sheikh Mansar Ali* v. *Matiullah.*
(1907) 6 Cri. L. Jour. 452 (454): 34 Cal. 840, *Kolha Koer* v. *Munsheear Tewari.*
(1917) 1917 Pat. 28 (29), *Ballam Singh* v. *Lal Babu.*
(1914) 1914 Low. Bur. 218 (219), *Mg. Tha Zan* v. *Mg. Ba Gale* alias *Mg. Bu.*
(1921) 1921 Pat. 173 (174), *Lachmi Ojha* v. *Binra Misser.*
(4) (1895) 22 Cal. 297 (305), *Thekatras Jherriah Coal Co.* v. *Sib Krishta Daw and Co.*
(1916) 20 Cal. W. N. 1014 (1015), *Satyendranath* v. *Krishnadhan.*
(1887) 14 Cal. 361 (364), *Reid* v. *Richardson.*
(5) (1923) 1923 Cal. 483 (483), *Kanqilal Das* v. *Hyder Ali.*

consideration to the evidence in the case, the order will be set aside.[6]

S. 146, Note 17.

The High Court will not *ordinarily* interfere with orders passed by the Magistrate with regard to the management of the property.[7] But where such an order offends against an elementary rule founded on the desire of Courts to place the parties on a footing of absolute equality, the High Court will interfere in revision.[8]

The District Magistrate has no power to revise an order under this section passed by a Subordinate Magistrate.[9]

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right of use of any land or water (including any right of way or other easement over the same) within the local limits of his jurisdiction, he may inquire into the matter in manner provided by S. 145, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being

Disputes concerning easements, etc.

S. 147.

147.* (1) *Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in* S. 145, *sub-S.* (2) (*whether such right be claimed as an easement or otherwise*), *within the local limits of his jurisdiction,* he may *make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned*

Disputes concerning rights of use of immovable property, etc.

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*(CODE OF 1882—S. 147.)

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immovable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or

Dispute concerning easements, etc.

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(6) (1919) 1919 Cal. 99 (100), *Ambica* v. *Wazedali.*
(1917) 18 Cri. L. Jour. 557 (559): 1917 All. 262, *Nathu Ram* v. *Emperor.*
(7) (1902) 29 Cal. 382 (384), *Lokenath* v. *Nedu Biswas.*
(8) (1927) 1927 Pat. 393 (394): 7 Pat. 1, *Mt. Lachmi Kuar* v. *Gajadhar.*
(9) (1922) 1922 Pat. 554 (555), *Ram Kumar Lal* v. *Thakur Ojha.*

S. 147. done, or claiming that such thing may be done, obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or occasions before such institution.

in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in S. 145, *and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.*

(2) *If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right:*

Provided that no such order shall be made where the right is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exerciseable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) *If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.*

(4) *An order under this section shall be subject to any*

subsequent decision of a Civil Court of competent Jurisdiction.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
NATURE OF PROCEEDINGS UNDER THIS SECTION ..	3

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directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or where the right is exerciseable only at particular seasons, unless the right has been exercised during the season next before such institution.

(CODE OF 1872—S. 532.)

532. If a dispute arise concerning the right of use of any land or water, or any right of way, such Magistrate, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it appears to him that the subject of dispute is open to the use of the public, or of any person or of any class of persons, such Magistrate may order that possession thereof shall not be taken or retained by any one to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the person claiming such possession shall obtain the decision of a competent Civil Court, adjudging him to be entitled to such exclusive possession.

Disputes concerning right of use of land or water.

Provided that such Magistrate shall not pass any such order, if the matter be such that the right of use is capable of being exercised at all times of the year, unless such right has been ordinarily exercised within three months from the date of the institution of the inquiry; or, in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

(CODE OF 1861—S. 320.)

320. If a dispute arise concerning the right of use of any land or water, the Magistrate or other Officer as aforesaid within whose jurisdiction the subject of dispute lies, may enquire into the matter, and if it shall appear to him that the subject of dispute is open to the use of the public, or of any person, or of any class of persons, the Magistrate or other Officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons unless such right has been exercised during the last of such seasons before the complaint.

Disputes concerning right of use of land or water.

S. 147, Notes 1—2.

	Note No.
WHO MAY INSTITUTE PROCEEDINGS UNDER THIS SECTION.	4
"IS SATISFIED FROM POLICE REPORT OR OTHER INFORMATION"	5
"DISPUTE LIKELY TO CAUSE A BREACH OF THE PEACE".	6
RIGHT OF USER OF LAND OR WATER	7
"EASEMENT OR OTHERWISE"	8
PRELIMINARY ORDER IN WRITING	9
"PARTIES CONCERNED IN SUCH DISPUTE"	10
SERVICE OF NOTICE	11
INQUIRY INTO THE EXISTENCE OF THE RIGHT ..	12
EXERCISE OF THE RIGHT	13
"ORDER PROHIBITING ANY INTERFERENCE WITH THE EXERCISE OF SUCH RIGHT"	14
"PROHIBITING THE EXERCISE OF SUCH RIGHT" ..	15
DECISION OF A CIVIL COURT	16
CONVERSION OF PROCEEDINGS	17
REVISION	18

Other Topics.

Duration of order. See Note 16, F.N. 1.
Evidence. See Note 10, Pts. 4-7, S. 145.
Inquiry as under S. 145. See Note 12, Pts. 1-3.
Institution of the inquiry. See Note 13, Pts. 6-9.
Interlocutory order restraining the parties. See Note 10, Pt. 9.
Local inspection. See S. 145, Note 10.
Revival of proceedings. See Note 6, F.N. 2.

1. Legislative Changes.—

Changes introduced by the Amendment of 1923.—

(1) For the words "including any right of way or other easement over the same", the words "whether such right be claimed as an easement or otherwise" have been substituted. *See* Note 7, *infra*.

(2) The words "He may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute.....claims" in sub-S. (1) are new. *See* Note 8, *infra*.

(3) For the words "permitting such thing to be done or directing that such thing shall not be done" the words "prohibiting any interference with such right" in sub-S. (2) have been substituted. *See* Note 14, *infra*.

(4) Sub-S. (3) is new. *See* Note 15, *infra*.

2. Scope of the section.—Section 145, *ante*, empowers the Magistrate to take preventive action in respect of disputes concerning *land or water or the boundaries thereof*. This section relates to disputes regarding *rights of user* of land or water and empowers the Magistrates to pass temporary orders, until the rights of the parties are decided by a Civil Court. But the Magistrate is

not *bound* to institute proceedings under this section in respect of such a dispute.[1] He can proceed against the parties under S. 107 or under S. 144, especially if an inquiry into such dispute would involve an investigation into complicated questions relating to the title of the parties.[2] But ordinarily, the proper course for the Magistrate to adopt would be to take action under this section, rather than make temporary orders under S. 144 or S. 107 without any inquiry into the respective claims of the parties.[3] S. 147, Notes 2—5.

As has been seen already in S. 145, the jurisdiction of the Magistrate to institute proceedings under this chapter is of an exceptional character and therefore the procedure prescribed in the section has to be strictly followed.[4] The procedure to be adopted in respect of the inquiry under this section is the same as that provided in S. 145, *ante*. As to the effect of non-compliance with the provisions of the section *see* S. 145, *ante*.

3. Nature of proceedings under this section.—*See* Note 5 to S. 145, *supra*.

The District Magistrate has power to transfer a proceeding under this section under the provisions of Ss. 192 and 528, *infra*.[1]

4. Who may institute proceedings under this section.—*See* S. 145, *ante*.

5. "Is satisfied from Police Report or other information".—*See* Notes 6—8 to S. 145.

The jurisdiction of the Magistrate to institute proceedings under this section arises on his being satisfied that a dispute exists concerning the right of user of land or water and that such a dispute is likely to cause a breach of the peace. Therefore it is his duty to record a *finding* that he is so satisfied on the materials before him[1] and to draw up a preliminary order stating the grounds which have satisfied him; the fact that the evidence in the subsequent inquiry into the existence of the right, discloses such grounds is not sufficient to give him jurisdiction which he did not possess at the time of the commencement of the proceedings.[2]

Where the Magistrate makes use of the Police Report for the limited purpose of satisfying himself as to the existence of such a dispute it is not necessary for him to examine the Police-officer with regard to the correctness of such report.[3]

Section 147—Note 2.

(1) (1869) (1869) 11 Suth. W. R. (Cr.) 3 (3), *Queen* v. *Rassul Nushy*.
(2) (1896) 23 Cal. 557 (562, 563), *Kali Kissen Tagore* v. *Anund Chunder Roy*.
(1926) 1926 Lah. 550 (550, 551), *Ahmad Din* v. *Jiwan*.
(1905) 10 Cal. W. N. viii, *Mirza Ramzan* v. *Munshi*.
(1884) 2 Weir 50 (51), *Sindama Naik*.
[See also (1890) 14 Bom. 25 (27), In re *Atmaram Narayan Parab*.
(1906) 3 Cri. L. Jour. 31 (33): 29 Mad. 97, *Arunachalam Chettiar* v. *Chidambaram*.]
(3) (1867) 2 Weir 65 (66).
(4) (1867) 7 Suth. W. R. (Cr.) 45 (46), *Queen* v. *Ramnath*.

Note 3.

(1) (1923) 1923 Pat. 366 (367), *Abdul Hamid* v. *Hazan Raza*.

Note 5.

(1) (1896) 6 Mad. L. Jour. 193 (194), *Kolandai Nayakan* v. *Karabudda Savudri*.
(1896) 23 Cal. 557 (562), *Kali Kissen Tagore* v. *Anund Chunder*.
(1912) 16 Cal. W. N. xcix (xcix).
(2) (1896) 23 Cal. 557 (562), *Kali Kissen Tagore* v. *Anund Chunder*.
(1912) 16 Cal. W. N. xcix (xcix).
(3) (1931) 1931 All. 14 (15): 53 All. 215, *Todarmal* v. *Emperor*.
(1871) 16 Suth. W. R. 17 (17), In re *Bhadreswari Chowdhrain* (Under

S. 147, Notes 6—7.

6. **"Dispute likely to cause a breach of the peace".**—In S. 532 of the Code of 1872, (corresponding to this section) the words "likely to cause a breach of the peace" were absent, and it was held in the undermentioned case[1] decided under that section that the dispute contemplated by the section should be some substantial dispute necessitating the interference of criminal authorities and that it was not sufficient if there was only a mere discussion or verbal altercation between the parties in respect of their rights. Under the present section however the Magistrate has to be satisfied not only that a real dispute exists but also that such a dispute is likely to cause a breach of the peace.[2] The object of this section is not to provide the parties an alternative to a civil action,[3] or to prevent any mischief or injury to individuals, by reason of any such dispute but to stop public manifestations of the dispute itself.[4] It was held in the undermentioned cases[5] that where the rights of the parties had been determined by the decision of a Civil Court, the Magistrate would have no jurisdiction to inquire into a claim which is at variance with the Civil Court's decree, and that the proper course would be to proceed against the aggressive party under S. 107, *supra*.[6]

7. **Right of user of land or water.**—As to the meaning of "land or water" *see* sub-S. (2) to S. 145, *ante*.

This section is intended to apply only to cases where the dispute relates to the *right of user* of land or water such as the use of highways, pathways, places of worship, fisheries, ferries and the like, as distinct from *disputes concerning immovable property* itself for which provision is made under Ss. 145 and 146, *ante*.[1] The expression land or water is not confined to private property only and is wide enough to include public property such as public roads, streets and pathways.[2] The fact that S. 133, *ante* provides expressly for the removal of obstruction caused to a public pathway does not bar institution of proceedings under this section if the conditions necessary for the exercise of the jurisdiction

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S. 532 of the Code of 1872 the words "is satisfied by Police report, etc." were absent and it was held that such report *per se* is inadmissible as evidence to prove existence of the dispute).

Note 6.

(1) (1880) 5 Cal. 194 (197), *Maharaja of Burdwan* v. *Chairman, Darjeeling Municipality*.
(2) (1896) 23 Cal. 557 (561), *Kali Kissen Tagore* v. *Anund Chunder*.
(1912) 16 Cal. W. N. xcix (xcix).
(1910) 11 Cri. L. Jour. 729 (730) (Cal.), *Kalanand Singh* v. *Rameshwar Singh* (If the Magistrate stays proceedings, he cannot revive them unless there is a fresh dispute likely to cause breach of the peace).
(3) (1866) 6 Suth. W. R. 74 (74), *Moonshee*.
(4) (1874) 22 Suth. W. R. (Cr.) 48 (49), *Rosik Lall Nundi* v. *Kartik Shaut*.
(1927) 1927 Bom. 654 (655), *Anya Shedya Patil*, In re.
(5) (1889) Rat. Un. Re. Cr. C. 462 (462), In re *Moti Lal*.
(1887) 11 Bom. 584 (587), In re *Balakrishna Amrit Pradhan* (Where the rights in dispute had just then been judicially determined by a Sub-Magistrate, the Magistrate cannot assume that the dispute would be continued and proceed to investigate under this section).
(6) (1889) Rat. Un. Re. Cri. Cas. 462 (462), In re *Motilal*.

Note 7.

(1) (1913) 14 Cri. L. Jour. 605 (606): 16 Oudh Cas. 192, *Ram Dulara* v. *Ajudhya Singh*.
(1934) 1934 Pat. 86 (88): 13 Pat. 153, *Ramroop Mahton* v. *Mano Mian* (Distinction between Ss. 145 and 147 pointed out where dispute relates to fisheries).
[See (1898) 26 Cal. 188 (193), *Harbullah Narain Singh* v. *Luchmeswar Prosad Singh* (In the circumstances of the case held that the subject-matter of dispute included not only the right of ferry but also the land and water upon which the right of ferry was exercised).]
(2) (1926) 1926 Pat. 348 (350), *P. D. Hamir & Co.* v. *Suresh Chandra*.
(1924) 1924 Nag. 294 (295), *Parashram* v. *Gopal Ramachandra*.
(1914) 1914 Mad. 712 (713), *Karuppana Koundan* v. *Kandaswami Koundan*.
(1927) 1927 Mad. 985 (985, 986), *Md. Amir Khan* v. *Mahalingam Pillai*.

under this section are established.[2-a] But the power of the Magistrates to pass orders in respect of such public streets or pathways should not be exercised until it is clearly proved that there is a right by custom or by grant or by statute, in one section of the public to prevent another section of the public from using the public street or pathway on particular occasions or for particular purposes, when such use is ordinarily and *prima facie* lawful.[3] S. 147, Note 7.

A "right" under this section must be a *legal* right. If the right claimed is one which the law will not recognize, such as a right to restrain another from fishing in the sea, it cannot be enforced under this section.[3-a]

It has been held that the following rights are rights of user of land or water within the meaning of this section:—

(*i*) A right to take a car in procession along a public road to a temple.[4]

(*ii*) A right to enter a temple and perform puja therein, or to worship therein.[5]

(*iii*) A right to enter a mosque and officiate as Kazi therein.[6]

(*iv*) A right to bury the dead in a burial ground.[7]

(*v*) A right to enter a samadhi.[8]

(*vi*) A right to erect a bund.[9]

(*vii*) A right to go upon a land of another for the purpose of collecting gratuities for a certain religious purpose.[10]

(*viii*) A right of way absolute[11] or limited by the exclusion of vehicular traffic.[12]

(*ix*) A right to lay warps in a street.[13]

(*x*) A right to grow lac on trees standing on land.[14]

(2-a) (1914) 1914 Mad. 712 (713), *Karuppana Koundan* v. *Kandaswami Koundan*.
(1866) 5 Suth. W. R. 5 (5), *Barodapershad Mustafee* v. *Mudoo Soodun Biswas* (The proper course is to proceed under S. 133).

(3) (1915) 16 Cri. L. Jour. 767 (770): 1916 Mad. 75, *Sudalaimuthu* v. *Enan Samban*.
(1910) 11 Cri. L. Jour. 721 (722) (Mad.), *Hindus of Kannamapalaiyam* v. *Kai Kola Christians* (In the absence of any right, the Hindus were prevented from interfering with the ordinary rights of the Christians to take water from a public well).
(1927) 1927 Mad. 985 (985, 986), *Muhammad Amir Khan* v. *Mahalingam Pillai* (The Muhammadans were prevented from interfering with the ordinary rights of the Hindus to take out a procession along a public street).

(3-a) (1935) 1935 Mad. 350 (352), *Sethukaruppan* v. *Peer Mahamad*.

(4) (1925) 1925 Bom. 536 (537), *Basappa Rachapp Bekari*, In re.

(5) (1925) 1925 Mad. 779 (779), *Sinnaswami Chetty* v. *Palani Goundan*.
[But see (1900) 24 Bom. 527 (531), In re *Pandurang Govind*.
(1910) 11 Cri. L. Jour. 292 (292): 37 Cal. 578, *Guiram Ghosal* v. *Lalbehari Das*.
(1911) 12 Cri. L. Jour. 3 (5): 38 Cal. 387, *Ram Saran Pathak* v. *Raghunandan Gir*.
(1901) 3 Bom. L. R. 416 (418), In re *Dnyandeshwar*.
(1916) 17 Cri. L. Jour. 235 (235): 1917 Mad. 840, *Palaniyandi Pandaram* v. *Palaniappa Thevan*.
(1914) 15 Cri. L. Jour. 671 (672): 1915 Mad. 84, *Chidambara Gurukkal* v. *Sengoda Gounden*.
(1888) 11 Mad. 323 (326), *Muhammad Musaliar* v. *Kunji Chek Musaliar*.
(1933) 1933 Mad. 245 (246), *Perumal Konan* v. *Tirumalai Machi Reddiar*.]

(6) (1906) 4 Cri. L. Jour. 58 (59): 29 Mad. 237, *Kadar Batcha* v. *Kader Batcha Rowthan*.

(7) (1928) 1928 Mad. 598 (599): 51 Mad. 522, *Mahammad Abdul* v *Mahammad Ashroff Sahib*.

(8) (1930) 1930 All. 452 (454), *Daya Ram* v. *Emperor*.

(9) (1930) 1930 Cal. 59 (59), *Sashi Bhusan Chowdhury* v. *Debendra Gati Roy*.
[See also (1885) 11 Cal. 52 (54), *Hari Mohan Thakur* v. *Kissen Sundari*.]

(10) (1917) 18 Cri. L. Jour. 113 (115): 1917 Cal. 256, *Sarat Chandra Madak* v. *Mobarak Mallik*.

(11) (1901) 5 Cal. W. N. 335 (336), *Lalit Chandra Neogi* v. *Tarini Pershad Gupta*.
(1868) 4 Mad. H. C. App. xi (xii).
(1867) 3 Mad. H. C. R. App. xxiii (xxiv).

(12) (1921) 1921 Pat. 227 (228), *Mahomed Musa* v. *Shyam Sundar Koer*.

(13) (1919) 1919 Mad. 812 (813), *Sankara Kailasa Mudaliar* v. *Kuthalinga Mudaliar*.

(14) (1920) 1920 Cal. 708 (710), *Ali Mohammad Mondal* v. *Fakiruddin Munshi*.

S. 147, Notes 7--8.

(*xi*) A right to let off water by its natural course.[15]

(*xii*) A right to fish.[16]

(*xiii*) A right to moor boats and dry fishing nets on the land of another.[17]

(*xiv*) A right to use the water emanating from the river and running through a particular channel.[18]

(*xv*) A right to irrigate from a tank.[19]

(*xvi*) A right to use the water of a well.[20]

(*xvii*) A right to ply ferries.[21]

A right of privacy is not however a right in the assertion of which a person can be justified in entering the premises of another for the purposes of closing the doors and windows and is therefore not a right of user of any land or water.[22] Similarly the right of a Muhammadan to do worship in the land of another, which is dependent upon the will of such person cannot be enforced under this section.[23]

It has been held that the following rights are not rights of user of land or water within the meaning of this section:—

(*i*) A right to an undivided share in a property.[24]

(*ii*) A right to remove sandalwood paste from the person of an idol.[25]

(*iii*) A right to a dignity or privilege not properly cognizable by a Civil Court.[26]

It has been held that the obstruction of a drain into which the sewage of complainant's premises fell does not come within the terms of the section.[27]

8. **"Easement or otherwise".**—Previous to the amendment of 1923, it was held by the High Court of Calcutta that the section had no application to rights not resembling easements, such as a right to perform puja in a tempie or to rights acquired by contract.[1] It was held by the High Court of Madras however, that the section was wide enough to apply to cases of such rights also.[2] The introduction of the words "or otherwise" by the amendment of 1923, gives

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(15) (1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Siva Pershad Pandit.*

(16) (1896) 23 Cal. 557 (560), *Kali Kissen Tagore* v. *Anand Chunder Roy.*

(1896) 23 Cal. 55 (59), *Dukhi Mullah* v. *Halway.*

(1934) 1934 Pat. 86 (88): 13 Pat. 153, *Ramroop Mahton* v. *Mano Mian* (Right to catch fish in waters upon the land of another—Dispute as to such right—Section applies).

(17) (1920) 1920 Cal. 561 (562), *Kali Kumar Das* v. *Bijoy Govind Mitra.*

(18) (1919) 1919 Pat. 174 (175), *Manzur Hussain* v. *Gauri Lal Das.*

(19) Oudh S. C. 64, *Queen-Empress* v. *Mt. Reehan.*

(20) (1924) 1924 Nag. 294 (295), *Parashram* v. *Gopal Ramchandra.*

(21) (1899) 3 Cal. W. N. 148 (149), *Maharaja Harbullabh Narain Sing Bahadur* v. *Bajrang Dass* (S. 147 and not S. 145 applies to dispute regarding ferry).

[But compare (1899) 26 Cal. 188 (193), *Hurbullubh Narain Singh* v. *Luchmeswar Prosad Singh* (Dispute concerning not only right of ferry but also land and water over which right was exercised—Held S. 145 applied).]

(22) (1888) Rat. Un. Re. Cr. Cas. 357 (358), In re *Gordhandas.*

(1913) 14 Cri. L. Jour. 400 (401) (Bom.), In re *Shankar Sadasiva Katre.*

(23) (1925) 1925 Pat. 435 (435), *Ram Pratab Marwari* v. *Sheikh Satif.*

(24) (1883) 5 All. 607 (608), *Beni Narain* v. *Acharj Nath.*

(1908) 7 Cri. L. Jour. 309 (310) (Bom.), *Emperor* v. *Gopal Rao Yenkatesh.*

(25) (1902) 4 Bom. 438 (439), In re *Pandurang.*

(26) (1890) 14 Bom. 25 (27), In re *Atmaram Narayan Parab.*

(27) (1866) 5 Suth. W. R. 58 (59), In re *Troylukhonath Bose.*

Note 8.

(1) (1910) 14 Cal. W. N. 611 (614): 37 Cal. 578, *Guiram Ghoshal* v. *Lal Behary Das.*

(1900) 4 Cal. W. N. 779 (780), *Empress* v. *Ganpat Kalwar.*

(2) (1906) 29 Mad. 237 (238), *Kader Batsha* v. *Kader Batcha.*

(1888) 11 Mad. 323 (326), *Muhammed Muscliar* v. *Kunji Chek Musaliar.*

effect to the Madras view.[2-a]

The word "easement" is not used in the restricted sense in which it is used under the English Law[3] nor is it confined to the right of easement acquired by uninterrupted enjoyment for a period of 20 years as provided by S. 26 of the Limitation Act.[4] For the purposes of this section it is enough if the right existed and was exercised during the last season or within 3 months next before the commencement of the proceedings.[5]

9. Preliminary order in writing.—Before the amendment of 1923 the section contained no specific direction for the drawing up of a preliminary order, and it was held in the undermentioned case[1] that the Magistrate was not bound to record a preliminary order as in the case of a proceeding under S. 145. The amended section now specifically enables the Magistrate to make a preliminary order in writing stating the grounds of his being satisfied as to the existence of a dispute likely to cause a breach of the peace and requiring the parties concerned in such a dispute to attend his Court and put in written statements of their respective claims to the right in dispute. The preliminary order should direct the parties to attend the Court of the Magistrate making the order; it is not proper to direct the parties to appear before another Magistrate.[2]

10. "Parties concerned in such dispute".—The Magistrate should ascertain and bring on record all such persons as are interested in the right claimed and require them to attend his Court for the purposes of the inquiry into the existence of the right. The proprietor of the land in which a right of way is claimed is a necessary party to a proceeding under this section though such person may not be *actually* concerned in the dispute.[1] It is not however necessary to implead the person from whom one of the parties derives his title; it is sufficient if the *actual* claimants are impleaded.[2] The omission to implead necessary parties is however only an irregularity and does not render the proceedings illegal unless prejudice is caused to the parties.[3] But an order passed without the necessary parties on record will not be binding on such parties.[3-a]

The Magistrate has no power to add parties after the commencement of the enquiry.[4] *See* S. 145, *ante*.

(2-a) (1930) 1930 All. 452 (454), *Daya Ram* v. *Emperor*.
(1930) 1930 Mad. 865 (865), *Venkanna* v. *Venkata Surya*.
[See also (1934) 1934 Pat. 86 (88): 13 Pat. 153, *Ramroop Mahton* v. *Mano Mian* (Jalkar rights—Dispute as to—Section applies).]
(3) (1896) 23 Cal. 55 (59), *Dukhi Mullah* v. *Halway*.
(4) (1909) 10 Cri. L. Jour. 292 (292, 293) (Cal.), *Srimanta Bera* v. *Indra Narayan Prodhane*.
(5) (1930) 1930 Mad. 865 (865), *Venkanna* v. *Venkata Surya*.
[See (1878) 2 Cal. L. R. 555 (557), *Obhoy Churn Dey* v. *Lukhy Monce Bewa*.]

Note 9.

(1) (1898) 2 Cal. W. N. 670 (671), *Miller* v. *Rajendranath*.
(2) (1896) 6 Mad. L. Jour. 193 (194), *Kolandai Nayakan* v. *Karabudda Savudri*.
(1921) 1921 Pat. 333 (333), *Misri Chaudhury* v. *Narsingh Prasad*.

Note 10.

(1) (1898) 2 Cal. W. N. 670 (672), *Miller* v. *Rajendra Nath*.
(2) (1896) 23 Cal. 55 (59), *Dukhi Mullah* v. *Halway*.
(3) (1926) 1926 Pat. 196 (197), *Chhakauri Lal* v. *Isher Singh*.
(1919) 1919 Pat. 174 (176), *Manzur Hussain* v. *Gaurilal*.
(3-a) (1919) 1919 Pat. 174 (176), *Manzur Hussain* v. *Gaurilal*.
(1925) 1925 Cal. 263 (264), *Jankinath Kundu Pal* v. *Monmohan De*.
(1918) 1918 Nag. 138 (138), *Pilaji* v. *Darya*.
(4) (1901) 5 Cal. W. N. 67 (70), *Basupathinath Bose* v. *Nandoo Lal Bose*.

S. 147, Notes 11—12.

11. Service of Notice.—The provision as to the service of notice is imperative and the Magistrate should not pass final orders under this section without issuing a notice as required by this section.[1] A notice issued under S. 145, is not a sufficient compliance.[2]

As to the effect of non-service of notice, *see* S. 145, *ante*.

12. Inquiry into the existence of the right.—The action taken under this section being of an emergency nature, a lengthy and elaborate inquiry into the rights of the parties is not contemplated. The Magistrate would be justified in passing an order in favour of one party, if he thinks, on a summary inquiry into the rights of the parties that there are reasonable grounds showing the existence of the right in favour of such party.[1] He should not however refer the matter to a Civil Court without any inquiry whatever,[2] but is bound to inquire into the matter in the manner provided under S. 145. That is, he should peruse the statements filed by the parties, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence if any as he thinks necessary and decide the question of the existence of such right as claimed by the parties. *See* S. 145 and the undermentioned cases.[3]

He should not pass an order merely on the ground of the convenience of the parties[4] or on the basis of any private information furnished to him,[5] or on a consideration of sentimental caste objections[6] but should come to a judicial decision on satisfactory proof regarding the rights of the parties.[7]

As the subject-matter of the dispute is a right of user of land or water, the Magistrate cannot pass any order of *attachment*.[8] He has also no power to pass any *interlocutory* order restraining the parties from exercising their rights pending the inquiry under this section.[9] If the case is emergent and calls for immediate action, he has power to prevent a breach of the peace by taking action under S. 144, *ante*.[10]

Note 11.

(1) (1933) 1933 Lah. 145 (147), *Turab Ali Khan* v. *Shromani Gurdwara*.

(2) (1933) 1933 Lah. 145 (147), *Turab Ali Khan* v. *Shromani Gurdwara*.

Note 12.

(1) (1926) 1926 Pat. 348 (351), *Hamir & Co.* v. *Sureshchandra*.

(2) (1870) 14 Suth. W. R. (Cr.) 28 (29), In the case of *Bhoiro Mundul*.

(3) (1918) 1918 Nag. 138 (138), *Pilalji* v. *Darya* (Magistrate is bound to give the parties opportunities of adducing evidence).

(1900) 4 Cal. W. N. 779 (780), *Ganpat Kalear* v. *Inderdeo* (Magistrate is bound to receive the evidence adduced by the parties).

(1903) 30 Cal. 918 (920), *Mahomed Nur* v. *Bilkan Mahtoa* (An order cannot be based merely on the written statements filed by one of the parties without any evidence).

(1917) 18 Cri. L. Jour. 715 (716): 1918 Mad. 791, *Muthuswami Nadan* v. *Kalinga Moopan* (The Magistrate is bound to receive the evidence adduced by the parties even though he has directed a subordinate Magistrate to make a local enquiry).

(1868) 4 Mad. H. C. App. xx (xx) (Do.).

(1916) 17 Cri. L. Jour. 478 (478): 1917 Mad. 854, *Muthusamy Nadan* v. *Kalinga Moopan* (Do.).

(4) (1914) 15 Cri. L. Jour. 668 (668): 1914 Oudh 381: 17 Oudh Cas. 263, *Mt. Gauhar* v. *Emperor* (Magistrate should not prescribe a time of convenience for parties without any inquiry).

(1865) 2 Suth. W. R. Cr. 64 (64), *Queen* v. *Toyluckonauth Sircar* (The mere fact that one of the parties had another way of approach to his house is not a ground for deciding against him in the inquiry).

(5) (1924) 1924 Pat. 717 (718), *Narendranath Sarkar* v. *E. I. Ry.*

(6) (1915) 16 Cri. L. Jour. 767 (769): 1916 Mad. 775, *Sudalaimuthu* v. *Enan Samban*.

(7) (1869) 4 Mad. H. C. App. xxiv (xxvi, xxvii).

(8) (1920) 1920 Cal. 708 (710), *Ali Mohammad* v. *Fakiruddi*.

(9) (1932) 1932 Nag. 83 (84), *Ramachandra* v. *Shankar Rao*.

(10) (1915) 16 Cri. L. Jour. 767 (769): 1916 Mad. 775, *Sudalaimuthu Chettiar* v. *Enan Samban*.

S. 147, Note 13.

13. Exercise of the right.—Where the Magistrate comes to the conclusion that the right claimed exists, he should also decide and give a finding as to whether such right was *exercised* within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or occasions, whether it was exercised during the last of such seasons or occasions.[1] It is not however necessary to give such a finding as to the exercise of the right where the Magistrate decides that the *right itself* does not exist.[2]

It is not necessary that any *specific* instance of the exercise of the right should be proved where a *general* continuous exercise of such right is satisfactorily proved.[3] The Magistrate may also draw a presumption under S. 114 of the Evidence Act, that the party having the right of user of the land, also exercised such right in the absence of clear evidence to the contrary.[4] It has been held by the High Court of Madras that the word 'exercise' does not mean "successfully and completely to assert" and that it is sufficient if the person having such right makes even a small gesture in the assertion of such right.[5]

The period of three months has to be calculated from the date of the institution of the inquiry that is from the date the Magistrate draws up formal proceedings and passes the preliminary order after satisfying himself as to the existence of a breach of the peace.[6] It has however been held by the High Court of Patna that the institution of the inquiry could only be the date on which the complainant brings his grievance to the Court and not the date on which the Court draws up the proceedings.[7]

It has been held by the High Court of Bombay that where a person was prevented from exercising his right within the period of three months because of circumstances beyond his control—as by obstruction by the other party—the proviso has no application and the right of such a person may be declared under this section.[8] On the other hand the High Court of Madras has held that there is no justification for the addition of such a condition to the section and that the words of the proviso should be given their plain meaning.[9]

Note 13.

(1) (1921) 1921 Pat. 486 (486), *Grant* v. *Padaratha Jha.*
(1924) 1924 Pat. 784 (784), *Sirkawal* v. *Bhuja Singh.*
(1913) 14 Cri. L. Jour. 303 (303) (Cal.), *Guru Prosad Dhar* v. *Luchman Ram.*
(1919) 1919 Pat. 477 (478), *Babu Khan* v. *Raj Kishore Pershad.*
(1912) 16 Cal. W. N. xcix (xcix, c) (Magistrate should not confine himself to the question of user only—He should also decide the existence of the right).
(1875) 24 Suth. W. R. 15 (16), *Chowdhree Zuhoorul Huq* v. *Kurum Chand Singh.*
(2) (1913) 17 Cal. W. N. ccxlvii (ccxlviii), *Durga Prosad* v. *Basdeo.*
(3) (1926) 1926 Pat. 348 (351), *Hamir and Co.* v. *Suresh Chandra.*
(4) (1931) 1931 Mad. 495 (496), *Vellayan Chetty* v. *Balakrishna Nadar.*
(5) (1931) 1931 Mad. 495 (496), *Vellayan Chetty* v. *Balakrishna Nadar.*
(6) (1926) 1926 Cal. 1051 (1052): 53 Cal. 851, *Ramchandra Acharjee* v. *Aditya Chandra Pal.*
(1930) 1930 All. 452 (455), *Dayaram* v. *Emperor.*
(1930) 1930 Pat. 291 (292), *Sohan Lohar* v. *Jiut Upadhya* (1926 Cal. 1051 is followed—But it is held that the date on which the parties are heard and evidence is taken and adjudicated upon is the date of the institution of the inquiry. It is submitted that 1926 Cal. 1051 does not lay down such a proposition).
(1927) 99 Ind. Cas. 33 (33) (Cal.), *Ramnath Basu Chowdhury* v. *Sarala Prosad Basu* (Held that the date of institution was the date on which the complainant filed his complaint. This was decided before 1923 where there was no provision as to drawing up of the preliminary order).
(7) (1930) 1930 Pat. 349 (351), *Bhagawan Swami* v. *Mathureswami.*
(8) (1925) 1925 Bom. 536 (537), *Basappa Rachappa Belkeri*, In re.
(9) (1931) 1931 Mad. 495 (496), *Vellayan Chetty* v. *Balakrishna Nadar.*

S. 147, Note 14.

14. "Order prohibiting any interference with the exercise of such right".—Under the section as it stood before 1923, where the Magistrate found that the right claimed existed, he had to pass an order "permitting such thing to be done or directing that such thing should not be done as the case may be" and these words were construed as enabling the Magistrate to pass an order directing a party to do a positive act such as the removal of a bund or fence erected by one party but which interfered with the exercise of the right of the other party.[1] It was also held that in case the party enjoined failed to carry out such order, the Magistrate had power to direct the Police to assist in the removal of such obstruction to the exercise of the right, by the other party.[1-a] By the amendment of 1923, the Magistrate is enabled to pass an order "prohibiting any interference with the exercise of such right". Thus while the order under the section before the amendment was directed to the person *claiming to be entitled* to the right, the order under the present section is directed against the person who is *interfering with such right*.[2] It has been held by the High Court of Calcutta that the power of the Magistrate under sub-S. (2) of the amended section is analogous to the power of a Civil Court to grant a temporary injunction restraining a person from doing a certain act—but that the Magistrate has no power to make an order in the nature of a mandatory injunction such as for instance, directing a party to remove an obstruction or bund put up by him.[3] On the other hand it has been held by the High Court of Madras[4] and Patna,[5] that there is no such restriction in the wording of the section itself, and that, an order under this section passed against the person who has placed an obstruction to the enjoyment of the right would place that person in effect, under a duty to remove the obstruction put up by him.

The Magistrate has to prevent arbitrary interference with the right; he has no power to pass a purely declaratory order under this section.[6]

It has been held by the Calcutta High Court that where *A* is ordered not to interfere with the exercise by *B* of his right of way over the former's land, the removal by *B* of a fence put up by *A* obstructing such right is not an act done "otherwise than in due course of law" within the meaning of S. 9 of the Specific Relief Act.[7]

Note 14.

(1) (1901) 5 Cal. W. N. 67 (70), *Dhanukdharey Sarcar Lal* v. *Nanda Lal Bose.*
(1901) 5 Cal. W. N. 335, *Lalit Chandra Nyogi* v. *Tarini Pershad Gupta.*
(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowat Koer* v. *Siva Pershad.*
(1870) 13 Suth. W. R. (Cr.) 51 (52), *Queen* v. *Madho Churn.*
(1912) 13 Cri. L. Jour. 184 (185): 39 Cal. 560, *Ambika Prosad Singh* v. *Gurusahai Singh.*
(1919) 1919 Pat. 174 (176), *Manzur Hussain* v. *Gauri Lal Das.*
(1914) 1914 Mad. 712 (712, 713), *Giri Appaya* v. *G. Kristamma.*
[But see (1882) 4 Mad. 121 (123), In the matter of *Alfred Lindsay* (Dissented from in 15 Cri. L. Jour. 362).
(1914) 1914 Mad. 239 (240), *Subramania Iyer* v. *Muthu Ambalam.*
(1866) 5 Suth.W.R. (Cr.) 57 (57), *Sremunto Dulori* v. *Ramchand Aduck.*]

(1-a) (1912) 13 Cri. L. Jour. 184 (185): 39 Cal. 560, *Ambika Prasad Singh* v. *Gur Sahai Singh.*
(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Siva Pershad Pandit.*
[But see (1909) 10 Cri. L. Jour. 579 (580): 36 Cal. 923, *Dalmir Puri* v. *Khodadad Khan.*]

(2) (1930) 1930 Mad. 865 (865), *Venkanna* v. *Venkata Surya Neeladri Rao.*

(3) (1925) 1925 Cal. 991 (992), *Hari Mati Dasi* v. *Haridasi Dasi.*
(1935) 1935 Cal. 454 (455), *Jogendra Chandra Das* v. *Birendra Lal Das* (Order directing *A* not to interfere with *B's* exercise of his right of way is proper—But order to *A* to *remove* fence obstructing *B's* pathway is bad).

(4) (1930) 1930 Mad. 865 (866, 867), *Venkanna* v. *Venkata Surya Neeladri Rao.*

(5) (1929) 1929 Pat. 351 (352), *Ram Dhan Puri* v. *Barhamdeo Lal.*

(6) (1884) 7 Mad. 49 (51), In the matter of the petitioner of *Narayana Taragan.*
(1880) 5 Cal. 194 (197), In the matter of *Maharaja of Burdwan* v. *The Chairman of Darjeeling Municipality.*

(7) (1935) 1935 Cal. 454 (455), *Jogandra Chandra Das* v. *Birendra Lal Das.*

15. "Prohibiting the exercise of such right".—Before the amendment of 1923, there was no provision enabling the Magistrate to pass an order prohibiting the exercise of the right, in case he found that such a right did not exist, but it was held nevertheless that the Magistrate had the power to pass a prohibitory order in order to prevent a breach of the peace.[1] The amendment specifically provides that in case the Magistrate finds that such a right as claimed does not exist, he should pass an order prohibiting such party from exercising that right.[2] Where however the Magistrate finds that the right *existed,* but that it was not *exercised* within the period of three months or during the last season, he cannot pass a prohibitory order under this section.[3]

16. Decision of a Civil Court.—Sub-S. (4) provides that an order under this section is subject to any subsequent determination of the rights of the parties by a Civil Court, and therefore the remedy of the party aggrieved by the order of the Magistrate is only to bring a civil suit. Where however, the right in dispute is itself not a right that can be adjudicated upon by a Civil Court, the Magistrate has no power to institute proceedings under this section.[1]

17. Conversion of proceedings.—Where the Magistrate institutes proceedings under S. 145 and subsequently discovers that the dispute relates to a right of user of land or water within the meaning of this section, he cannot convert the proceedings into one under this section but should pass a preliminary order as required by this section and provide opportunities to the parties to adduce evidence with regard to the existence of such right.[1] If however he *converts* the proceeding under S. 145, into one under this section and passes an order thereon, and the parties are not prejudiced thereby, the order will not be set aside in revision.[2]

Similarly a proceeding under S. 133, cannot be converted into a proceeding under this section unless the conditions necessary to give the Magistrate jurisdiction under this section are established and a preliminary order under this section is passed.[3]

18. Revision.—*See* S. 145, *ante.*

The High Court will not interfere with a finding of fact arrived at by the Magistrate and the remedy of the person aggrieved by such a finding is to bring a suit in a Civil Court.[1]

(In removing the fence *B* does not act otherwise than in due course of law).

Note 15.

(1) (1919) 1919 Cal. 207 (208), *Pyari Mohan Shaha* v. *Harish Chandra Saha.*
(2) (1930) 1930 Pat. 291 (292), *Sahan Lohar* v. *Jiut Upadhya.*
(1891) Rat. U. Re. Cr. Cas. 548 (549), *Queen-Empress* v. *Madhavdas.*
(3) (1925) 1925 Bom. 536 (537), *Basappa Rachappa Belkari,* In re.

Note 16.

(1) (1890) 14 Bom. 25 (27), In re, *Atmaram Narayan Parab* (Held also that the order was bad in form as it contained no restriction of the time during which it was to operate).

Note 17.

(1) (1910) 11 Cri. L. Jour. 61 (62): 1909 P. R. 12, *Bhana* v. *Emperor.*
[See (1899) 3 Cal. W. N. 148 (149), *Maharaja Harbullabh* v. *Bajrang Das.*]
(2) (1925) 1925 Cal. 1022 (1023), *Anath Bandhu Nundy* v. *Wahid Ali.*
(1924) 1924 Bom. 452 (452): 48 Bom. 512, In re *Amar Sang.*
(3) (1911) 12 Cri. L. Jour. 43 (44) (Cal.), *Abdul Rachman Mia* v. *Safar Ali.*

Note 18.

(1) (1926) 1926 Mad. 154 (154), *Khazi Mahomed Khan,* In re.
(1922) 1922 Pat. 214 (214), *Bandh Rai* v. *T. B. Norman.*

S. 148. **148.*** (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate, may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this Chapter for witnesses, or pleader's fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Orders as to costs.

(3) When any costs have been incurred by any party to a proceeding under this Chapter * * * * the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. *Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees which the Court may consider reasonable.*

Order as to costs.

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*(CODE OF 1882—S. 148.)

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-Divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees or both, the Magistrate passing a decision under section 145, section 146, or section 147, may direct by whom such costs shall be paid, whether by such party, or by any other party, to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Order as to costs.

S. 148, Note 1.

SYNOPSIS.

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1. Legislative Changes.—There was no section corresponding to this in the Code of 1861.

Changes introduced in 1882—

(1) The words "any Magistrate of the first class" which occurred in S. 553 of the Code of 1872 were substituted by the words "any District Magistrate, or Sub-Divisional Magistrate".

(2) Paragraphs 2 and 3 corresponding to the present sub-Ss. 2 and 3 were newly added.

Changes introduced in 1898—

The words "consistent with the law for the time being in force" in the first paragraph were omitted.

Changes introduced in 1923—

(1) The words "for witnesses' or pleaders' fees or both" in sub-S. (3) were omitted.

(CODE OF 1872—S. 533.)

Local inquiry to determine boundary dispute.

533. Whenever a local inquiry is necessary for the purposes of this chapter, any Magistrate of the first class may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions, consistent with the law for the time being in force, as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(CODE OF 1861—Nil.)

S. 148, Notes 1—4.

(2) The words "all costs.....were fines" at the end of the sub-S. (3) were omitted.

(3) The words "such costs.....reasonable" have been newly added.

2. Scope.—This section provides for a local enquiry in proceedings under this Chap. (XII). It is not in every case that a local enquiry should be held.[1] It should be held if it will assist the Magistrate in determining the several points or the boundaries of the property in dispute.[2] The object of a local enquiry is to understand and appreciate the topography of the land in dispute in order to aid the Magistrate in appreciating the evidence offered in Court, as to the main point, *i.e.*, of possession.[3] A local enquiry should not therefore be directed on matters, which may be proved by evidence, *e.g.*, actual possession.[4] An order completely transferring the function of making investigation into the dispute to a subordinate Magistrate is hence an abuse of the power conferred by this section.[5] The order deputing the enquiry must show the necessity for an enquiry.[6]

3. "Local Enquiry"—Meaning of.—A "local enquiry" under this section is not synonymous with "local inspection"; hence a person deputed to hold an enquiry under this section is competent to examine witnesses.[1] But a mere survey of lands, after enquiry from all parties is not a "local enquiry" but merely a ministerial act.[2]

3-a. Ex parte enquiry.—As the report of the enquiry forms part of the proceedings, and the parties thereto are affected by it, such enquiry should not be held *ex parte*.[1]

4. Who can hold the enquiry.—The section provides that whenever a local enquiry is necessary, a District Magistrate or Sub-Divisional Magistrate *may* depute any Magistrate subordinate to him to make the enquiry. This, however, does not prevent him from making the inquiry *himself*.[1] The person

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Section 148—Note 2.

(1) (1919) 1919 Cal. 884 (885), *Upendranath* v. *Prasanna Kumar.*
(2) (1919) 1919 Cal. 884 (885), *Upendranath* v. *Prasanna Kumar.*
(3) (1922) 1922 Pat. 249 (251), *Mt. Ram Ratan Kuar* v. *Tarakhnath Bhattacharji.*
(1906) 3 Cri. L. Jour. 193 (194) (Cal.), *Lal Behari Saha* v. *Bejoy Shankar Sikdar.*
(1920) 1920 Pat. 749 (749), *Ram Sahai Singh* v. *Dwarka Singh.*
(1923) 1923 Pat. 31 (32), *Lachmi Narain Agarwala* v. *Mukhram Marwari.*
(1923) 1923 Pat. 366 (367), *Abdul Hamid* v. *Hasan Raza.*
(1911) 12 Cri. L. Jour. 319 (319) (Cal.), *Dowlat Koer* v. *Siva Pershad* (Where levels and fall of water are concerned, local enquiry should be ordered).
(4) (1918) 1918 Nag. 136 (137), *Jaiwanti* v. *Ram Rao.*
(1908) 8 Cri. L. Jour. 150 (150) (Mad.), In re *Ramaswami Nayakar.*
(1923) 1923 Pat. 31 (32), *Lachmi Narain Agarwala* v. *Mukhram Marwari.*
(1879) 3 Cal. L. R. 134 (136), In re *Baikant Kumar.*
(5) (1932) 1932 Mad. 368 (369), *Gadagamma Venkatapathi* v. *Baliarsimhuni Sanyasiraju.*
(1907) 6 Cri. L. Jour. 384 (384): 31 Mad. 82, *Armuga Gobinda* v. *Venkata Subbier.*
(1892) 2 Weir 118 (118), *Hanumanthappa* v. *Hussain Saib.*
(1879) 3 Cal. L. R. 134 (136), In the matter of *Baikant Kumar.*
(6) (1908) 8 Cri. L. Jour. 150 (150) (Mad.), In re *Ramaswami Nayakar.*

Note 3.

(1) (1918) 1918 Mad. 791 (793), *Muthuswami Nadan* v. *Kalinga Moopan.*
(1919) 1919 Mad. 166 (167), *Jagannadha Rao Bahadur* v. *Gopala Krishna Rao Bahadur.*
(2) (1922) 1922 Pat. 224 (225): 1 Pat. 75, *Chalai Mahto* v. *Babu Surendranath Chatterjee.*

Note 3-A.

(1) (1920) 1920 Pat. 749 (749), *Ram Sahai Singh* v. *Dwarka Singh.*

Note 4.

(1) (1901) 5 Cal. W. N. 686 (688), *Raj Mohan* v. *Prosunno Chandra.*
(1911) 12 Cri. L. Jour. 319 (319) (Cal.), *Dowlat Koer* v. *Seva Pershad Pandit.*
(1923) 1923 Pat. 366 (367), *Abdul Hamid* v. *Hasan Raza.*

deputed to make the enquiry must be a *Magistrate* and not a Kanungo[2] and such Magistrate must make the inquiry *himself* and cannot delegate it to somebody else.[3] It has however been held in the undermentioned case[4] that this section is only an enabling one and does not prevent any person being deputed under the general provisions of law to hold an inquiry, though in such cases, such person should come into the witness-box and depose to what he saw. S. 148, Notes 4—5.

A *ministerial act*, *e.g.*, the survey of the disputed land not being a local enquiry, can be deputed to a pleader, or a commissioner, or an amin, or a Kanungo.[5]

5. Report of the enquiry.—Where a local enquiry has been made under this section, the report of the Magistrate holding the enquiry may be read as evidence and becomes part of the proceedings.[1] The party affected by it is therefore entitled to be acquainted with the result of the enquiry and should be given an opportunity of rebutting the report.[2] It is however doubtful whether the evidence taken by the Magistrate at the enquiry forms part of the record of the proceedings and whether it can be relied upon by the deputing Magistrate.[3] But it has been held that if such evidence is acted upon, without objection from the parties, the Magistrate does not act without jurisdiction[4]; at the least it amounts to a mere irregularity curable by S. 537.[5]

But where the person deputed is not a Magistrate but a Kanungo[6] or an amin,[7] the report does not automatically form part of the record. He must go into the witness-box and give his deposition and then alone his report is admissible under S. 157 of the Evidence Act.[8]

On receipt of the report, the deputing Magistrate must hold further enquiry[9] and cannot base his order merely on the local inspection; he must take

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(1900) 4 Cal. W. N. 779 (780), *Empress* v. *Ganpat Kalwar.*
(1922) 1922 Pat. 294 (294), *Ramsunder* v. *Maharaja Bahadur Kesho Prasad Singh.*
(1906) 3 Cri. L. Jour. 193 (194) (Cal.), *Lal Behari Saha* v. *Bejoy Shankar Sikdar.*
(1922) 1922 Pat. 249 (251), *Mt. Ram Ratan Kuar* v. *Tarakhnath Bhattacharji.*
(1868) 9 Suth. W. R. 64 (65), *Mt. Anundee Koer* v. *Ranee Soonael Kooer.*
(2) (1881) 7 Cal. L. R. 352 (353), *Umachurn Santra* v. *Beni Madhub Roy.*
(3) (1918) 1918 Nag. 136 (137), *Jaiwanti* v. *Rama Rao.*
(4) (1911) 12 Cri. L. Jour. 480 (480) (Cal.), *Achambit Das* v. *Sarada Prasad Holdar.*
[See also (1873) 20 Suth. W. R. 57 (57), *Queen* v. *Soumber Ahir* (Enquiry was deputed to amin).]
(5) (1922) 1922 Pat. 224 (225): 1 Pat. 75, *Chulai Mahto* v. *Babu Surendranath Chatterji.*
(1873) 20 Suth. W. R. 57 (57), *Queen* v. *Soumber Ahir.*
(1911) 12 Cri. L. Jour. 480 (480) (Cal.), *Achambit Das* v. *Sarada Prasad Holdar.*

Note 5.

(1) (1918) 1918 Nag. 136 (136), *Jaiwanti* v. *Rama Rao.*
(2) (1918) 1918 Nag. 136 (136), *Jaiwanti* v. *Rama Rao.*
(1874) 21 Suth. W. R. Cr. 25 (26), *Mir Dhunoo* v. *Thomas Brown.*
(3) (1917) 18 Cri. L. Jour. 715 (717): 1918 Mad. 791, *Muthuswami Nadan* v. *Kalinga Moopan.*
(1879) 3 Cal. L. R. 134 (136), In re *Baikant Kumar.*
(4) (1917) 18 Cri. L. Jour. 715 (716): 1918 Mad. 791, *Muthuswami Nadan* v. *Kalinga Moopan.*
(1919) 1919 Mad. 166 (167), *Jagannadha Rao* v. *Gopalakrishna Rao.*
(1879) 3 Cal. L. R. 134 (136), In re *Baikunta Kumar* (Agreement to abide by the enquiry).
(5) (1917) 18 Cri. L. Jour. 715 (717): 1918 Mad. 791, *Muthuswami Nadan* v. *Kalinga Moopan.*
(6) (1911) 12 Cri. L. Jour. 480 (480) (Cal.), *Achambit Das* v. *Sarada Prasad Holder.*
(7) (1873) 20 Suth. W. R. 57 (57), *Queen* v. *Soumber Ahir.*
(8) (1911) 12 Cri. L. Jour. 480 (480) (Cal.), *Achambit Das* v. *Sarada Prasad Holdar.*
(1873) 20 Suth. W. R. 57 (57), *Queen* v. *Soumber* (Ameen's report).
(9) (1917) 18 Cri. L. Jour. 715 (716): 1918 Mad. 791, *Muthuswami Nadan* v. *Kalinga Moopan.*

S. 148, Notes 5—7.

evidence tendered by the parties.[10] It has however been held that it is not illegal to act upon the report alone when *no* evidence is tendered by the parties.[11]

6. **Costs—Sub-S. (3).**—The powers under the Civil Procedure Code as to costs cannot be imported into criminal proceedings. Costs can be awarded only under the provisions of this Code.[1] Under sub-S. (3) of this section costs can be awarded by the Magistrate who finally disposes of the proceedings. It has been held that the High Court in revision can also pass an order as to costs in the original proceedings as an incidental or consequential order under S. 439 read with S. 423 (*d*).[2] But there is a difference of opinion as regards the power of the High Court to award costs incurred in the *revision proceedings*. The High Courts of Bombay and Rangoon take the view that the High Court can pass such an order as a consequential and incidental order.[3] The High Courts of Madras and Allahabad have on the other hand taken a different view.[4] The Rangoon High Court has further held that the question whether an order under sub-S. (3) is consequential or incidental is to be determined upon the circumstances of each case.[5]

Where the original case has been tried by one Magistrate, his successor cannot pass an order for costs[6] though where an order for costs has been passed by the former, the successor can make an *assessment* thereof.[7]

7. **Amount of costs.**—Prior to the amendment of this section in 1923, the Magistrate could award costs incurred by the party for *witnesses' or pleaders' fees only*[1] and had no power to award any other costs, *e.g.*, a sum for the damages to the crops,[2] or a penalty paid by a party on a document not properly stamped.[3]

(1892) 2 Weir 118 (118), *Hanumanthappa* v. *Hussain Sahib.*

(1932) 1932 Mad. 368 (369), *Gadagamma Venkatapathi* v. *Baliarsimhani.*

(10) (1900) 4 Cal. W. N. 779 (780), *Emperor* v. *Ganpat Kalwar.*

(1922) 1922 Pat. 294 (294), *Ramsundar* v. *Maharaja Bahadur Kesho Prasad Singh.*

(1906) 3 Cri. L. Jour. 193 (194) (Cal.), *Lal Behari Saha* v. *Bajoy Shankar.*

(1922) 1922 Pat. 249 (251), *Mt. Ram Ratan Kuar* v. *Tarakhnath Bhatta Charjee.*

(1868) 9 Suth. W. R. 64 (65), *Anundee* v. *Soonael.*

[See (1921) 1921 Cal. 272 (272), *Gagan Howladar* v. *Karimudy Chowkidar* (Final order based on local inquiry of which no note or memorandum was recorded was set aside).

(1920) 1920 Lah. 114 (115), *Yar Ali Shah* v. *Rahim Shah.*]

(11) (1916) 17 Cri. L. Jour. 478 (478): 1917 Mad. 854, *Muthuswami* v. *Kalinga.*

(1913) 14 Cri. L. Jour. 302 (302, 303) (Cal.), *Piziruddin* v. *Talajennissa.*

Note 6.

(1) (1926) 1926 Bom. 91 (96), *Bai Jiba* v. *Chandulal Ambalal.*

(2) (1926) 1926 Bom. 91 (96), *Bai Jiba* v. *Chandulal Ambalal.*

(1933) 1933 Rang. 288 (291): 11 Rang. 361, *Ma Mya Khin* v. *Maung Po Htwa.*

(1925) 1925 Mad. 438 (440): 48 Mad. 262, *Veerappa Naidu* v. *Avudayammal.*

(1933) 1933 All. 264 (269): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad.*

(3) (1926) 1926 Bom. 91 (96), *Bai Jiba* v. *Chandulal Ambalal.*

(1933) 1933 Rang. 288 (291): 11 Rang. 361, *Ma Mya Khin* v. *Maung Po Htwa.*

(1925) 1925 Mad. 438 (440): 48 Mad. 262, *Veerappa Naidu* v. *Avudayammal.*

(4) (1933) 1933 All. 264 (269): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad.*

(5) (1933) 1933 Rang. 288 (291): 11 Rang. 361, *Ma Mya Khin* v. *Maung Po Htwa.*

(6) (1929) 1929 Pat. 93 (94), *Manghu Sahu* v. *Ramdhani Tomboli.*

(1920) 1920 Cal. 320 (320): 47 Cal. 974, *Najar Chandra Pal* v. *Sidhartha Krishna.*

(7) (1910) 11 Cri. L. Jour. 335 (336): 13 Oudh Cas. 66, *Iklas Cnas* v. *Raj Kuraj.*

(1914) 15 Cri. L. Jour. 676 (677): 1915 Mad. 92, *Subbiah Servai* v. *Chokkalinga Thevan.*

(1896) 23 Cal. 37 (38, 39), *Mohomed Ershad Ali* v. *Sarada Prasad.*

(1895) 22 Cal. 384 (386), *Giridhar Chatterjee* v. *Ebadullah Naskar.*

(1906) 4 Cri. L. Jour. 171 (172) (Cal.), *Dilbasi Koer* v. *Deorathi Koer.*

[But see (1894) 21 Cal. 609 (611), *Bhojal Sonar* v. *Nirban Singh.*]

Note 7.

(1) (1912) 13 Cri. L. Jour. 297 (297) (Mad.), *P. Peddanna* v. *Tummala Ganta Kotiah.*

(1921) 1921 Pat. 176 (178), *Khubi Singh* v. *Darbari Mahton.*

(1905) 2 Cri. L. Jour. 552 (554): 32 Cal. 602, *Prayag Mahton* v. *Gobind Mahton.*

(1913) 14 Cri. L. Jour. 210 (210) (Mad.), *Tummalaguntа Kotiah* v. *P. Pedanna.*

(2) (1905) 2 Cri. L. Jour. 552 (554): 32 Cal. 602, *Prayag Mahton* v. *Gobind Mahton.*

(3) (1913) 14 Cri. L. Jour. 210 (210) (Mad.), *Tummala Gunta Kotiah* v. *P.*

S. 148, Notes 7—8.

But in view of the amendment, the power, of awarding costs is extended to award other incidental costs also, the costs for witnesses, and pleaders' fees being *included* therein. Hence the cases prior to 1923 deciding that the Court could not award more than costs for witnesses' or pleaders' fees are no longer good law.

Under this section, only the costs incurred by the party either in whole or in part can be awarded.[3-a] Hence it follows that the order should be passed after due enquiry into the amounts of costs incurred.[4] The sum awarded need not however be arrived at after exact calculation.[5] It should only be a reasonable sum,[6] after considering the number of witnesses and the number of hearings.[7] The scale however should not be too liberal.[8] The value of the property in dispute is not a sure test in assessing costs.[9]

8. **When order for costs should be made.**—An order awarding costs should ordinarily be passed simultaneously with the final order on the merits.[1] The actual *assessment* may be made subsequently.[2] But sometimes it is not possible to pass an order at the time of the final order, in which case the Magistrate may reserve judgment as to costs.[3] But the order must be made within

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Pedanna.

(1912) 13 Cri. L. Jour. 297 (297) (Mad.), *P. Peddanna* v. *Tummalu Ganta Kotiah.*

(3-a) (1929) 1929 Pat. 93 (94), *Manghu Sahu* v. *Ramdhani Tamboli.*

(4) (1916) 17 Cri. L. Jour. 348 (349): 1916 Pat. 396, *Nemdhari Singh* v. *Ram Tahal Rai.*

(1929) 1929 Pat. 93 (94), *Manghu Sahu* v. *Ramdhani Tamboli.*

(1920) 1920 Pat. 219 (220), *Jhaman Mahton* v. *Thakuri Mahton.*

(1922) 1922 Pat 564 (565), *Hira Mahton* v. *Raj Kumar Mahton.*

(5) (1932) 1932 All. 325 (326), *Brij Pal Singh* v. *Ram Naresh Singh.*

(6) (1932) 1932 All. 325 (326), *Brij Singh* v. *Ram Naresh Singh.*

(7) (1934) 1934 Cal. 80 (80), *Nezamal Ashan* v. *Golam Mahammad.*

(8) (1905) 2 Cri. L. Jour. 408 (411) (Cal.), *Rajendra Narain Roy* v. *Mohammad Arzunand Khan* (Awarding of additional costs for extra fees and travelling and other expenses for bringing counsel from distance condemned).

(1931) 1931 All. 3 (7): 53 All. 172. *Kallu* v. *Bashiruddin* (Payment of only one pleader allowed instead of two).

(9) (1931) 1931 All. 3 (6): 53 All. 172, *Kallu* v. *Bashiruddin.*

[See also (1929) 1929 Pat. 93 (94), *Manghu Sahu* v. *Ramdhani Tomboli.*

(1916) 17 Cri. L. Jour. 348 (349): 1916 Pat. 396, *Nemdhari Singh* v. *Ram Tahal Rai.*

(1920) 1920 Pat. 219 (220), *Jhaman Mahton* v. *Thakuri Mahton.*

(1922) 1922 Pat. 564 (564, 565), *Hira Mahton* v. *Raj Kumar Mahton.*]

Note 8.

(1) (1934) 1934 Cal. 80 (80), *Nazamal Ashan* v. *Golam Mohammad.*

(1895) 22 Cal. 387 (391), *Binoda Sundari Chowdhurani* v. *Kali Kristo Pal Chowdhury.*

(1897) 24 Cal. 757 (759), *Empress* v. *Tomijuddi.*

(1911) 12 Cri. L. Jour. 49 (49) (Mad.), *Narasimhachariar* v. *Pillanna* (Order allowing withdrawal held not decision within S. 148).

(1928) 1928 Sind 193 (194): 22 S. L. R. 386, *Relumal* v. *Pherumal* (Order staying proceedings is decision within S. 148).

(1934) 1934 Cal. 80 (80), *Nazamal Ashan* v. *Golam Mohammad.*

(1911) 12 Cri. L. Jour. 376 (376) (Cal.), *Bansi Singh* v. *Mohammad Akbar Ali.*

(1906) 4 Cri. L. Jour. 232 (233): 29 Mad. 373, *Vythinada Tambiran* v. *Mayandi Chetty.*

(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Siva Pershad Pandit.*

(2) (1913) 14 Cri. L. Jour. 570 (571) (Mad.), In re *Medapati Ammireddi.*

(1920) 1920 Cal. 320 (321): 47 Cal. 974, *Nafar Chandra Pal Chowdhari* v. *Sidhartha Krishna Mozumdar.*

(1918) 1918 Pat. 481 (482), *Chadhari Ahir* v. *Raja Ram Singh.*

(1933) 1933 All. 264 (269): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad.*

(1895) 22 Cal. 384 (386), *Giridhar Chatterjee* v. *Ebadullah Naskar.*

(1914) 15 Cri. L. Jour. 676 (677): 1915 Mad. 92, *Subbia Servai* v. *Chokkalinga Thevan.*

(1923) 1923 Mad. 87 (88), *Palaniandi Servai* v. *Sammandi Ammal.*

(1897) 24 Cal. 757 (759), *Empress* v. *Tomijuddi.*

(1911) 12 Cri. L. Jour. 376 (376) (Cal.), *Banshi Singh* v. *Syed Mahammad Akbar Ali Khan.*

(1929) 1929 Pat. 93 (94), *Manglu Sahu* v. *Ramdhani Tamboli.*

(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Sivapershad Pandit.*

(1906) 4 Cri. L. Jour. 232 (233): 29 Mad. 373, *Vythinada Tambiran* v. *Mayandi Chettu.*

(1910) 11 Cri. L. Jour. 335 (336): 13 Oudh Cas. 66, *Iklas Kaur Thakurain* v. *Raja Raghuraj Bahadur.*

(1894) 21 Cal. 609 (611), *Bhojlal Sonar* v. *Nirban Singh.*

(1906) 4 Cri. L. Jour. 171 (172) (Cal.), *Dilbasi Koer* v. *Deorati Koer.*

(1896) 23 Cal. 37 (38, 39), *Mohomad Ershad Alikhan Chowdhury* v. *Saroda Prosad Shaha.*

(3) (1934) 1934 Cal. 95 (96), *Devendranath Khan* v. *Dhanmoni Dassi.*

(1923) 1923 Mad. 87 (88), *Palaniandi Ser-*

S. 148, Notes 8–10.

a reasonable time and cannot be passed after great delay.[4]

9. **For and against whom order can be passed.**—The section authorises the Magistrate to pass an order for costs only against the *parties* to the proceedings. No order can therefore be passed against a person who is not a party.[1] Where a party has substantially succeeded, it is but proper that the opposite party, who had wrongfully dispossessed the former, should pay the costs of the former.[2] The mere fact that a party took little interest in the proceedings does not absolve him from liability when the complainant was compelled to make him a party on account of his denial of the complainant's right to possession.[3] Such order can be passed even in favour of the legal representatives of the successful party.[4]

10. **Notice.**—When an order awarding costs is passed simultaneously with the final order on the merits, no notice to the parties is necessary.[1] Where, however, the Magistrate reserves judgment without mentioning at any time when the parties are before him, that he intends to make an order as to costs, notice must be given to the party against whom such order is to be passed.[2] If such an order is passed *ex parte*, the Court acts without jurisdiction.[3] A contrary

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vai v. *Sammandi Ammal*.
(1901) 28 Cal. 302 (303), *Prokash Chunder Sarkar* v. *Ram Prasad Pattack*.
(1918) 1918 Pat. 658 (660), *Dwaraka Rai* v. *Nathuni Koeri*.
(1908) 12 Cal. W. N. ccvii (ccvii), *Kali Prasad Singh* v. *Kali Singh*.
(1897) 24 Cal. 757 (759), *Empress* v. *Tomijuddi*.
(1906) 4 Cri. L. Jour. 171 (172) (Cal.), *Dilbasi Koer* v. *Deorati Koer*.
(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Doulat Koer* v. *Sivapershad Pandit*.
(4) (1929) 1929 Pat. 93 (94), *Manglu Sahu* v. *Ramdhani Tamboli* (Period of nine months held too long).
(1920) 1920 Cal. 320 (321): 47 Cal. 974, *Natarchandra Pal Chowdhari* v. *Sidhartha Krishna* (Three months held not reasonable but order was not disturbed).
(1918) 1918 Pat. 481 (482). *Chadhari Ahir* v. *Raja Ram Singh* (Order as to costs made 10 days after the final order upheld).
(1933) 1933 All. 264 (269): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad* (Two days' delay held reasonable).
(1895) 22 Cal. 384 (386), *Giridhar Chattarjee* v. *Ebadullah Naskar*.
(1914) 15 Cri. L. Jour. 676 (677): 1915 Mad. 92, *Subbiah Servai* v. *Chokkalinga Thevan* (Application by legal representatives after 3 years was allowed).
(1923) 1923 Mad. 87 (88), *Palaniandi Servai* v. *Sammandi Ammal* (Delay of six weeks held not long).
(1897) 24 Cal. 757 (759), *Empress* v. *Tomijuddi*.
(1911) 12 Cri. L. Jour. 376 (376) (Cal.), *Banshi Singh* v. *Sayad Mohamad Akbar Ali Khan* (Seven days held not unreasonable).
(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Siva Pershad*.
(1906) 4 Cri. L. Jour. 232 (233): 29 Mad. 373, *Vythianada Tambiran* v. *Mayandi Chetty* (Seven days held reasonable time).
(1910) 11 Cri. L. Jour. 335 (336): 13 Oudh Cas. 66, *Iklas Kaur Thakurain* v. *Raja Raghuraj Bahadur Singh* (When facts are fresh in his mind).
(1895) 22 Cal. 387 (391), *Binoda Sundari Chowdhurani* v. *Kali Kristo Pal* (Order after six months due to delay caused by action of the objectors was not disturbed).

Note 9.

(1) (1926) 1926 Oudh 269 (269), *Emperor* v. *Chet Khan*.
(1931) 1931 All. 3 (7): 53 All. 172, *Kallu* v. *Bashiruddin* (Party taking little interest in proceedings cannot escape liability when complainant was compelled to make him a party and latter denied former's allegations).
(2) (1926) 1926 Bom. 91 (96), *Bai Jiba* v. *Chandulal Ambalal*.
(1928) 1928 Sind 193 (195): 22 S. L. R. 386, *Relumal* v. *Pherumal* (Applicant inducing Magistrate to proceed under Ch. 12 when he had no jurisdiction must bear costs of other party).
(3) (1931) 1931 All. 3 (7): 53 All. 172, *Kallu* v. *Bashiruddin*.
(4) (1914) 15 Cri. L. Jour. 676 (677): 1915 Mad. 92, *Subbiah Servai* v. *Chokkalinga Thevan*.

Note 10.

(1) (1934) 1934 Cal. 80 (80), *Nazamal Ashan* v. *Golam Mahammad*.
(2) (1934) 1934 Cal. 95 (96), *Devendranath Khan* v. *Dhanmoni*.
(1923) 1923 Mad. 87 (88), *Palaniandi Servai* v. *Sammandi*.
(1901) 28 Cal. 302 (303), *Prokash Chunder Sarkar* v. *Ram Prasad Pattak*.
(1918) 1918 Pat. 658 (660), *Dwarka Rai* v. *Nathuni Koeri*.
(1908) 12 Cal. W. N. ccvii (ccvii), *Kali Prasad Sing* v. *Kali Singh*.
(1897) 24 Cal. 757 (759), *Empress* v. *Tomijuddi*.
(1906) 4 Cri. L. Jour. 171 (172) (Cal.), *Dilbasi Koer* v. *Deorati Koer*.
(1911) 12 Cri. L. Jour. 319 (320) (Cal.), *Dowlat Koer* v. *Siva Pershad Pandit*.
(3) (1906) 4 Cri. L. Jour. 171 (172) (Cal.),

view namely that an *ex parte* order, if passed after considering the application on the merits, is not invalid has been expressed in the undermentioned case.[4] S. 148, Notes 10—12.

11. Recovery of costs.—In spite of the omission of the last sentence of this section by the Criminal Law Amendment Act XII of 1913, the costs awarded under this section are to be recovered as fines. (*See* S. 547 of the Code). A party to the proceedings cannot bring a civil suit for the recovery of costs awarded or refused by an order under this section.[1] A suit by a *witness* in such proceedings for his costs against the party for whom he appeared is however maintainable.[2] When an order awarding costs has been made by a Magistrate, neither he nor his successor can refuse to recover the costs on the ground of long delay.[3] Such order though passed *ex parte* cannot subseqently be set aside.[4] There is no discretion given to the Magistrate by this section or S. 386 to refuse to recover the costs.[5]

12. Revision.—According to the Code prior to 1923, proceedings under Chap. XII were no proceedings within the meaning of S. 435. Hence no revision could be entertained on an order under S. 148.[1] But this provision has now been omitted from the present S. 435 and hence an order under S. 148 is now revisable. Where the trial Court ordered a party as well as a non-party to the proceedings to pay costs and the High Court quashed the order on the ground that no costs can be awarded against a non-party, the record was sent back to the trial Court for assessing the costs against the party to the proceeding, on the ground that it was the trial Court that was in a better position to exercise discretion.[2] As the award of costs under S. 148 is in the discretion of the trial Magistrate the High Court will not ordinarily interfere with the discretion so exercised.[3] Nor will it interfere in the absence of sufficient materials for arriving at the costs ordered by the trial Court.[4]

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

S. 149.

149.* Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

Police to prevent cognizable offences

***(CODE OF 1882—S. 149.)**

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every Police-officer may interpose for the pur-

Dilbasi Koer v. *Deorathi Koer* (*Ex parte* order was set aside).

(4) (1908) 12 Cal. W. N. ccvii (ccvii), *Kali Prasad Singh* v. *Kali Singh*.

(1901) 28 Cal. 302 (303), *Prokash Chunder Sarkar* v. *Ram Prasad Pattak*.

(1923) 1923 Mad. 87 (88), *Palaniandi Servai* v. *Sammandi Ammal*.

(4) (1933) 1933 All. 264 (269): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad*. Note 11.

(1) (1907) 11 Cal. W. N. cclxiii (cclxiii), *Forbes* v. *Hayes*.

(2) (1904) 8 Cal. W. N. 178 (180), *Nemai Chandra Ghosu* v. *Ajahar Chowdhury*.

(3) (1923) 1923 Pat. 57 (57), *Harendra Krishna* v. *Balkumar*.

(4) (1906) 4 Cri. L. Jour. 171 (172) (Cal.), *Delbasi Koer* v. *Deorati Koer*.

(5) (1923) 1923 Pat. 57 (57), *Harendra Krishna Bagchi* v. *Balkumar*. Note 12.

(1) (1900) 4 Cal. W. N. lxxxiii (lxxxiii), *Mt. Gulab* v. *Trilok Bhagat*.

(2) (1926) 1926 Oudh 269 (269), *Emperor* v. *Chet Khan*.

(3) (1905) 2 Cri. L. Jour. 408 (411) (Cal.), *Rajendra Narain Roy* v. *Mohammad Arzumand* (High Court cannot in revision interfere).

(4) (1915) 16 Cri. L. Jour. 156 (157): 1915

S. 149, Notes 1--2.

SYNOPSIS.

SCOPE AND OBJECT OF THE CHAPTER AND SECTION .. Note No. 1
"INTERPOSE"—MEANING OF 2

1. Scope and object of the Chapter and Section.—Section 23 of the Police Act (V of 1861) empowers every police-officer to prevent the commission of all offences and public nuisances.[1] This section empowers a police-officer to prevent the commission of *cognizable* offences.[2] This chapter and the next are not mutually exclusive. It cannot be said that because a police-officer is investigating under Chap. XIV, therefore he is not doing anything under this chapter or *vice versa*. On the contrary preventive action started under this chapter may lapse into investigation under Chap. XIV.[3] But a power to prevent the *commission* of an offence does not include a power to remove certain banners from a Hindu procession on the ground that such carrying being obnoxious to Mahomedans would, if allowed, produce a breach of the peace.[4] Similarly a police-officer is not justified under this chapter in removing an axe carried by a person under the impression that such person was carrying it on his way to attack his enemy.[5] This section does not empower a police-officer to pass *any order* either against the person from whom an offence is apprehended or against the would-be victims of the offence. Such wide powers cannot be said to have been contemplated by the legislature under this section.[6]

2. "Interpose"—Meaning of.—The word "interpose" connotes the idea of actively intervening and not merely a prohibition by word of mouth. A police-officer cannot shirk his duty of interposing effectively by being content with passing an oral order not to do a certain act.[1]

Police to prevent cognizable offences.

pose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

(CODE OF 1872—S. 95.)

Police to prevent certain offences.

95. Every Police-officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

(CODE OF 1861—S. 102.)

Police may interfere to prevent offences.

102. It shall be the duty of every Police-officer to prevent, and he may interpose for the purpose of preventing, the commission of any offence specified in Column 3 of the Schedule annexed to this act as an offence for which Police-officers may arrest without a warrant.

Mad. 825, *Venkatappaya* v. *Venkataramanayya*.

Section 149—Note 1.

(1) (1916) 17 Cri. L. Jour. 347 (348): 1917 Low. Bur. 152: 8 Low. Bur. Rul. 329, *Emperor* v. *Nga Kala*.
(2) (1916) 17 Cri. L. Jour. 347 (348): 1917 Low. Bur. 152: 8 Low. Bur. Rul. 329, *Emperor* v. *Nga Kala*.
(3) (1931) 1931 Cal. 745 (747, 748): 58 Cal. 1312, *Mani Mohan Ghose* v. *Emperor*.
(4) (1894) 17 Mad. 37 (42), *Ranganayakulu* v. *Prendergart*.
(5) (1926) 1926 Lah. 19 (20): 6 Lah. 392, *Hag Dad and others*.
(6) (1925) 1925 All. 165 (169): 47 All. 205, *Emperor* v. *Raghunath Venaik*.

Note 2.

(1) (1925) 1925 All. 165 (169, 170): 47 All. 205, *Emperor* v. *Raghunath Venaik*.

150*. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

151†. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

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*(CODE OF 1882—S. 150.)

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

(CODE OF 1872—S. 96.)

96. Every Police-officer receiving information of a design to commit any such offence, shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

(CODE OF 1861—S. 103.)

103. It shall be the duty of a Police-officer who shall receive information of a design to commit any such offence, to communicate such information to the Police-officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

Information to be communicated.

†(CODE OF 1882—S. 151.)

151. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

(CODE OF 1872—S. 97.)

97. A Police-officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

S. 151, Note 1.

1. Arrest without emergency is illegal.—Sections 54 and 55, *ante* enact that a police-officer can arrest without warrant in certain cases. This section empowers such officer to arrest without warrant any person *designing to commit* a cognizable offence. Such an arrest, can, however, be made only when the commission of the offence *cannot otherwise be prevented*. If, without emergency, an arrest is made under this section, such arrest is illegal.[1]

S. 152.

152*. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public land-mark or buoy or other mark used for navigation.

Prevention of injury to public property.

(CODE OF 1861—S. 104.)

104. A Police-officer, knowing of a design to commit any such offence as aforesaid, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

May arrest to prevent offences.

***(CODE OF 1882—S. 152.)**

152. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Prevention of injury to public property.

(CODE OF 1872—S. 98, Paras 1 and 2.)

98. A Police-officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immovable;

Injury to public property.

Or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation.

* * * * *

(CODE OF 1861—S. 105.)

105. A Police-officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public building, work of art, road, bridge, tank, well, or water channel, or to prevent the removal or injury of any public land-mark or buoy, or other mark used for navigation.

Injury to public property.

Section 151—Note 1.

(1) (1930) 1930 Lah. 348 (349, 350), *Gaman* v. *Emperor*.

153*. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing, which are false.

Inspection of weights and measures.

(2) If he finds in such place any weights, measures or instruments for weighing, which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

***(CODE OF 1882—S. 153.)**

153. Any officer in charge of a Police Station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

(CODE OF 1872—S. 381.)

381. An officer in charge of a Police Station may, without a warrant, enter any shop or premises within the limits of such station, for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are, in such shop or premises, any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If such officer finds, in such shop or premises, any weights, measures or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

(CODE OF 1861—S. 129.)

129. An officer in charge of a Police Station may, without a warrant, enter any shop or premises within the limits of such Station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he shall have reason to believe that there are in such shop or premises any weights, measures, or instrument for weighing which are false. If such Police-officer shall find in such shop or premises any weights, measures, or instruments that are false, he may seize the same and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

Inspection of weights and measures used in shops.

S. 153, Notes 1—3.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF THE SECTION	2
"IF HE FINDS . . . ANY WEIGHT . . . ARE FALSE" ..	3

Other Topics.

Limits to the power of Police-officer. See Note 2, Pt. 1.

1. Legislative Changes.—

(1) *Difference between the Codes of* 1861 *and* 1872—

There is no material difference between the Codes of 1861 and 1872 in this respect.

(2) *Difference between the Codes of* 1872 *and* 1882—

The word "place" was substituted for the words "Shop or premises" which occurred in the Code of 1872.

(3) There is no difference between the Codes of 1882 and this Code in this respect.

2. Scope and applicability of the section.—This section specifically authorises an officer in charge of a Police-station to enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures under the circumstances mentioned in the section.[1] As to under what circumstances a person will be guilty of an offence relating to weights and measures, *see* Ss. 264 to 267 of the Penal Code and the undermentioned case.[2]

3. "If he finds . . . any weights . . . are false".—Before coming to a conclusion that any weight or measure is false there must be some standard weight or measure prescribed by lawful authority or generally recognised by custom.[1] To assume indiscriminately, that some shop keeper's weight is the correct one and proceed for comparison is not proper.[2] Some reasonable allowance should always be made for wear and tear and for the rough and ready methods of bazaar shopkeepers.[3] Where a five seer weight was found to be short by one tola it was held that it could not be regarded as a false weight.[4]

Section 153—Note 2.

(1) (1914) 1914 Lah. 42 (43, 44): 1913 Pun. Re. No. 20, *Emperor* v. *Nanakchand*.

(2) (1884) 1 Weir 225 (225), *Appasami* alias *Muniswami and* 13 *others* (If a person professes to sell by standard weight, he is bound to take reasonable care that his weights are not defective).

Note 3.

(1) (1914) 1914 Lah. 42 (43, 44): 1913 Pun. Re. No. 20, *Emperor* v. *Nanak Chand*.

(1909) 9 Cri. L. Jour. 415 (415) (Rang.), *Emperor* v. *Miya Pyan* (Where no standard is prescribed, no presumption of fraud can arise).

(2) (1914) 1914 Lah. 42 (43, 44): 1913 Pun. Re. No. 20, *Emperor* v. *Nanakchand*.

(3) (1914) 1914 Lah. 42 (43, 44): 1913 Pun. Re. No. 20, *Emperor* v. *Nanakchand*.

(4) (1883) 3 All. W. N. 224 (224), *Empress* v. *Bikka Mal*.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

154*. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in cognizable cases.

***(CODE OF 1882—S. 154.)**

PART V.

Information to the Police and their powers to investigate.

CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in cognizable cases.

(CODE OF 1872—S. 112.)

112. Every complaint preferred to an officer in charge of a Police-station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

Complaint to Police to be in writing.

(CODE OF 1861—S. 139.)

139. Every complaint or information preferred to an officer in charge of a Police-station, shall be reduced into writing, and the substance thereof shall be entered in a diary to be kept by such officer, in such form as shall be prescribed by the Local Government.

Complaint, etc., to be in writing.

S. 154, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
WHAT IS FIRST INFORMATION	3
"RELATING TO THE COMMISSION OF A COGNIZABLE OFFENCE"	4
"SHALL BE REDUCED TO WRITING BY HIM AND READ OVER"	5
"SHALL BE SIGNED BY THE PERSON GIVING IT" ..	6
"OFFICER IN CHARGE OF A POLICE-STATION"	7
"TO BE ENTERED IN A BOOK TO BE KEPT BY SUCH OFFICER IN SUCH FORM AS THE LOCAL GOVERNMENT MAY PRESCRIBE"	8
IMPORTANCE OF FIRST INFORMATION	9
HOW TO USE F. I. R.	10
FIRST INFORMATION BY ACCUSED	11
DUTY OF THE PROSECUTION TO TENDER F. I. R. IN EVIDENCE	12
GRANT OF COPIES OF FIRST INFORMATION	13
EFFECT OF GIVING FALSE INFORMATION UNDER THIS SECTION	14
EFFECT OF THE POLICE-OFFICER IN CHARGE RECORDING FIRST INFORMATION FALSELY	15

Other Topics.

Actual words of the complainant should be recorded. See Note 5, Pt. 3.

Court-fees. See Court-Fees Act, S. 19, Cl. XVI.

Evidentiary value of first information. See Note 9.

First information is the basis of the case. See Note 9, Pt. 1.

"Is given orally." See Note 5.

No compensation. See Note 14, Pt. 12.

Proof of the first information. See Note 10, Pt. 7.

Punishment for giving false information. See Note 14, Pt. 1.

Refusal to sign is punishable. See Note 6.

Sanction for prosecution. See Note 14 and S. 195.

Superior Police-officer—Powers of. See Note 7, Pt. 4.

Where offence is committed outside the local limits of the station. See Note 7, Pt. 5.

1. **Legislative Changes.**—

Changes introduced in the Code of 1872—

(1) The words "every complaint preferred" were substituted for the words "every complaint *or information* preferred" which occurred in the Code of 1861.

(2) The words "and shall be signed, sealed or marked by the person making it" were newly added.

Changes introduced in the Code of 1882—

(1) The words "every information relating to the commission of a cognisable offence is given orally to an officer in charge of a police-station" were substituted for the words "every complaint preferred to an officer in charge of a police-station".

(2) The words "by him or under his direction and be read over to the informant" were added after the words "shall be reduced into writing."

(3) Before the words "shall be signed" the words "and every such information whether given in writing or reduced to writing as aforesaid" were added.

(4) The words "sealed or marked" were omitted.

(5) The words "in *such* form as the Local Government *may prescribe in this behalf*" were substituted for the words "in the form prescribed by the Local Government".

There is no difference between the Codes of 1882 and 1898.

2. Scope and object of the section.—This chapter deals with the powers of the police to investigate into the following classes of cases:—

(1) Where information is received as to the commission of a *cognisable* offence (S. 154).

(2) Where information is received as to the commission of a *non-cognisable* offence (S. 155), and

(3) Where information is received that a person has committed *suicide* or has been *killed* by another or by an animal or by machinery or by accident or *has died* under circumstances raising a suspicion that an offence has been committed (S. 174).

One of the modes by which a person aggrieved may put the criminal law into motion is by giving information under this section.[1] The information so given is called the "first information". It is the basis upon which an investigation is commenced under this chapter.[2] The object of this section is threefold, *firstly* to inform the Magistrate of the District and the District Superintendent of Police who are responsible for the peace and safety of the District of the offences reported at the station.[3] *Secondly* to make known to the judicial officers before whom the case is ultimately tried, what are the facts given out immediately after the occurrence and on what materials the investigation commenced[4] and *thirdly* to safeguard the accused against subsequent variations or additions.[5]

3. What is first information.—The information recorded under this section is known as "first information" though the word "first" is not mentioned in the Code.[1] It is usually given by the complainant or by somebody on his behalf.[2] It is of very great importance to determine whether a statement falls under this section or not: for if a statement is one made under this section it is admissible in evidence (*Vide* Note 10); but if it is one coming under S. 162,

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Section 154—Note 2.

(1) (1890) 17 Cal. 574 (577) (F.B.), *Karim Baksh* v. *Empress*.
(2) (1912) 13 Cri. L. Jour. 65 (89) (Cal.), *Peary Mohan Das* v. *Weston*.
(1925) 1925 Cal. 831 (833): 52 Cal. 499, *Dargahi* v. *Emperor*.
(3) (1898) 20 All. 151 (154), *Empress* v. *Muhammad Ismail*.
(4) (1908) 7 Cal. W. N. 345 (348), *Emperor* v. *Bhut Nath Ghose*.
(1907) 6 Cri. L. Jour. 86 (88) (Cal.), *Emperor* v. *Kampu Kuki*.
(5) (1931) 1931 Pat. 150 (151), *Hafiz Md. Sani* v. *Emperor*.

Note 3.

(1) (1931) 1931 Cal. 745 (748): 58 Cal. 1312, *Moni Mohan Ghose* v. *Emperor*.
(2) (1924) 1924 All. 207 (207), *Subedar* v. *Emperor*.

S. 154, Note 3.

infra, it cannot be used save for the purpose mentioned therein. As the word "first" indicates, that information is "*first* information" which is *given first in point of time*[3] and *on which* the investigation is commenced by the police.[4] All statements recorded *subsequent* to the starting of the investigation fall under S. 162, *infra*.[5] Where, therefore, the information does not indicate or disclose the commission of a cognisable offence and no formal investigation is commenced thereon such information does not fall under this section, nor would statements recorded by the police *till they commence* the investigation come within the provisions of S. 162, *infra*.[6] As observed by Mr. Justice Ayling in In re *Nandamuri Anandayya*.[7] "The police must frequently hear of alleged offences from less reliable sources, *i.e.*, village gossip, etc. In such cases it is discretionary with the officer to take action or not and before deciding as to the course to adopt, he may frequently deem it well to make a few preliminary and informal enquiries as to whether there is anything in what he has heard to render a formal investigation desirable." Such preliminary inquiries do not become "investigation" by the police and if, during the preliminary inquiries, the police-officer receives a statement from a reliable source confirming the suspicion, this latter statement is the real first information and it does not fall under S. 162, *infra*.

Illustrations.

(*a*) *A* informs *B* (a village Magistrate) of the commission of a cognizable offence. *B* transmits the information to the Police. The Police arrive at the village, take a statement from *A* and get it signed by *A*. The latter statement of *A* falls under S. 162, *infra*. The first information is that given by *B*.[8]

(*b*) A person informed the Police that he saw a woman in a field with her throat cut. The Police did not record this; but treated the information lodged by the woman's father given subsequently as the first information. It was *held* that the former information was the first information and the latter only a statement under S. 162, *infra*.[9]

(*c*) *A*, the wife of the deceased, informed the Police about the disappearance of her husband and of her suspicion of foul play. This statement was not recorded. The Police investigated, and after discovery of the dead body drew up a *ruqa* which the Police entered as the first information. *Held*, that the *ruqa* was not the first information under this section.[10]

(*d*) *A* reports to the Police that he saw a mob of armed men going towards a certain place. This is not first information.[11] There is no information of any *offence* in such a case.

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(3) (1894) 22 Cal. 50 (72), *Empress* v. *Jagat*.
(4) (1903) 7 Cal. W. N. 345 (347), *Emperor* v. *Bhutnath Ghose*.
(1925) 1925 All. 303 (304): 47 All. 280, *Chittar Singh* v. *Emperor*.
(1894) 22 Cal. 50 (72), *Empress* v. *Jagat*.
(5) (1927) 1927 Cal. 17 (19): 54 Cal. 237, *Azimaddy* v. *Emperor*.
(1923) 1923 Pat. 550 (553): 2 Pat. 517, *Gansa Oraon* v. *Emperor*.
(1929) 1929 Nag. 43 (45), *Mahomed Ibrahim* v. *Emperor*.
(1920) 1920 Pat. 42 (43), *Keshwar Gope* v. *Emperor*.
(1925) 1925 Rang. 364 (365, 366): 3 Rang. 577, *Sultan* v. *C. De. M. Welbourne*.
(1925) 1925 Cal. 831 (831): 52 Cal. 499, *Dargahi* v. *Emperor*.
(6) (1931) 1931 Cal. 745 (748, 749): 58 Cal. 1312, *Moni Mohan Goshe* v. *Emperor*.
(7) (1914) 25 Ind. Cas. 630 (632): 1915 Mad. 312, *Nandamuri Anandayya*, In re.
(8) (1930) 1930 All. 746 (749), *Abdul Jalil Khan* v. *Emperor*.
(1908) 9 Cri. L. Jour. 77 (78): 31 Mad. 506, *Chinna Ramana Gowd* v. *Emperor*.
(1910) 11 Cri. L. Jour. 286 (286) (Mad.), In re *Krishna Bai Padithaya*.
(1908) 9 Cri. L. Jour. 170 (174, 177): 32 Mad. 258, *Sessions Judge of Tinnevelly* v. *Sivan Chetty* (Vide Judgment of Sir Sankaran Nair).
(1901-02) 6 Cal. W. N. 921 (922), *Emperor* v. *Doulat Kunjra*.
(9) (1922) 1922 Pat. 535 (539): 1 Pat. 401, *Chandrika* v. *Emperor*.
(10) (1926) 1926 Lah. 179 (180), *Choghatta* v. *Emperor*.
(11) (1927) 1927 Pat. 100 (102), *Arjun Kurmi* v. *Emperor*.

(e) On 23—12—1930, one *S*, a prostitute, was abducted and murdered. *K*, her aunt (who was not aware of the murder) reported on 24—12—1930 that *S* went with the accused but had not returned. The Police directed her to search for *S* in her usual resorts. On the 25th of December *K* returned to the Police and informed them that *S* was not to be found. On the 26th the Sub-Inspector of Police found one of the accused and on questioning him suspected that an offence had been committed. He took the statement of *K* (a third statement by her) and this was treated as the first information. *Held*, that since the first two statements did not disclose a cognizable offence, the third statement on the 26th was rightly treated as the first information and that it did not come within S. 162, *infra*.[12]

See also the following cases.[13]

S. 154, Notes 3—4.

Telegrams and telephonic messages are *not* informations under this section, since they are neither given orally to Police-officer and reduced to writing by him, nor given in writing signed by the informant.[14] So if after the receipt of the telegram or telephonic message, the Police proceed to the spot and take down the information from the complainant or informant and get it signed, this latter is the first information.[15]

The operation of this section cannot be evaded by the Police choosing to record as first information a statement obtained *after* the investigation has commenced[16] and getting the statement signed contrary to the provisions laid down under S. 162, *infra*.[17] The Police-officer should not wait till he had some *good reason to believe* that a cognisable offence has been committed to record an information; it is enough if there is a reasonable suspicion that a crime has been perpetrated.[18]

In every case it is for the Court to decide whether a statement in question falls under this section or under S. 162.[19]

4. "Relating to the commission of a cognisable offence".—The conditions as to the record of an information under this section are *first* that it must be an *information* and secondly it must relate to a *cognisable offence* on the face of it and not merely in the light of subsequent events. The mere fact that an information is first in point of time is not sufficient.[1] As to what are cognisable offences *see* S. 4 (*f*) and Schedule II of the Code.

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(12) (1931) 1931 Cal. 745 (748): 58 Cal. 1312, *Moni Mohan Ghose* v. *Emperor*.

(13) (1928) 1928 Pat. 634 (636), *Habib Khan* v. *Emperor*.
(1923) 1923 Pat. 158 (159), *Dasarath Singh* v. *Emperor*.
(1930) 1930 Cal. 130 (131), *Osman Gani Mistry* v. *Emperor*.

(14) (1914) 1915 Mad. 312: 25 Ind. Cas. 630 (632), *Nandamuri Anandayya*, In re
(1925) 1925 Cal. 959 (961), *Kalia* v. *Emperor*.
(1930) 1930 Lah. 457 (459), *Banta Singh* v. *Emperor*.
(1928) 1928 Mad. 791 (792), *Public Prosecutor* v. *Chidambaram*.
(1931) 1931 Sind 13 (13), *Meherali Lalji* v. *Emperor*.
(1935) 1935 Cal. 403 (404), *Kachi Hazam* v. *Seraj Khan* (Telegram to Police Inspector is not first information report—But it cannot be excluded from evidence).

(15) *See the cases cited in Foot-note* (14) *above*.

[But compare (1934) 1934 Lah. 413 (414): 15 Lah. 814, *Chanam Singh* v. *Emperor* (Original telegram which was thumb marked by the complainant obtained by Sub-Inspector and its authenticity confirmed—Held, that it became a written statement complying with S. 154).]

(16) (1920) 56 Ind. Cas. 582 (584): 1920 Nag. 170: 16 Nag. L. R. 30, *Mt. Ajodhi* v. *Emperor*.
(1902) 11 Cal. W. N. 554 (556), *Emperor* v. *Kempukuki*.

(17) (1925) 1925 Mad. 106 (112), *Narayana Menon*, In re.

(18) (1907) 6 Cri. L. Jour. 86 (Cal.), *Emperor* v. *Kampu Kuki*.

(19) (1930) 1930 Cal. 130, *Osman Gani Mistry* v. *Emperor*.
(1923) 1923 Pat. 550 (557): 2 Pat. 517, *Gansa Oraon* v. *Emperor*.

Note 4.

(1) (1931) 1931 Cal. 745 (748): 58 Cal. 1312, *Mani Mohan Goshe* v. *Emperor*.

S. 154, Notes 4—7.

Where information is given to the Police of a non-cognisable offence, the Police-officer should proceed under S. 155, *infra*.

The word "relating" means that there need not be complete or satisfactory proof or evidence given at the time; it is sufficient if the information given indicates that a cognisable offence has been committed. But until there is this indication it cannot be said that the information is one "relating to" such an offence.[2]

5. "Shall be reduced to writing by him and read over".—This section imposes a duty upon the Police-officer to record the information given to him orally; and after recording the same to read it over to informant. It is in the interest of the Public that the statements should be recorded faithfully and truly.[1] The Police-officer is bound to record the information *at once*. A statement recorded several days after the occurrence and after there has been development is no first information.[2] Further the information must be taken *as the informant gives it*; it becomes valueless if it is drawn up by some other person: thus a first information drawn up by a Police-officer and finally settled by an attorney is not a "first information".[3]

But though the Police-officer is bound to take down the information given, a refusal to do so will not give a cause of action for filing a suit for damages against the officer.[4] But if the Police-officer makes a false record, etc., he will be liable to punishment. (*Vide* Note 15).

The mere fact that a Police-officer does not record a statement, which is in fact a "first information" will not make it any the less a first information; nor does his recording a statement which is not a first information, impress it with the character of a "first information". *Vide* Note 3, (what is first information).

6. "Shall be signed by the person giving it".—The law requires that the first information should be signed by the person giving it so that there may be a guarantee as to its correctness.[1] The informant cannot in such a case easily or freely deny having made such statements. In cases where such information is false the informants are liable to be prosecuted for an offence under the Penal Code (*Vide* Note 14). It may be remarked that this is the only section by which the Police-Officer can compel informant to sign.[2] Statements under S. 162, need not be signed by the persons making them. A refusal to sign the statement made under this section is punishable as an offence under S. 180 of the Penal Code.

7. "Officer in charge of a Police Station".—For the definition of "officer in charge of a Police station" *Vide* S. 4 (*p*), *supra*. This section does

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(2) (1931) 1931 Cal. 745 (749): 58 Cal. 1312, *Mani Mohan Goshe* v. *Emperor*.

Note 5.

(1) (1898) 1898 All. W. N. 52 (53), *Empress* v. *Muhammad Sheh Khan*.
(1875) 23 Suth. W. R. (Cr.) 32, *Queen* v. *Hollas*.
(1923) 1923 Pat. 550 (553): 2 Pat. 517, *Ganesh Oraon* v. *Emperor*.
(2) (1912) 13 Cri. L. Jour. 65 (89) (Cal.), *Peary Mohandas* v. *Diveston* (Delay of two months).
(3) (1912) 13 Cri. L. Jour. 65 (89) (Cal.), *Peary Mohandas* v. *Diveston*.
(4) (1926) 1926 Mad. 54 (55), *S. Kambhotlu* v. *Ashreef Hussan*.

Note 6.

(1) (1931) 1931 Cal. 745 (750): 58 Cal. 1312, *Mani Mohan Goshe* v. *Emperor*.
(2) (1908) 9 Cri. L. Jour. 170: 32 Mad. 258, *Sessions Judge, Tinnevelly* v. *Sivan Chetty*.

not apply unless the information is given to an *officer in charge of a police station*. Thus an information given to a Police-officer who is on tour and who is not an officer in charge of a police station[1] or one given to a Magistrate[2] does not come within this section. A Magistrate cannot direct the police to treat a complaint presented to him as the first information.[3]

Under S. 551, *infra*, Police-officers superior in rank to an officer in charge of a police station have the same powers as the officer in charge of a police station. So an information given to a Deputy Superintendent of Police of a murder during a rebellion, is first information under this section and is therefore admissible in evidence.[4]

This section does not lay down that information of the commission of a cognisable offence could be given only to the officer in charge of a police station who has *territorial jurisdiction* under S. 156 to investigate into the case. The officer in charge of *any* police station can receive such a statement; but the Code is silent as to the procedure to be adopted by the officer in such a case; evidently he has to receive such statement and forward it to the officer of a station who will have jurisdiction to investigate into the offence.[5]

8. **"To be entered in a book to be kept by such officer in such form as the Local Government may prescribe.**—S. 44 of the Police Act (5 of 1861) lays down "it shall be the duty of every officer in charge of a police station to keep a *general diary* in such form as shall from time to time be prescribed by the Local Government and to record therein all complaints, and charges preferred, the names of all persons arrested, the names of complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise and the names of witnesses who shall have been examined." Various Local Governments have prescribed the form mentioned in this section. After recording the information when given orally to him, the officer in charge of the police station has again to write the substance of it in his general diary.

It has to be noted that this diary is different from the one mentioned in S. 172, *infra*.

9. **Importance of first information.**—The "first information" is the basis of the case: it puts the police in action: it represents the case set up by the informant at that time.[1] It has therefore to be very carefully scrutinised[2] especially in regard to the following particulars:—

(*a*) *Delay in giving the information.*—The Courts have always viewed the information with grave suspicion when there has been delay in

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Note 7.

(1) (1928) 1928 Cal. 771 (772), *Momin Taluqdar* v. *Emperor*.
(2) (1930) 1930 Lah. 457 (459), *Banta Singh* v. *Emperor*.
(3) (1928) 1928 Pat. 359 (361), *Ulfat Khan* v. *Emperor*.
(4) (1923) 1923 Mad. 694, *Thackroth Hydross*, In re.
(1897-1901) U. B. R. 31 (35), *Nga Po Ke* v. *Empress* (Assistant Superintendent of Police).
(5) (1914) 25 Ind. Cas. 630 (633): 1915 Mad. 312, *Nandamuri Anandayya*, In re.

Note 9.

(1) (1929) 1929 Nag. 43 (45), *Muhammad Ibrahim* v. *Emperor*.
(1897-1901) U. B. R. 31 (34), *Nga Po Ke* v. *Empress*.
(1902) 11 Cal. W. N. 554 (556), *Emperor* v. *Kampu Kuki*.
(2) (1924) 1924 Lah. 413 (415), *Mula Singh* v. *Emperor*.
(1929) 1929 Nag. 350 (351), *Sham Lal* v. *Emperor*.

S. 154, Note 9.

giving it. People very often try to *foist* crimes committed by some persons known or unknown on the personal enemies of the informants, after consultation with other people; and in many cases people charged with offences have been acquitted because of the suspicion arising from the delay in giving the information.[3] If therefore there is no satisfactory explanation for such delay, it is fatal to the prosecution.[4]

(*b*) *Non-mention of names of accused.*—Where the complainant who has been injured, or any other eye-witness, having had opportunities to see the offenders and who are known to the complainant or witness, gives the first information, and in doing so omits the names of certain persons who are later on placed on their trial by the police before the Courts, such omission will be a circumstance in favour of the accused.[5] Of course, the absence of the names of the accused by itself is not sufficient proof of his innocence[6] but in such cases the Courts have demanded other convincing evidence to convict the accused.[7] On the other hand, the mere fact that the name of the accused finds a place in the first information is not a presumptive proof of his guilt. Thus in rioting cases it will be safe to charge all the persons mentioned in the first information inasmuch as friends and the relations of the culprits are more often implicated in such cases.[8]

(*c*) *Non-mention of the names of witnesses.*—The fact that no eye-witness is mentioned in the first information and a number of them are brought forward later on, as having witnessed the occurrence, is a suspicious circumstance against the prosecution case especially when the informant knew that there were eye-witnesses and their names.[9] But when there is independent and

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(3) (1924) 1924 All. 441 (442), *Umrao* v. *Emperor*.
(1911) 12 Cri. L. Jour. 561 (561, 562) (Lah.), *Muhamada* v. *Emperor*.
(1926) 27 Cri. L. Jour. 821 (821) (Lah.), *Jalel* v. *Emperor*.
(1926) 1926 Lah. 496 (496), *Bishen Singh* v. *Emperor*.
(1923) 1923 Lah. 36 (36), *Md. Baksh* v. *Crown* (Four months).
(1923) 1923 Lah. 391 (392), *Nawab* v. *Emperor*.
(1918) 1918 Lah. 37 (38, 39), *Mirza* v. *Emperor*.
(1916) 17 Cri. L. Jour. 150 (151): 1916 Lah. 292, *Abdul Rahman* v. *Crown*.
(1924) 1924 Cal. 975 (976): 51 Cal. 924, *Remembrancer of Legal Affairs, Bengal* v. *S. C. Roy* (Delay of eleven days).

(4) (1915) 16 Cri. L. Jour. 411 (412): 1916 Cal. 98: 42 Cal. 784, *Hare Krishna* v. *Emperor*.

(5) (1930) 1930 Bom. 244 (247), *Emperor* v. *Shirputraya Baslingaya*.
(1910) 11 Cri. L. Jour. 99 (101, 102) (Lah.), *Emperor* v. *Sadu*.
(1913) 14 Cri. L. Jour. 196 (196-197) (Lah.), *Shera* v. *Emperor*.
(1915) 16 Cri. L. Jour. 204 (205, 206): 1915 Lah. 396, *Nur Khan* v. *Crown*.
(1915) 16 Cri. L. Jour. 222: 1915 Lah. 469, *Ronki* v. *Emperor*.
(1915) 16 Cri. L. Jour. 634 (635): 1915 Lah. 244, *Uda* v. *Crown*.
(1915) 16 Cri. L. Jour. 737 (737): 1915 Lah. 386, *Machhia* v. *Crown* (The Courts demand strict corroboration before convicting persons not named in the F. I. R.—*Ed.*).
(1916) 17 Cri. L. Jour. 279 (280): 1916 Lah. 325, *Tajoo* v. *Crown*.
(1922) 1922 Lah. 28 (29), *Attar Khan* v. *Crown*.
(1922) 1922 Lah. 410 (413), *Khizar* v. *Crown*.
(1927) 1927 Lah. 149 (150), *Bachan* v. *Emperor*.
(1911) 12 Cri. L. Jour. 551 (552) (Mad.), *Sundara Goundan* v. *Emperor*.
(1886) 8 All. 306 (311), *Empress* v. *Ram Saran*.
(1929) 1929 Nag. 222 (222), *Lodya Mahar* v. *Emperor*.
(1928) 1928 Oudh 417 (418), *Parshadi* v. *Emperor*.
(1928) 1928 Pat. 359 (362), *Ulfat Khan* v. *Emperor*.
(1929) 1929 Pat. 705 (707), *Rampal Das* v. *Emperor*.
(1931) 1931 Sind 13 (14), *Meharali Lalji* v. *Emperor*.
(1926) 1926 Jour. 112 (4) (Lah.), *Mangal Singh* v. *Emperor*.

(6) (1928) 1928 Lah. 880 (886), *Ram Kishen* v. *Emperor*.
(1932) 1932 Oudh 99 (101, 102): 7 Luck. 552, *Gajadhar* v. *Emperor*.

(7) (1909) 10 Cri. L. Jour. 239 (241): 2 Sind L. R. 27, *Emperor* v. *Hazuri*.
(1926) 1926 Lah. 369 (369), *Karman* v. *Emperor*.
(1927) 1927 Lah. 63 (65), *Bahadurai* v. *Emperor*.

(8) (1916) 17 Cri. L. Jour. 450 (450): 1916 Lah. 215, *Baqri* v. *Emperor*.

(9) (1918) 1918 Lah. 69 (70): 1918 Pun. Re. No. 4, *Harji* v. *Emperor*.
(1928) 1928 Lah. 657 (659), *Chandu* v. *Emperor*.
(1934) 1934 Oudh 315 (317), *Sundar Lal* v. *Emperor* (Person sleeping close to

reliable testimony that a witness not named in the information was present during the occurrence there is no reason to reject it on the sole ground that the witness's name was not so mentioned.[10]

The fact that witnesses are mentioned in the first information but are not examined at the trial on behalf of the prosecution does not of itself give rise to a presumption under S. 114, Ill. (*g*) of the Evidence Act against the prosecution.[11] The presumption, will, however arise where it is clear that the person mentioned knew the facts, was willing and able to give relevant evidence and has been kept back.[12]

(*d*) *Difference between the statements in the information and in the evidence given in Court.*—The object of the first information is to make known what the case of the informant is against the alleged offenders at the *earliest opportunity*, when the occurrence took place; so if at the trial a story is given against the alleged offenders which differs in material particulars from the one given in the information, it has always been viewed with grave suspicion and the accused have been given the benefit of doubt arising from such contradictions and discrepancies.[13]

The first information need not, however, contain *minute* details[14] nor is it the last word in the prosecution case.[15] "We ought not to view" said Maclean, C.J., in *Nazir Jharudar* v. *Emperor*, 9 Cal. W.N., "too narrowly the terms of the first information which is perhaps given under circumstances of haste and without knowledge of the true facts."

10. How to use F.I.R.—The first information report is not a substantive or primary evidence in the case. It cannot be substituted for evidence given on oath and when there is no other evidence, the facts mentioned in the information alone cannot be relied upon to convict the accused.[1] It is misdirection

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cot on which deceased was murdered—No mention in first information of his witnessing crime—Omission tends to discredit such person's testimony secured by police afterwards).

(10) (1928) 1928 Lah. 507 (509), *Dharam Singh* v. *Emperor*.

(1933) 1933 Lah. 1005 (1006), *Mohammad Araf* v. *Emperor*.

(11) (1932) 1932 Cal. 118 (119, 120): 58 Cal. 1335, *Girish Chandra Nandas* v. *Emperor*.

(12) (1915) 16 Cri. L. Jour. 170 (173): 1915 Cal. 545: 42 Cal. 422, *Ram Ranjan Roy* v. *Emperor*.

(1926) 1926 Cal. 728 (730), *Hari Charandas* v. *Emperor*.

(1922) 1922 Lah. 28 (29), *Attar Khan* v. *Emperor*.

[See also (1934) 1934 Cal. 458 (459), *Debendra Chandra Sarkar* v. *Emperor* (Witnesses examined being interested in prosecution, failure to examine witnesses mentioned in first information will tell heavily against prosecution).]

(13) (1926) 1926 Jour. 176 (176) (Lah.), *Hashmat Hussain* v. *Emperor*.

(1933) 1933 Oudh 148 (150): 8 Luck. 301, *Ratan* v. *Emperor*.

(1911) 12 Cri. L. Jour. 497 (500) (Mad.), *Teli Khaja Hussain Sahib* v. *Emperor*.

(1931) 1931 Lah. 157 (158), *Akbar* v. *Emperor*.

(1923) 1923 Lah. 385, *Suleman* v. *Emperor*.

(1922) 1922 Lah. 410 (414), *Khezar* v. *Crown*.

(1919) 1919 Lah. 136 (137), *Raja* v. *Crown*.

(1922) 1922 Lah. 459 (459), *Bakhtawar Lal* v. *Crown*.

(1914) 1914 Lah. 179 (180), *Rajwaji* v. *Crown*.

(1916) 17 Cri. L. Jour. 111 (112): 1916 Lah. 406, *Mool Chand* v. *Crown*.

(1915) 16 Cri. L. Jour. 699 (699): 1915 Lah. 438, *Mohabli* v. *Emperor*.

(1913) 14 Cri. L. Jour. 320 (320) (Lah.), *Kear Singh* v. *Emperor*.

(1911) 12 Cri. L. Jour. 500 (501) (Lah.), *Ram Chand* v. *Emperor*.

(1910) 11 Cri. L. Jour. 611 (611) (Lah.), *Kadam* v. *Crown*.

(1916) 17 Cri. L. Jour. 147 (148): 1916 Lah. 287, *Jahangir* v. *Crown*.

(14) (1928) 1928 Lah. 913 (914), *Gaman* v. *Emperor*.

(1928) 1928 Lah. 17 (19): 8 Lah. 605, *Emperor* v. *Ibrahim*.

(1924) 1924 Lah. 555 (555), *Jhadu* v. *Emperor*.

(1904) 1 Cri. L. Jour. 708 (709) (Cal.), *Asiruddin* v. *Emperor*.

(15) (1924) 1924 Lah. 591, *Raja* v. *Emperor*.

Note 10.

(1) (1902) 26 Mad. 191 (192), *Emperor* v. *Cherath*.

(1924) 1924 All. 164 (165), *Jamaluddin* v. *Emperor*.

S. 154. Note 10.

on the part of a judge to ask the jury to accept the statement in the first information in preference to the evidence in the case.[2] As has been pointed out by Beasley, C.J., in *Sankaralinga Thevan* In re:[3] "If a witness in a Sessions trial makes a statement different to that attributed to that witness in the first information report that discredits the evidence of the witness to that extent in the Sessions Court but does not make the statement in the first information report the evidence upon that matter in the case". It has therefore been held in numerous cases that the first information can be used only to corroborate or contradict the evidence under Ss. 157 and 145 of the Indian Evidence Act.[4] "The usual course is for the prosecution to call the informant and for the first information to be tendered as corroboration under S. 157 of the Evidence Act but it could also be tendered in a proper case under S. 32 (1) (of the Evidence Act) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the *res gestae*) under S. 8. Theoretically the defence could prove the information to impeach the informant's credit under S. 155 or to contradict him under S. 145.[5] *See also* cases cited below.[6]

Unless the informant is examined, the information cannot be put in evidence[7] and an information which is based entirely upon hearsay cannot be tendered in evidence by the prosecution.[8] On the same principle, in a case where the accused are tried under S. 401 of the Penal Code as belonging to a gang of cattle lifters, the Police-officers cannot be allowed to prove that reports were made to them on prior occasions against some of the accused of their having stolen cattle.[9] A map prepared by the police on information is inadmissible in evidence.[10] But care should be taken to see that only "first information" is used in evidence. As has already been stated, if statements

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(1929) 1929 All. 916 (917), *Imrat* v. *Emperor*.
(1930) 1930 Oudh 249 (249), *Wali Mohammad* v. *Emperor*.
(1933) 1933 Pesh. 94 (95), *Nawab Khan* v. *Emperor*.
(2) (1910) 11 Cri. L. Jour. 557 (557-558) (Cal.), *Asfar Sheikh* v. *Emperor*.
(3) (1930) 1930 Mad. 632 (634): 53 Mad. 590, *Sankaralinga Theran*, In re.
(4) (1897) 1897 All. W. N. 47 (47), *Empress* v. *Ram Sukh*.
(1925) 1925 All. 303 (304): 47 All. 260, *Chittar Singh* v. *Emperor*.
(1925) 1925 All. 413 (414), *Mohan Singh* v. *Emperor*.
(1912) 13 Cri. L. Jour. 65 (90) (Cal.), *Peary Mohandas* v. *Weston*.
(1913) 14 Cri. L. Jour. 642 (650) (Cal.), *Autor Singh* v. *Emperor*.
(1923) 1923 Cal. 517 (519): 50 Cal. 318, *Muhammad Yunus* v. *Emperor*.
(1926) 1926 Lah. 179 (180-81), *Choghatta* v. *Emperor*.
(1928) 1928 Lah. 17 (18): 8 Lah. 605, *Emperor* v. *Ibrahim*.
(1928) 1928 Lah. 507 (509), *Dharam Singh* v. *Emperor*.
(1928) 1928 Lah. 913 (914), *Ganan* v. *Emperor*.
(1928) 1928 Lah. 923 (924), *Sheo Karan* v. *Emperor*.
(1924) 1924 Nag. 115 (116), *Chunni Lal* v. *Emperor*.
(1928) 1928 Nag. 255 (256), *Emperor* v. *Raghwnath*.
(1929) 1929 Nag. 43 (45), *Mohammad Ibrahim* v. *Emperor*.
(1914) 1914 Oudh 414 (415), *Dal* v. *Emperor*.
(1928) 1928 Rang. 295 (295): 6 Rang. 481, *Emperor* v. *Nga Hlaing*.
(1934) 1934 Nag. 94 (96): 30 Nag. L. R. 262, *Abdul Aziz Musalman* v. *Emperor*.
(1934) 1934 Pesh. 27 (28), *Mohammad Khan* v. *Emperor*.
(1934) 1934 Rang. 60 (60), *Nga Thun Hlaing* v. *Emperor*.
(5) (1927) 1927 Cal. 17 (19): 54 Cal. 237, *Azimaddy* v. *Emperor*.
(6) (1930) 1930 Lah. 450 (452), *Kapursingh* v. *Emperor*.
(1931) 1931 Lah. 38 (40), *Mahla Singh* v. *Emperor*.
(1931) 1931 Lah. 103 (104), *Gajjan Singh* v. *Emperor*.
(1902) 5 Oudh Cas. 246 (249), *Samaidin* v. *Emperor*.
(7) (1920) 1920 Cal. 988 (989), *Salim Sardur* v. *Emperor*.
(1904) 1 Cri. L. Jour. 62 (65) (Cal.), *Emperor* v. *Dina Bandu Moitra*.
(1899) 1 Bom. L. R. 433 (435), *Empress* v. *Vijubhai*.
(1934) 1934 Sind 100 (101), *Mt. Misri* v. *Emperor* (First report can be only used to corroborate evidence of person giving the information).
(8) (1925) 1925 Lah. 418 (419): 6 Lah. 437, *Sajjan Singh* v. *Emperor*.
(1913) 14 Cri. L. Jour. 593 (593) (Lah.), *Fateh Sher* v. *Emperor*.
(9) (1930) 1930 Sind 211 (215): 24 Sind L. R. 252, *Baksho* v. *Emperor*.
(10) (1925) 1925 Cal. 959 (960), *Kalia* v. *Emperor*.

are received by the police *after* the *investigation commences*, they fall only under S. 162, *infra* and statements under S. 162, cannot be used to corroborate the prosecution. They can be used only to the extent and in the manner mentioned in S. 162. *Vide* Notes under that section. The real first information should be found and that alone is admissible[11] under this section. S. 154, Notes 10—12.

An information recorded under this section is a public document and a certified copy of it is admissible in evidence.[12]

11. First Information by accused.—It frequently happens that persons after committing an offence proceed to the Police station and there report the matter to the officers concerned, who take down such statements as the first information under this section. The question arises as to whether and how far the statements are admissible against the informant who later on stands accused. It has been held that by reason of the provisions contained in S. 25 of the Indian Evidence Act such statements are inadmissible in evidence if they are in the nature of confessions.[1] But if the statement made by the accused in the information does not amount to a confession, it is admissible.[2] In *Emperor* v. *Lalit Mohan*,[3] an old man of 50 murdered his young wife aged 16, suspecting her of infidelity and reported the matter to the police after the occurrence. In his report, he gave a history of the facts *previous* to the date of occurrence and which prompted him to do the deed. It was held by their Lordships that the *preliminary narrative* was admissible against the accused if proved. Similarly it has been held in a Privy Council Case that a report made by *A* to the Police that *B* has beaten him is not a confession and is admissible against *A* in his trial for having murdered *B's* wife the same day a short time before.[4] But the Bombay High Court has, in a recent case expressed a doubt as to the admissibility of *portions* of a confession.[5]

12. Duty of the prosecution to tender F.I.R. in evidence.—The prosecution is bound by practice to produce in Court the first information given to the Police and recorded by them.[1] Being the earliest version of the occurrence, it has always to be placed before the Judge and the jury in order to judge of the truth or falsity of the case[2] and it has been held that the failure to record

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(11) (1921) 22 Cri. L. Jour. 410 (411): 1920 Cal. 988, *Salim Sardar* v. *Emperor.*

(12) (1893-1896) Upp. Bur. Rul. Vol. I, 24 (25), *Abdul Rahmin* v. *Empress* (Dissenting from 1872-1892 L. B. R. 572).
[But see (1872-1892) L. B. R. 572 (572), *Empress* v. *Nga Si.*]

Note 11.

(1) (1909) 10 Cri. L. Jour. 193 (194) (Cal.), *Rex.* v. *Shaik Taleb.*
(1925) 26 Cri. L. Jour. 1492 (1493) (Lah.), *Nur Muhammad* v. *Emperor.*
(1918) 1918 Lah. 69 (69): 1918 Pun. Re. 4, *Harji and Kala* v. *Crown.*
(1919) 1919 Lah. 466 (469): 1918 Pun. Re. 36, *Sikandar* v. *Emperor.*
(1923) 1923 Nag. 251 (252), *Manjoo* v. *Emperor.*
(1893) 21 Cal. 392 (395), *Moher Sheikh* v. *Empress.*
(1935) 1935 Bom. 26 (27): 59 Bom. 120, *Harnam Kisha* v. *Emperor.*

(2) (1921) 22 Cri. L. Jour. 694 (695) (Lah.), *Kalu* v. *Emperor.*

(3) (1921) 1921 Cal. 111 (112), *Emperor* v. *Lalit Mohan.*
[See also (1923) 1923 Lah. 232 (235), *Jalal* v. *Emperor.*]

(4) (1917) 1917 P. C. 25 (27, 28): 14 Cal. 876: 44 Ind. App. 137: 13 Nag. L. R. 100, *Dal Singh* v. *Emperor.*

(5) (1935) 1935 Bom. 26 (28): 59 Bom. 120, *Harnam Kisha* v. *Emperor* (Admissibility of portions of statement containing confession doubted).

Note 12.

(1) (1924) 1924 Lah. 591 (591), *Raja* v. *Emperor.*
(1903) 7 Cal. W. N. 345 (347), *Emperor* v. *Bhut Nath Ghose.*
(1902) 6 Cal. W. N. 921 (921), *Emperor* v. *Doulat Kunjra.*
(1928) 1928 Pat. 359 (361), *Ulfat Khan* v. *Emperor.*

(2) (1926) 1926 Cal. 139 (144): 53 Cal. 372, *Khijiruddin* v. *Emperor.*
(1907) 5 Cri. L. Jour. 427 (429): 34 Cal. 698, *Jatindra* v. *Emperor.*

S. 154, Notes 12—14.

such statement or the non-production of the information has very serious consequences as it prejudices the accused and deprives him of the right of cross-examination.[3]

But the prosecution is not strictly bound down to the case in the first information. It is never *per se* a statement of the case for the prosecution[4] and the Police can show that the first information is not accurate.[5]

13. **Grant of copies of first information.**—The accused is entitled to have a copy of the information but he can have it only under an order of a Court of competent jurisdiction or of an officer superior to an officer in charge of a Police station. The officer in charge of a Police station is prohibited from giving such copies or any other private information of such report to any private individual. A violation of this rule is punishable under S. 29 of the Police Act, V of 1861. In the undermentioned case[1] a Head-Constable was tried for giving a copy of the information to a private individual, and was convicted for 6 weeks for offences under S. 409 or in the alternative under S. 379 of the Penal Code and under S. 29 of Act V of 1861. Chapman, J., of the Patna High Court set aside the conviction under S. 409 or under S. 379 but upheld the conviction under S. 29 of Act V of 1861 and reduced the sentence and in doing so observed as follows: "It might be well for the Local Government to consider whether facility should not be given to accused persons to obtain copies from the Police of first information at least even before the trial commences in the Magistrate's Court. It is vitally necessary that an accused person should be granted a copy of the first information at the earliest possible stage in order that he may get the benefit of legal advice. To put difficulties in the way of his obtaining such a copy is only creating a temptation in the way of officers who are in possession of the original."

14. **Effect of giving false information under this section—** (*a*) *Criminal Liability.*—A person giving information to an officer in charge of a Police station under this section can be prosecuted for an offence punishable under S. 182 or S. 211 of the Penal Code, if such information is found to be false.[1]

There is a difference of opinion as to whether a false charge to the Police falls under the second part of S. 211 of the Penal Code or not. See the undermentioned cases.[2]

(1934) 1934 Nag. 94 (95, 96): 30 Nag. L. R. 262. *Abdul Aziz* v. *Emperor.*

(3) (1922) 1922 Pat. 535 (539): 1 Pat. 401, *Chandrika* v. *Emperor.*

(4) (1932) 1932 Oudh 99 (102): 7 Luck. 552. *Gajadhar* v. *Emperor.*

(5) (1924) 1924 Lah. 591 (591), *Raja* v. *Emperor.*

Note 13.

(1) (1917) 1917 Pat. 625 (626), *Danpul Singh* v. *Emperor.*

Note 14.

(1) (1906) 4 Cri. L. Jour. 68 (69) (Cal.). *Gati Mandal* v. *Emperor.*

(1919) 1919 All. 159 (159), *Mula* v. *Emperor.*

(1918) 1918 All. 85 (85), *Manohar* v. *Emperor.*

(1930) 1930 Oudh 414 (414), *Ganga Prasad* v. *Emperor.*

(1903) 1 Weir 122 (Mad.), *Public Prosecutor* v. *Thavsiandi Thevan.*

(1905) 2 Cri. L. Jour. 171 (175): 32 Cal. 180, *Emperor* v. *Sarada Prosad Chatterjee.*

(1901) 5 Cal. W. N. 727 (728), *Giridhari Naik* v. *Emperor.*

(2) (1882) 5 All. 215 (217), *Empress* v. *Pitaram Rai* (Does not fall under S. 211).

(1883) 5 All. 598 (598), *Empress* v. *Parabu* (Do.).

(1894) 16 All. 124 (126), *Empress* v. *Bishesher* (Do.).

(1910) 11 Cri. L. Jour. 54 (54) (All.), *Emperor* v. *Jag Mohan* (Do.).

(1912) 13 Cri. L. Jour. 855 (855) (All.), *Barakatulla* v. *Sadho Kalwar* (Do.).

(1931) 1931 Nag. 134 (136): 27 Nag. L. R. 275 (F. B.), *Sultan Ahmad* v. *Emperor* (Do.).

(1906) 4 Cri. L. Jour. 240 (241): 2 Nag. L. R. 119, *Emperor* v. *Chhoti Bi* (Do., Overruled by 1931 Nag. 134).

(1913) 14 Cri. L. Jour. 491 (492) (Bom.), *Apaya Tatoba Munde* v.

S. 154. Note 14.

A gives an information to the Police. It is referred as false. *A* presses his case before the Magistrate. Can *A* be prosecuted under S. 182 or S. 211 before the Magistrate disposes of his case? No, according to the undermentioned decisions.[3] Yes, according to the following decisions.[4] The former view is more in consonance with natural justice and equity and gives *A* an opportunity to prove the truth of his case, before he is sought to be prosecuted for offences under S. 182 or S. 211 for giving false information. Before the Magistrate disposes of the complaint in a legal way steps should not be taken under S. 211 or S. 182. A mere expression of suspicion, without any definite charge will not make a person liable to prosecution.[5]

A person can be charged for abetment if he instigates another to give false information.[6] If the false information is given to the Police to screen an offender the informant is liable to be punished under S. 201 and S. 203 of the Penal Code.[7]

Emperor (Does fall under S. 211).
(1866) 5 Suth. W. R. Cr. 32 (32), *Queen* v. *Bonomally Sohai* (Do.).
(1880) 5 Cal. 281 (282), *Ashrof Ali* v. *Empress* (Do.).
(1890) 17 Cal. 574 (579) (F. B.), *Karim Buksh* v. *Empress* (Do.).
(1912) 13 Cri. L. Jour. 826 (826-827): 40 Cal. 360, *Dilan Singh* v. *Emperor* (Do.).
(1913) 14 Cri. L. Jour. 387 (388) (Cal.), *Sarba Mahton* v. *Empress* (Do.).
(1914) 1914 Cal. 349 (350), *Mirza Hassan Mirza* v. *Musst. Mahbuban* (Do.).
(1930) 1930 Cal. 711 (712), *Topzal Hossain* v. *H. C. Hunt* (Do.).
(1887) 14 Cal. 633 (635, 636), *Queen* v. *Karim Baksh* (Do., Overruled by 17 Cal. 574).
(1884) 1884 Pun. Re. No. 17, *Sulla* v. *Empress* (Do.).
(1922) 1922 Lah. 133 (134), *Mohammad Hayat* v. *Crown* (Do.).
(1862-63) 1 Mad. H. C. R. 30 (30, 31), *Queen* v. *Subbanna Gownden* (Do.).
(1896) 20 Mad. 79 (81), *Queen* v. *Nanjunda Rau* (Do.).
(1903) 26 Mad. 640 (643-44), *Rayan Kutti* v. *Emperor* (Do.).
(1897) 1 Weir 120 (120), *Public Prosecutor* v. *D. Venkata Reddi* (Do.).
(1903) 1 Weir 193 (193): 27 Mad. 129, *Chenna Malli Gowda* v. *Emperor* (Do.).
(1904) 1 Cri. L. Jour. 425 (425): 27 Mad. 127, *Mallappa Reddy* v. *Emperor* (Do.).
(1906) 3 Cri. L. Jour. 108 (109): 28 Mad. 565, *Emperor* v. *Jonnalagadda Venkatarayudu* (Do.).
(1909) 9 Cri. L. Jour. 170 (171, 172): 32 Mad. 258, *Sessions Judge of Tinnevelly* v. *Sivan Chetty* (Do.).
(1918) 1918 Mad. 731 (732), In re *Maula Obiah* (Do.).
(1912) 13 Cri. L. Jour. 576 (577): 1 U. B. R. 134, *Mi Ngwe* v. *Mt. Chit* (Do.).
(1931) 1931 Rang. 12 (14): 8 Rang. 499, *Ma Pau* v. *Emperor* (Do.).
(1931) 1931 All. 269 (271), *Emperor* v. *Johri* (Do.).
(1881) 8 Cal. L. R. 233 (235), *Brahmanand Bhuttacharjee*, In re (Statement of suspicion against certain person is not false *charge* or institution of Criminal Proceedings within S. 211).

(8) (1871) 16 Suth. W. R. Cr. 77 (77), In re *Bishoo Barik*.
(1880) 5 Cal. 281 (282), *Ashrof Ali* v. *Empress*.
(1881) 6 Cal. 582 (583), *Empress* v. *Salik Roy*.
(1881) 6 Cal. 496 (498), *The Government* v. *Karimdad*.
(1881) 7 Cal. 87 (88), In re *Sokhina Bibi*.
(1887) 14 Cal. 707 (712) (F. B.), *Empress* v. *Sham Lall*.
(1879) 4 Cal. L. R. 134 (136), *Biyogi Bhagut* v. *Empress*.
(1879) 4 Cal. L. R. 534 (536, 537), *Erad Ali* v. *Nusiban Nissa Bibee*.
(1880) 7 Cal. L. R. 382 (383, 384), *Russick Lall Mallik*.
(1880-81) 8 Cal. L. R. 289 (291), In re *Chowkidar*.
(1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor*.
(1932) 1932 Cal. 550 (551), *Charles Johns* v. *Emperor*.
(1932) 1932 Cal. 287 (288), *Sheikh Abdullah* v. *Emperor*.
(1933) 1933 Cal. 614, *Shakandar Mia* v. *Emperor*.
(4) (1905) 2 Cri. L. Jour. 615 (617, 618): 33 Cal. 1, *Jogendra Lall* v. *Bahu Ballaghhor*.
(1931) 1931 Cal. 634 (635): 58 Cal. 1065, *Emperor* v. *Bahar Ali*.
(1884) 7 Mad. 292, *Ramaswamy* v. *Empress*.
(5) (1912) 13 Cri. L. Jour. 303 (304) (Mad.), *Swaminath Tevan* v. *Emperor*.
(1905) 2 Cri. L. Jour. 66 (72): 1905 Pun. Re. No. 12, *Karim Baksh* v. *Emperor*.
(1872) 1872 Pun. Re. No. 14 (Cr.), *Crown* v. *Nihala*.
(1919) 1919 Cal. 501 (502), *Ananga Mohan Dutta* v. *Emperor*.
(1867) 8 Suth. W. R. Cr. 67 (67), *Rafec Mahomed* v. *Abbas Khan*.
(1932) 1932 Bom. 177 (178), In re *Dinshawji*.
(1925) 1925 All. 472 (472), *Samokhan* v. *Emperor*.
(1922) 1922 All. 272 (272): 44 All. 647, *Emperor* v. *Incharam*.
(1920) 1920 All. 196 (197), *Algoo* v. *Emperor*.
(1917) 18 Cri. L. Jour. 1017 (1017): 39 All. 715: 1917 All. 223, *Mathura Prasad* v. *Emperor*.
(6) (1903) 7 Cal. W. N. 556 (557), *Ram Logan Lal* v. *Emperor*.
(7) (1919) 1919 Cal. 679 (680): 46 Cal. 427, *Taprinessa* v. *Emperor*.

S. 154, Notes 14—15.

But the informant is not liable to be prosecuted under S. 193 of the Penal Code.[8]

Whether a complaint is necessary for prosecution under S. 182 or S. 211 *see* S. 195, *infra*.

If a person is defamed by the information given to the Police, such person can prosecute the informant under S. 500 of the Penal Code as well.[9]

(*b*) *Civil Liability*.—A suit for damages for malicious prosecution will lie against the informant to the Police.[10] But if the informant merely left it to the Police to take what action they chose, after expressing to the Police his honest opinion[11] he is not liable to pay any damages.

(*c*) The informant can be ordered to pay compensation to the accused under S. 250, *infra*.[12]

15. Effect of the Police-Officer in charge recording first information falsely.—If the informant has a duty to give true information to the police-officer, the latter has an equal obligation laid on him to record it correctly and truthfully. If he fails to do so, he is liable to be punished under Ss. 177 and 218 of the Penal Code.[1] If the Police-officer in his false report makes any defamatory statements, the aggrieved person can also prosecute him under S. 500 of the Penal Code.[2]

S 155.

155*. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a

Information in non-cognizable cases.

***(CODE OF 1882—S. 155.)**

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter, in a book to be kept as aforesaid, the substance of such information, and refer the informant to the Magistrate.

Information in non-cognizable cases.

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(8) (1913) 14 Cri. L. Jour. 56 (56): 35 All. 102, *Phulel* v. *Emperor*.
(1895) 17 All. 436 (437), *Empress* v. *Ajudhia Prasad*.
(1885) 11 Cal. 79 (81), *Empress* v. *Atar Ali*.

(9) (1916) 17 Cri. L. Jour. 381 (382): 1917 Mad. 600, *K. Anjaneyalu*, In re.
(1926) 1926 Lah. 278 (278), *Thambu* v. *Crown*.
(1924) 1924 All. 535 (536): 46 All. 671 (F. B.), *Majju* v. *Lachman Prasad*.
(1923) 1923 All. 167 (167, 168), *Lala Lachman Prasad* v. *Najju*.
(1919) 1919 All. 276 (277): 41 All. 311, *Parwasi* v. *Emperor*.
(1926) 1926 Jour. 141 (141) (Lah.), *Samp Singh* v. *Emperor*.

(10) (1918) 46 Ind. Cas. 337 (337): 3 U. B. R. 67: 1919 U. B. 37, *Maung Po Lun* v. *Ma Nyein*.
(1920) 57 Ind. Cas. 392 (394): 1920 Pat. 489, *Jagadamba Prasad* v. *Raghunandan*.
(1920) 1920 Mad. 789 (790), *Shanmuga Udayar* v. *Kandaswami Asari*.
(1919) 1919 Mad. 229 (230-1): 42 Mad. 880, *Periya Goundan* v. *Kuppa Goundan*.
(1910) 8 Ind. Cas. 315 (315) (Mad.), *Tummala Nagabushanam* v. *M. Venkatratnam*.
(1915) 28 Ind. Cas. 273 (276): 1914 Lah. 531: 1915 Pun. Re. 1, *Godharam* v. *Debidas*.
(1909) 1 Ind. Cas. 970 (970): 36 Cal. 278, *Hari Charan Sant* v. *Kailash Bhuyan*.
(1915) 27 Ind. Cas. 410 (412): 1915 All. 51, *Baldeo Shukul* v. *Balbhadar Singh*.

(11) (1920) 1920 Mad. 712 (713), *Raj Gopala Naick* v. *Spencer and Co., Ltd*.

(12) (1920) 1920 Sind 73 (74): 13 Sind L. R. 166, *Wali Mahomed* v. *Emperor*.

Note 15.

(1) (1897) 20 All. 151 (154), *Empress* v. *Muhammad Ismail*.
(1899) 27 Cal. 144 (150, 151), *Empress* v. *Deodhar*.
(1931) 1931 Pat. 150 (150-151), *Hafiz Muhammad Sani* v. *Emperor*.
[See (1934) 1934 Sind 6 (9, 10), *Emperor* v. *Mahomed Khabar* (It is serious matter to report untrue facts, *e.g.*, stating that the report was recorded before visiting scene of occurrence while in fact it was drawn up afterwards).]

(2) (1930) 1930 Lah. 159, *Nathu Mal* v. *Abdul Haq*.

book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate. S. 155.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

[The section so far as it applies to the police in the town of Bombay is repealed by the City of Bombay Police Act, 1902.]

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case, or commit the same for trial, or of a Presidency Magistrate.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

(CODE OF 1872—Ss. 110, 111 and 113.)

What offences Police may not investigate.

110. A Police-officer may not, without the order of a Magistrate of the first or second class, investigate an offence not cognizable by the Police.

A Magistrate of the first or second class may, as provided in sections 24 and 26, order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police-officer may exercise the same powers in respect of the investigation as in a cognizable case.

Saving of powers vested in Police by special or local law.

111. Nothing in section 110 shall be held to interfere with the exercise of any powers vested in a Police-officer by any special or local law, or with the performance of any duty which is imposed upon a Police-officer by any such special or local law.

Complaint in non-cognizable cases.

113. If a complaint is preferred to an officer in charge of a Police-station, of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police-officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

(CODE OF 1861—Ss. 133, 134.)

CHAPTER IX.

Preliminary enquiry by the Police.

Police-officers to make enquiry into certain offences only when directed to do so by Magistrate.

133. No Police-officer shall, without an express order from a Magistrate, enquire into or take cognizance of any offence punishable under the Indian Penal Code, other than the offences described in Column 3 of the Schedule annexed to this Act, as offences for which a Police-officer may arrest without warrant. But it shall be competent to a Magistrate, upon the report of a Police-officer or otherwise, to direct enquiry to be made by

S. 155, Notes 1—2.

SYNOPSIS.

	Note No.
APPLICABILITY OF THE SECTION TO PRESIDENCY TOWNS	1
PROCEDURE WHEN INFORMATION IS GIVEN ..	2
SUB-S. (2)—WHO CAN ORDER AN INVESTIGATION ..	3
ORDER FOR INVESTIGATION	4
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Other Topics.

False entry in diary. See Note 2, Pt. 2. See S. 154 also.

Informant to be referred to Magistrate. See Note 2, Pt. 7.

Information to be recorded. See Note 2, Pt. 1.

Police—Whether can record a statement. See Note 5, Pt. 3.

Whether can search. See Note 5, Pt. 4.

Power to arrest without warrant. See Note 5, Pt. 8.

Power whether can be delegated. See Note 5, Pt. 10.

Privilege—Statements to the Police. See S. 161.

Report to the Magistrate. See Note 5, Pt. 7.

1. Applicability of the section to Presidency Towns.—S. 1 of the Code enacts that in the absence of any specific provision to the contrary nothing in the Code shall apply to the police in the towns of Calcutta and Bombay. The use of the word "Presidency Town" in sub-S. (2) of this section has been held to be a "specific provision to the contrary" and that consequently this section will apply to the towns of Calcutta and Bombay.[1] The section so far as it applies to the police in the town of Bombay has however, been repealed by S. 2 of the City of Bombay Police Act, 1902 (Act 4 of 1902).

2. Procedure when information is given.—When information is given to an officer in charge of a Police-station of the commission within the limits of such station of an offence whether cognizable or non-cognizable it is the duty of such officer to enter the substance of such information in the book kept for that purpose.[1] Failure to enter or entering such information falsely is an offence punishable under S. 177 of the Penal Code.[2] The object of the section is to inform the Magistrate of the District and the District Superintendent of Police of the offences which have been reported at the Thana.[3]

The information given to the Police-officer in respect of a non-cognizable offence cannot amount to an institution of criminal proceedings within the meaning of S. 211, Penal Code.[4] nor can a charge under S. 182 of the Penal

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a Police-officer into any offence punishable under the Indian Penal Code or under any special or local law.

Saving of powers vested in Police-officers by any special or local law.

134. Nothing in the last preceding section shall be held to interfere with the exercise of any powers which are vested in a Police-officer by any special or local law, or with the performance of any duty which is imposed upon a Police-officer by any such special or local law.

Section 155—Note 1.

(1) [See (1896) 21 Bom. 495 (498, 499), *Empress* v. *Visram Balaji*.]
(1925) 1925 Cal. 587 (589, 590): 52 Cal. 67, *Emperor* v. *Panch Kari*.
(1888) 15 Cal. 595 (606), *Empress* v. *Nilmadhab Mitter*.

Note 2.

(1) (1898) 20 All. 151 (153, 154), *Empress* v. *Muhammad Ismail Khan*.
(1930) 1930 Lah. 159 (162, 163), *Nathu Lal* v. *Abdul Huq*.
(2) (1930) 1930 Lah. 159 (162, 163), *Nathu Lal* v. *Abdul Huq*.
(1898) 20 All. 151 (154), *Empress* v. *Muhammad Ismail Khan*.
(3) (1898) 20 All. 151 (154), *Queen-Empress* v. *Muhammad Ismail Khan*.
(4) (1932) 1932 Cal. 511 (511, 512), *Abdul Hakim Khan Chandun* v. *Emperor*.

Code be brought against the informant on the ground that such information was false[5] as the Police-officer has no power to take any proceedings by himself in such cases without an express order from a Magistrate.[6]

After entering such information in the diary the Police-officer should refer the informant to the Magistrate.[7] He may in addition also report the case to the Magistrate for orders under sub-S. (2).[8]

3. Sub-Section (2)—Who can order an investigation.—The Magistrates who can order an investigation under this section are—

(1) Magistrates of the first or second class having power to try such cases or commit them for trial, and

(2) Presidency Magistrates.

The words "having power to try" mean only possessing the power to try and should not be confused with the exercise of that power. Hence, a District Magistrate can order an investigation into a case under S. 294-A, Penal Code, even though such offence cannot be tried without a complaint from the Local Government or an officer empowered by the Government in this behalf.[1]

4. Order for investigation.—It is open to the Magistrate to order an investigation under this section when he receives a police report in a non-cognisable case and has reason for doubting its correctness[1] and if he does so the Police-officer is bound to make the investigation.[2]

But it is only *under the orders of* a Magistrate that the police can investigate into a non-cognisable offence.[3] Thus he cannot in such a case under S. 165, *infra*, enter a house and make a search.[4]

An order for investigation under this section can be made not only in respect of offences under the Penal Code but also in respect of offences under any local or special law.[5]

It has been held that an order by the District Magistrate to an officer of the Criminal Investigation Department to make a confidential enquiry for

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(5) (1932) 1932 Pat. 170 (170), *Mosafir Singh* v. *Emperor*.
(1933) 1933 Oudh 374 (375), *Gunga Dayal* v. *Emperor*.

(6) (1932) 1932 Cal. 511 (511, 512), *Abdul Hakim Khan Chaudun* v. *Emperor*.
(1933) 1933 Oudh 374 (375), *Ganga Dayal* v. *Emperor*.
(1932) 1932 Pat. 170 (170), *Mosagir Singh* v. *Emperor*.

(7) (1927) 1927 Bom. 440 (441, 443): 51 Bom. 498, *Emperor* v. *Shivaswami*.
(1902) 26 Bom. 150 (156, 157), *Emperor* v. *Sada*.

(8) (1910) 11 Cri. L. Jour. 156 (156) (Mad.), *Asadulla Hussain Khan*, In re.
(1930) 1930 Lah. 159 (162, 163), *Nathu Lal* v. *Abdul Huq*.
(1931) 1931 Oudh 172 (174), *Bhuneshwari Pershad* v. *Emperor*.
(1931) 1931 Oudh 172 (174), *Bhuneshwari Pershad* v. *Emperor* (Report by Police-officer asking for warrant to be issued under S. 161—Procedure not bad).

Note 3.

(1) (1932) 1932 Lah. 581 (581, 582), *General Relief Association, Lahore* v. *Emperor*.

Note 4.

(1) (1914) 1914 U. B. 31 (31): 2 U. B. R. 19, *Nga Saw Ke* v. *Emperor*.
(1932) 1932 Lah. 581 (581, 582), *General Relief Association, Lahore* v. *Emperor*.
(1906) 4 Cri. L. Jour. 183 (190, 191) (Bom.), *Emperor* v. *Vishwanath Krishna Sathe*.
(1912) 13 Cri. L. Jour. 691 (692) (Cal.), *Feroja Peshakar* v. *Amiruddin*.
(1868) 10 Suth. W. R. 49 (49, 50), In re *Fokto Shah*.
[But see (1888) 12 Bom. 161 (163), In re *Jankidas Guru Sita Ram*.]

(2) (1868) 1868 Pun. Re. No. 21, p. 51, *Chamun* v. *Lullee*.

(3) (1918) 1918 Lah. 171 (175): 1918 Pun. Re. No. 16, *Hiralal* v. *Emperor*.
(1889) Rat. Un. Re. Cr. Cas. 488 (490), *Empress* v. *Kalidas*.
(1932) 1932 Cal. 511 (511, 512): 59 Cal. 334, *Abdul Hakim Khan Chauduri* v. *Emperor*.
(1897) 24 Cal. 691 (696, 698), *Bahabul Shah* v. *Taraknath Chowdhury*.
(1913) 14 Cri. L. Jour. 218 (218, 219) (All.), *Sarferaz Khan* v. *Emperor*.
(1881) 5 Bom. 405 (407), *Government of Bombay* v. *Shidapa*.
(1865) 3 Suth. W. R. 16 (16).
(1929) 1929 Mad. 115 (117), *Ponnusami Udayar* v. *Emperor*.

(4) (1897) 24 Cal. 691 (696, 698), *Bahabal Shah* v. *Taraknath Chowdhury*.

(5) (1870) 14 Suth. W. R. 41 (44), In re *Pran Kisto Pal* (Case under 1861 Code—But submitted that law is same under present Code).

S. 155, Notes 4—5.

the purpose of ascertaining whether any grounds exist for instituting criminal proceedings is not an order for investigation under this section.[6]

5. Powers and duties of the Police under Sub-S. (3).—Investigation under this chapter includes investigation under sub-S. (3) of this section.[1] A Police-officer empowered under the sub-section to investigate can thus exercise the powers conferred by S. 161,[2] record statements under S. 162,[3] make a search under S. 165,[4] and send up a charge sheet or report that the evidence is insufficient.[5] It is the duty of such officer to keep a diary of the proceedings in investigation under S. 172.[6] After the investigation he should send in a report of the investigation under S. 173 even if the order of the Magistrate is silent as to such report.[7] But the power to arrest without warrant is expressly taken away by this section.[8] If he arrests without a warrant, it will be illegal.[9]

It has been doubted in the undermentioned case[10] whether a Police-officer appointed to investigate under this section can delegate his authority to another.

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156*. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

***(CODE OF 1882—S. 156.)**

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

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(6) (1927) 1927 Bom. 501 (509), *Emperor* v. *Jehangir Ardeshir Gama*. Note 5.

(1) (1931) 1931 All. 263 (264): 53 All. 407, *Raghubar Dayal Misra* v. *Emperor*.

(2) (1883) 8 Bom. 216 (219), *Empress* v. *Parshram Raysing*.

(3) (1919) 1919 All. 276 (277): 41 All. 311, *Parwari* v. *Emperor*.

(4) (1932) 1932 Lah. 581 (581, 582), *General Relief Association, Lahore* v. *Emperor*.

(5) (1912) 13 Cri. L. Jour. 691 (692) (Cal.), *Feroza Peshakar* v. *Amiruddin*.

(1931) 1931 All. 263 (264): 53 All. 407, *Raghubar Dayal Misra* v. *Emperor*.

(6) (1918) 1918 Lah. 171 (175): 1918 Pun. Re. No. 16, *Hiralal* v. *Emperor*.

(7) (1915) 1915 Bom. 80 (80, 81), *Appa Ragho Bhogle* v. *Emperor*.

(1913) 14 Cri. L. Jour. 218 (218, 219) (All.), *Sarferaz Khan* v. *Emperor*.

(8) (1897-1901) U. B. R. 31 (33), *Nga Po Ke* v. *Empress*.

(1883) 1 Weir 343 (343), In re *Latchamana Goundan*.

(9) (1883) 1 Weir 343 (343), In re *Latchamana Goundan*.

(10) (1889) Rat. Un. Re. Cr. Cas. 488 (490), *Empress* v. *Kalidas*.

SYNOPSIS.

S. 156, Notes 1—3

	Note No.
LEGISLATIVE CHANGES	1
"COGNIZABLE CASE"	2
OFFICER IN CHARGE OF A POLICE-STATION	3
TERRITORIAL LIMITS TO POWER OF INVESTIGATION ..	3-A
IRREGULARITIES IN INVESTIGATION—SUB-S. (2) ..	4
ORDER FOR INVESTIGATION—SUB-S. (3)	5
SESSIONS JUDGE—POWER TO ORDER INVESTIGATION ..	6
POWERS AND DUTIES OF THE POLICE IN INVESTIGATION	7

Other Topics.

Order for investigation when complaint is made. See Note 5, Pt. 2.

Order when no reportor complaints is made. See Note 5, Pt. 1.

Superior Police-officers—Power to investigate. See Note 3, Pt. 1.

What cases can be investigated—Scope of the section. See Note 2, Pt. 1.

1. Legislative Changes.—Sub-S. (3) is new and was not found in the Code of 1882.

2. "Cognizable case."—The power to investigate under this section is not limited to *offences* only. It extends to any *cognizable case*, *e.g.*, where a person has been arrested under S. 55 (*c*).[1] Nor is the power limited by any condition that the Police-officer should have something written before he can take action in respect of an offence of which he can take cognizance without the order of a Magistrate.[2]

3. Officer in charge of a Police-station.—The section authorises *an officer in charge of a Police-station* to make an investigation in any cognizable case. Under S. 551, *infra*, Police-officers superior in rank to an officer in charge of a Police-station can exercise the same powers of investigation as can

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No proceeding of a Police-officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(CODE OF 1872—Ss. 109 and 114, Paras. 2 and 3.)

CHAPTER X.

Powers of the Police to investigate.

What offences Police-officer may investigate.

109. An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police.

Upon information, etc., Police-officer in charge of station to proceed in person or depute a subordinate.

114. * * * * *

Police-officers shall investigate offences committed within the local limits of their jurisdiction; but they may investigate offences committed outside of those limits, in cases in which a Magistrate might, under the provisions of Chapter VI, inquire into an offence not committed within his district.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

(CODE OF 1861—Nil.)

Section 156—Note 2.

(1) (1893) 1893 All. W. N. 124 (124), *Empress* v. *Bhajan.*

(2) (1909) 2 Ind. Cas. 436 (448) : 36 Cal. 433, *Clarke* v. *Brajendra.*

S 156, Notes 3—5.

be exercised by an officer in charge of a Police-station. An Inspector of the Provincial Criminal Investigation Department is an officer superior in rank to an officer in charge of a Police-station and can make an investigation under this section.[1] If the officer in charge of the Police-station is ill, the next in rank, and in charge of the station then, could investigate, even though he is not generally empowered to investigate cognizable cases.[2] In serious cases of rioting, etc., it is desirable that investigation is made by a senior officer.[3] As to the power of an Inspector of the Criminal Investigation Department to investigate offences, *see* the undermentioned case.[4]

3-A. Territorial limits to the power of investigation.—Where a girl is taken away from her husband's house in District *M* and is brought to District *D*, a Magistrate at *D* will have jurisdiction under S. 181 to inquire into the offence (kidnapping). Hence, the police at *D* can investigate into the crime under this section.[1]

4. Irregularities in investigation—Sub-S. 2.—Sub-S. (2) provides that no proceeding of a Police-officer shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. A conviction or acquittal does not depend upon the question what particular officer actually conducts the investigation which results in the trial. That is determined mainly by the evidence that is given at the trial and considered.[1]

The failure properly to investigate cannot vitiate the trial. If there is anything suspicious in the investigation it is for the Court to consider the same in determining the truth of the charge.[2]

5. Order for investigation—Sub-S. (3).—Where no complaint has been made to a Magistrate, but the latter gets information in respect of any cognizable case he may under the provisions of sub-S. (3) of this section order the Police to investigate into it.[1] But where a complaint has been made in respect of any offence and the Magistrate taking cognizance thereof considers, before the issue of process to the accused, that the matter should be investigated, he should order such investigation under the provisions of S. 202, *infra*, and *not* under this sub-section.[2] The reason is that this sub-section does not provide an alternative procedure to that laid down in S. 202.[3] The mere fact, however, that a complaint has been made to a Magistrate in respect of a cogni-

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Note 3.

(1) (1912) 13 Cri. L. Jour. 352 (362, 368): 35 Mad. 397, *Muthu Kumaraswami Pillai* v. *Emperor.*
(1912) 13 Cri. L. Jour. 305 (317): 35 Mad. 247, *Emperor* v. *Nilakanta.*
[See also (1919) 1919 Mad. 487 (491), *Kumarumuthu Pillai* v. *Emperor.*]
(2) (1923) 1923 Pat. 547 (549): 2 Pat. 379, *Emperor* v. *Bhola Bhaghat.*
(3) (1933) 1933 Lah. 871 (876), *Emperor* v. *Rai Singh Narain Singh.*
(4) (1912) 13 Cri. L. Jour. 352 (392): 35 Mad. 397, *Muthu Kumaraswami Pillai* v. *Emperor.*

Note 3-A.

(1) (1933) 1933 All. 665 (666), *Kharaiti* v. *Emperor.*

Note 4.

(1) (1928) 1928 Bom. 162 (164): 52 Bom. 238, *Shivbhat* v. *Emperor.*
(2) (1931) 1931 Pat. 150 (152), *Hafiz Muhammad* v. *Emperor.*

Note 5.

(1) (1906) 4 Cri. L. Jour. 183 (190, 191, 192) (Bom.), *Emperor* v. *Vishwanath Krishna Sathe.*
(1926) 1926 Cal. 586 (587): 53 Cal. 650, *Satyacharan Mitra* v. *Emperor.*
(2) (1929) 1929 Bom. 72 (73, 74): 53 Bom. 339, *Emperor* v. *Nurmahomed Rajmahommed.*
(3) (1911) 12 Cri. L. Jour. 463 (463) (Mad.), In re *Arula Kotiah.*
(1928) 1928 Mad. 1268 (1269, 1270), *Vijayaraghavachariar* v. *Emperor.*
[See also (1928) 1928 Cal. 24 (25): 54 Cal. 303, *Isaf Nasya* v. *Emperor.*
(1887) 12 Bom. 161 (163), In re *Janaki Das.*]
[See however the observation in (1933) 1933 Sind 136 (137, 138): 27 Sind L. R. 67, *Emperor* v. *Ghulam Nabi.*]

zable case does not affect the powers of the Police to make an investigation under sub-S. (1) of this section independent of any order from a Magistrate.[4] S. 156. Notes 5—7.

6. Sessions Judge—Power to order investigation.—A Sessions Judge is not a Magistrate empowered under S. 190 and cannot direct the Police under sub-S. (3) to make an investigation.[1]

7. Powers and duties of the Police in investigation.—It is the duty of the Police in making an investigation to discover the truth and not simply to obtain evidence for the purpose of securing a conviction.[1] The power conferred must be used with caution. The police in conducting the investigation must act in such a way as to inspire full confidence in everybody concerned.[1-a] A general power to enter indiscriminately into houses in the neighbourhood of the place where a cognizable offence may have been committed is not contemplated by this section.[2] The number of investigations into a crime is not limited by law and where one has been completed another may be begun on fresh information received.[3] The investigating officer is a material witness for the prosecution and his non-production is a serious omission which cannot but throw suspicion on the whole prosecution case.[4] But he cannot be regarded as unbiassed, and it is desirable that the investigating officer corroborates the result of his investigation by independent evidence.[5] The practice of engineering an offence, by an investigating officer, in order to find out whether a person when tempted will commit an offence is to be strongly deprecated.[6]

157.* (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the com-

Procedure where cognizable offence suspected.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the

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Procedure where cognizable offence suspected.

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*(CODE OF 1882—S. 157.)

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a Police-report, and

Procedure where cognizable offence suspected.

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(4) (1931) 1931 Mad. 770 (770, 771): 54 Mad. 598, *Gopal Naick* v. *Alagiriswami Naick.*
(1932) 1932 Lah. 579 (580, 581), *Rashid Ahmed* v. *Emperor.*
(1923) 1923 Pat. 547 (548, 549): 2 Pat. 379, *Emperor* v. *Bhola Bhagat.*
(1933) 1933 Sind 136 (137, 138): 27 Sind L. R. 67, *Emperor* v. *Ghulam Nabi Allahwadhayo.*

Note 6.

(1) (1910) 11 Cri. L. Jour. 330 (330, 331): 1910 Pun. Re. 11, *Emperor* v. *Ali.*

Note 7.

(1) (1933) 1933 All. 314 (317), *Shukul* v. *Emperor.*
(1-a) (1934) 1934 Lah. 692 (693), *Kartar Singh* v. *Emperor.*
(1933) 1933 Lah. 871 (876), *Emperor* v. *Rai Singh Narain Singh* (Allying themselves with person who is suspected to have a hand in crime is bad).
(2) (1928) 1928 All. 185 (186), *Jagannath* v. *Emperor.*
(3) (1918) 19 Cri. L. Jour. 901 (901): 1919 Mad. 751, *Divakhar Singh* v. *Ramamurthi Naidu.*
(1932) 1932 Lah. 103 (109), *Mohinder Singh* v. *Emperor.*
[But see (1932) 1932 Lah. 611 (612, 613), *Emperor* v. *Ali.*]
[See also (1908) 7 Cri. L. Jour. 202 (204): 1908 Pun. Re. 4, *Shivnath* v. *Emperor.*]
(4) (1922) 1922 Pat. 582 (585): 1 Pat. 630, *Niru Bhagat* v. *Emperor.*
(5) (1917) 18 Cri. L. Jour. 1028 (1032): 1917 All. 224, *Hansraj* v. *Emperor.*
(6) (1916) 17 Cri. L. Jour. 139 (140): 1916 All. 242, *Bhim Sen* v. *Emperor.*

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mission of an offence which he is empowered under S. 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot, to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers *not being below such rank as the Local Government may, by general or special order, prescribe in this behalf* to proceed, to the spot, to investigate the facts and circumstances of the case, *and, if necessary to take measures* for the discovery and arrest of the offender:

Provided as follows:—

Where local investigation dispensed with.

(*a*) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Where police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of police-station that there is no sufficient ground for entering on an investigation he shall not investigate the case.

(2) In each of the cases mentioned in clauses (*a*) and (*b*) of the proviso to sub-S. (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section.

(2) In each of the cases mentioned in clauses (*a*) and (*b*) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, *and, in the case men-*

tioned in clause (b) *such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated.* S. 157.

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shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender.

Provided as follows:—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where Police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

(CODE OF 1872—Ss. 114, Para 1; 116 and 117.)

114. If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission, within his local jurisdiction, of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offence.

Upon information, etc., Police-officer in charge of station to proceed in person or depute a subordinate.

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116. Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

Where local investigation dispensed with.

117. Provided that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

Where Police-officer in charge sees no sufficient ground for investigation.

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and shall, after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.

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SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"FROM INFORMATION RECEIVED"	3
"OR OTHERWISE"	4
"HE SHALL FORTHWITH SEND A REPORT.....TO THE MAGISTRATE"	5
EFFECT OF NOT SENDING THE "OCCURRENCE REPORT" ..	6
"TO INVESTIGATE THE FACTS AND CIRCUMSTANCES OF THE CASE"	7
OBJECT OF INVESTIGATION	8
PROVISO (*b*)	9
WHO CAN INVESTIGATE UNDER THIS SECTION ..	10
WHETHER THE OCCURRENCE REPORT IS A PUBLIC DOCUMENT	11
"OR SHALL DEPUTE ONE OF HIS SUBORDINATE OFFICERS" WITHOUT WARRANT DURING INVESTIGATION	12
DELAY IN INVESTIGATION AND DUTY OF COURT ..	13

Other Topics.

Investigation does not include every Police enquiry. See Note 7, Pt. 1.
Investigation of offence outside jurisdiction. See Note 7, Pt. 2.
Necessity for the report. See Note 5, Pt. 2.
Reasons to suspect. See Note 2, Pt. 1.
To the spot to investigate. See Note 7, Pt. 2.

(CODE OF 1861—Ss. 135, 136, 137.)

135. Upon complaint or information being preferred to an officer in charge of a Police-station of the commission within the limits of such station of any of the offences specified in Column 3 of the Schedule annexed to this Act, as offences for which Police-officers may arrest without warrant, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate officers to proceed to the spot to enquire into the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Upon complaint preferred, Officer in charge of Police-station to proceed in person or depute a subordinate Officer to make enquiry.

* * * * * * *

136. Provided that, when any complaint is made against any person by name, and the case is not of a serious nature, it shall not be incumbent on the officer in charge of a Police-station to proceed in person or to depute a subordinate officer to make an enquiry on the spot, unless such local enquiry shall appear to be necessary.

Except in cases not of a serious nature where local enquiry not necessary.

137. If on any complaint or information being preferred to an officer in charge of a Police-station, it shall appear to such officer that there is no sufficient ground for entering on an enquiry, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall abstain from proceeding in the case and shall report the substance of the complaint or information for the orders of the Magistrate.

If officer in charge of Police-station see no sufficient ground for an enquiry.

S. 157, Notes 1—6.

1. Legislative changes.—Before the amendment of the section in 1923 the wording of the section was similar to that of the corresponding section of the Code of 1882. By the amending Act of 1923 the following changes were introduced into the section:—

(*a*) The words "not being below.....*in* this behalf" and the words "and, if necessary to take measures" were inserted in sub-S. (1).

(*b*) The words "and, in the case mentioned.....in Cl. (*b*)..... cause it to be investigated" were added in sub-S. (2).

2. Scope of the section.—The section provides the manner in which investigation is to be conducted where the commission of a cognizable offence is suspected and further authorises an officer in charge of a Police-station not to investigate if he considers that there is no sufficient ground for such investigation and regulates his procedure in such cases.[1]

This section does not apply to the City of Bombay and Calcutta.[2] [*See also* S. 1, *supra*.]

3. "From information received."—The words "from information received" refer to the information furnished and recorded under S. 154.[1]

As to what is "information" within the meaning of S. 154, *see* Note 3, thereto.

4. "Or otherwise".—The words "or otherwise" are wide enough to include every source of information other than that furnished and recorded under S. 154. They will even include information derived from a telegram or village gossip.[1] It was held in the undermentioned case[2] that where the Police came to know of a complaint which had been made to a Magistrate, it is sufficient on which they could proceed to investigate. *See also* the cases cited below.[3]

5. "He shall forthwith send a report.....to the Magistrate."—This section provides for the making of a report by the Police to the Magistrate *before investigation*. This is called an "occurrence report."[1] S. 173, *infra*, provides for the submitting of a report after the *investigation is completed*. S. 174 provides for sending of an inquest report in cases of death under the circumstances specified in that section.

The object of the report under this section is to enable a Magistrate to have early information of every serious crime so that he may be in a position to act if necessary under S. 159.[2]

6. Effect of not sending the "occurrence report."—The section is mandatory and the sending of the "occurrence report" is a step which is an

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Section 157—Note 2.

(1) (1932) 1932 Lah. 611 (612), *Emperor* v. *Ali*.
(2) (1897) 21 Bom. 495 (499), *Empress* v. *Visram Babaji*.
(1888) 15 Cal. 595 (607), *Empress* v. *Nilmadhub Mitter*.

Note 3.

(1) (1910) 11 Cri. L. Jour. 201 (201) (Cal.), *Jagadami Pershad* v. *Mahado Kandoo*.

Note 4.

(1) (1914) 15 Cri. L. Jour. 622 (624): 1915 Mad. 312, In re *Nandamuri Anandayya*.
(2) (1923) 1923 Pat. 547 (549): 2 Pat. 379, *Emperor* v. *Bhola Bhagat*.
(3) (1926) 1926 All. 562 (562), *Balram Dikshit* v. *Emperor*.

Note 5.

(1) (1899) 1899 All. W. N. 87 (89), In re *Kandhaiya Lal*.
(2) (1931) 1931 Pat. 150 (151), *Hafiz Mohamad Sani* v. *Emperor*.

S. 157, Notes 6—11.

essential preliminary to an investigation. The failure to send such report is a serious neglect of duty and is likely to result in failure of justice, as it lays the police open to the suspicion of concocting false evidence.[1] The omission cannot, however, vitiate a trial in the absence of prejudice to the accused.[2]

7. **"To investigate the facts and circumstances of the case".**—"Investigation" is defined in S. 4 including "all the proceedings under this Code on the collection of evidence conducted by a Police-officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf." Every enquiry that a Police-officer in charge of a Police-station makes does not necessarily come under this section. Police-officers very frequently hear from village gossip or anonymous petitions and deem it well to make a few preliminary enquiries as to whether there is anything in what he has heard to render a formal investigation desirable. Such inquiries are not "investigations" under this section.[1]

The locking of the door of an accused person's house and the keeping of guard over the house are within the powers of the police in investigation under this section. There is nothing under this section to prevent the police of one station from acting in the jurisdiction of another Police-station.[2]

8. **Object of investigation.**—The object of investigation is to search for the truth and not to collect evidence to secure a conviction.[1]

9. **Proviso (b).**—The officer in charge of the Police-station is given full discretion whether to investigate or not, as he thinks fit, he is not bound to act on the information.[1]

10. **Who can investigate under this section.**—Three classes of officers can make an investigation into a crime:—

(*a*) The officer in charge of a Police-station.

(*b*) An officer below the rank of such officer as the Local Government may prescribe in this behalf under this section.

(*c*) Officers superior to an officer in charge of a Police-station by virtue of S. 551, *infra*. An Inspector of the Criminal Investigation Department is an officer superior in rank to an officer in charge of a Police-station and can make an investigation under this section.[1]

11. **Whether the "occurrence report" is a public document.**—It has been held in the undermentioned cases[1] that the occurrence report is not an *act* or *record of acts* of a public officer and is, therefore, not a public document and

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Note 6.

(1) (1910) 11 Cri. L. Jour. 498 (499): 4 Sind L. R. 38, *Emperor* v. *Balokhan.*
(1931) 1931 Pat. 150 (151), *Hafiz Muhammad Sani* v. *Emperor.*

(2) [*See cases cited in foot-note* 1.]

Note 7.

(1) (1914) 15 Cri. L. Jour. 622 (624): 1915 Mad. 312, *Nadamuni Anadayya.*

(2) (1915) 16 Cri. L. Jour. 551 (552): 1915 Lah. 376: 1915 Pun. Re. 12, *Nathu Singh* v. *Emperor.*

Note 8.

(1) (1933) 1933 All. 314 (317), *Shukul* v. *Emperor.*

Note 9.

(1) (1924) 1924 All. 535 (535): 46 All. 671, *Majju* v. *Lachman.*
(1871) 16 Suth. W. R. Cr. Cir. 1.

Note 10.

(1) (1912) 13 Cri. L. Jour. 305 (317): 35 Mad. 247, *Emperor* v. *Nilakanta.*

Note 11.

(1) (1897) 20 Mad. 189 (198, 202, 205), *Empress* v. *Arumugam.*
(1931) 1931 Pat. 150 (151), *Hafiz Mohammad Sani* v. *Emperor.*

that an accused is not entitled either to obtain a copy of it or to inspect it before it is filed.

12. "Or shall depute one of his subordinate officers" without warrant during investigation.—It was held under the Code of 1861 that a Police constable deputed under the provisions corresponding to this section, is not empowered to enter a house in search of *property* though he might do so in search of the person of the offender.[1]

13. Delay in investigation and duty of Court.—Delay in investigation causes serious prejudice to an accused person. It gives time to witnesses, even those who may not be dishonest, to bring their evidence into harmony with that of the others. It may also interfere with the preparation of the defence in that an accused may feel difficulty in recalling what he was doing at the time of the offence.[1] When there is any delay in investigation, it is the duty of a Court to enquire fully into the circumstances of the delay and consider its bearing upon the case.[2]

158*. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under S. 157 how submitted.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

***(CODE OF 1882—S. 158.)**

Reports under section 157 how submitted.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

(CODE OF 1872—S. 117, Para. 2.)

Where Police-officer in charge sees no sufficient ground for investigation.

117. * * *

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit and shall after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.

(CODE OF 1861—Nil.)

Note 12.

(1) (1870) 7 Bom. H. C. R. Cr. 50 (52), *Reg.* v. *Vyankatrao Shrinivas.*

Note 13.

(1) (1932) 1932 Lah. 345 (347): 13 Lah. 573, *Emperor* v. *Barwick.*

(2) (1900) 2 Bom. L. R. 1092 (1094), *Majesty.*

S. 158, Note 1.

1. Applicability of the section.—This section does not apply to the Police of Calcutta and Bombay.[1] *See* also S. 1, *supra*.

S. 159.

159*. Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
"ON RECEIVING SUCH REPORT"	2
OFFENCE THAT CAN BE INVESTIGATED OR INQUIRED INTO	2-A

***(CODE OF 1882—S. 159.)**

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

(CODE OF 1872—S. 115.)

Preliminary inquiry.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

(CODE OF 1861—S. 135.)

Upon complaint preferred, Officer in charge of Police-station to proceed in person or depute a subordinate Officer to make enquiry.

135. * * *

Any Magistrate, on receiving intimation of the commission of any such offence, may at once proceed or depute an officer exercising any of the powers of a Magistrate, to proceed to hold a preliminary enquiry into or otherwise to dispose of such case in the manner provided in this Act.

Section 158—Note 1.

(1) (1897) 21 Bom. 495 (499), *Empress* v. *Visram Babaji.* (1888) 15 Cal. 595 (607), *Empresss* v. *Nilmadhub Miller.*

	Note No.	
"IF HE THINKS FIT"	3	S. 159, Notes 1—5.
"DEPUTE ANY MAGISTRATE SUBORDINATE TO HIM TO PROCEED TO HOLD A PRELIMINARY ENQUIRY" ..	5	
"PRELIMINARY ENQUIRY"	5	

Other Topics.

Direct investigation. See Note 2, Pt. 1.
Otherwise dispose of. See Note 3, Pt. 1.
When Magistrate cannot try the case by reason of conducting the enquiry. See S. 556.

1. Legislative changes.—Under S. 135 of the Code of 1861, the Magistrate receiving intimation of the commission of a cognizable offence, could depute "an officer exercising any of the powers of a Magistrate" to proceed to hold a preliminary inquiry: Under the Codes of 1872 and the later Codes he could depute only a "Magistrate subordinate to him".

2. "On receiving such report".—The words "such report" mean the first information report submitted under S. 157, before investigation. They do not include the *final report* under S. 173, *infra* or the report submitted under S. 202, *infra*. The holding of an inquiry under this section on a *final* report under S. 173 after investigation will be without jurisdiction.[1]

2-A. Offence that can be investigated or inquired into.—Under this section the powers of the Magistrate are confined to inquiry and orders regarding the offence to which the report relates. The Magistrate has no power under the section to proceed against the *informant*.[1]

3. "If he thinks fit".—A Magistrate having before him a police report submitted to him under the provisions of S. 157 may determine, as he thinks fit, either to take no further steps, or to take cognizance of the offence under S. 190 (1) (*b*) or proceed under S. 203 of the Code.[1]

4. "Depute any Magistrate subordinate to him to proceed to hold a preliminary enquiry".—A Magistrate who is deputed under the provisions of this section, to hold a preliminary enquiry must do so in conformity with the directions under which he is empowered so to act. Thus where a Subordinate Magistrate is deputed to investigate a case and to record the evidence of the witnesses for the purposes of a preliminary enquiry, he has no power to question the accused and record a statement from him under S. 364.[1]

5. "Preliminary enquiry".—The expression preliminary enquiry used in this section refers to an enquiry that may be made just after the receipt

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Section 159—Note 2.

(1) (1899) 1899 All. W. N. 87 (89), *In re Kandhaiya Lal.*
(1904) Upp. Bur. Rul. 1st Qr. Cr. Pr. Code 4, *Lachmanan Chetty* v. *Emperor.*
[See also (1913) 14 Cri. L. Jour. 387 (388) (Cal.), *Sarba Mahton* v. *Emperor.*]
[See also (1917) 18 Cri. L. Jour. 13 (14): 1917 Cal. 593: 43 Cal. 1152, *Tayabullah* v. *Emperor.*]
(1900) 4 Cal. W. N. 351 (352), *Mouli Durzi* v. *Naurangi.*
(1909) 10 Cri. L. Jour. 424 (426): 32 All. 30, *Abdul Rahman* v. *Emperor.*
(1904) 1 Cri. L. Jour. 539 (540): 1904 U. B. R. 1st Qr. Cr. P. C. 4, *Lachmana Chetty* v. *Emperor.*

Note 2-A.

(1) (1904) 1 Cri. L. Jour. 539 (540): 1904 U. B. R. 1st Qr. Cr. P. C. 4, *Lachmana Chetty* v. *Emperor.*

Note 3.

(1) (1878) 2 Weir 119.

Note 4.

(1) (1898) 2 Cal. W. N. 702 (708), *Bhairab Ohunder.*

S 159, Note 5.

by the Magistrate of the report under S. 157. It is used in a sense different from that in S. 288 namely an enquiry under Chapter XVIII of the Code prior to commitment to the sessions and which is held *after the police investigations are completed*, after the charge sheet is drawn up and after the accused is forwarded to the Magistrate.[1]

On receipt of the report of a preliminary enquiry under this section, the Magistrate should proceed in the same way as he would deal with a report received from a police-officer.[2]

S. 160.

160*. Any police-officer making an investigation under this Chapter may, by order in writing require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

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*(CODE OF 1882—S. 160.)

160. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

(CODE OF 1872—S. 118.)

118. An officer in charge of a Police-station, or other officer making an investigation, may, by an order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station, who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required.

Police-officer's power to summon witnesses.

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(CODE OF 1861—S. 144.)

144. An officer in charge of a Police-station may, by an order in writing, require the attendance before himself of any person being within the limits of his station, who, from the statement of the complainant or otherwise, appears to be acquainted with the facts and circumstances of any case into which he is enquiring under section 135 of this Act and such person shall be bound to obey such requisition.

Witnesses to be summoned.

Note 5.

(1) (1922) 1922 Mad. 40 (41): 45 Mad. 230. *T. P. Obegadu* v. *Pukasi Pedda and others.*

(2) (1903) 30 Cal. 923 (925, 926), *Lokenath* v. *Sanyasi.*

S. 160, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
"ANY POLICE-OFFICER MAKING AN INVESTIGATION" ..	3
"BY ORDER IN WRITING"	4
WHO CAN BE SUMMONED UNDER THIS SECTION? ..	5
PURPOSE FOR WHICH ATTENDANCE REQUIRED	6
SERVICE OF ORDER IN WRITING	7
POLICE CANNOT SUMMON PRODUCTION OF DOCUMENTS.	8
"BEFORE HIMSELF"	9
"SUCH PERSON SHALL ATTEND"	10
IF SECURITY BOND CAN BE TAKEN FROM WITNESS ..	11
EFFECT OF DISOBEDIENCE OF SUMMONS	12
POWER OF THE DISTRICT MAGISTRATE	13
PRIVILEGES AND DUTIES OF WITNESSES	14

Other Topics.

Accused cannot be summoned. See Note 5, Pt. 2.
Admissibility in evidence of statement. See S. 162.
Any person. See Note 5.
Detention of persons. See Note 10, Pt. 3.
Examination of women. See Note 10, Pt. 5.
Failure to attend. See Note 10, Pt. 1, Note 12.
May require the attendance. See Note 10, Pts. 1 and 2.
Recording of statements. See S. 161.
Taking down statement from persons immediately prior to their arrest. See Note 5, Pt. 2-a.

1. Legislative changes.—

Difference between 1861 *and* 1872 *Codes*—

Under S. 144 of the Code of 1861, only an *officer in charge of a Police-station* was empowered to require the attendance of witnesses during the course of investigation. Further the witnesses so required had to be *within his station.* Under the Code of 1872, an officer in charge of a Police-station or *other officer making an investigation* may require the attendance of witnesses and such witnesses may be within the limits of his own or *adjoining station.*

Difference between 1872 *and* 1882 *Codes*—

(*a*) The words "Any Police-officer making an investigation under this chapter" were substituted for the words "Any officer in charge of a Police station, or other officer making an investigation" which occurred in the Code of 1872.

(*b*) The words "who from the information given or otherwise" were substituted for the words "who from the statement of the complainant or otherwise".

S. 160, Notes 1—5.

(c) The clause beginning with "and shall answer....." and ending with "tending to criminate himself" in 1872, Code were enacted as a separate section. *Vide* S. 161, *infra*.

There is no difference between the Codes of 1882 and 1898 in this respect.

2. **Scope and object of the section.**—This section aims at securing the attendance of persons who would supply the necessary information in regard to the commission of an offence and who would be examined as witnesses in the enquiry or trial to be held in regard to the said offence.[1] The intention of the Legislature is to provide facility for the Police to obtain evidence with regard to the crime which is being investigated.[1-a] *See also* S. 175, *infra*, where a similar power is given to the Police to summon assessors to be present at the time of investigation. It is however, not necessary that the Police should have summoned a person under this section in order to examine that person. Any one who is present at the time of investigation, if acquainted with the circumstances of the case may be examined *though not summoned*.[2]

3. **"Any Police-officer making an investigation".**—The only person who can summon a witness under this section is a Police-officer *making an investigation under this chapter*. Thus if a Head Constable who is not making an investigation under this chapter summons a witness, the latter is not bound to obey the order and such disobedience will not be punishable under law. Nor would the evidence of such a witness (if given) form the basis of a charge under S. 191 or S. 192 of the Penal Code.[1]

4. **"By order in writing".**—A person is not bound to appear before the Police-officer investigating a case, *without an order in writing* by such officer. Disobedience of a mere verbal order is not punishable under law.[1] Similarly where a constable without an order in writing made by the investigating officer, asks a person to accompany him, he does not act in the discharge of his duty and an assault by such person on the constable is not an offence under S. 353 of the Penal Code.[2]

5. **Who can be summoned under this section?**—The only person that can be required to attend under this section are persons who are acquainted with the facts of the case and are likely to be witnesses at the trial to be held after investigation. In other words the section applies to *witnesses* and *possible witnesses* only.[1]

So an *accused* person cannot be summoned under this section to answer the complaint against him[2] and no statement can be taken from the accused

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Section 160—Note 2.

(1) (1929) 1929 Nag. 17 (20): 24 Nag. L. R. 158 (F. B.), *Gola* v. *Emperor*.
(1881) 7 Cal. 121 (126), *Empress* v. *Kasimkhan*.
(1-a) (1884) 7 Mad. 274 (275) (F. B.), *Empress* v. *Saminada*.
(1900) 27 Cal. 295 (302), *Empress* v. *Jadub Das*.
(2) (1930) 1930 Pat. 510 (512): 9 Pat. 577, *Manmohan Rai* v. *Emperor*.

Note 3.

(1) (1889) 16 Cal. 349 (354, 355), *Empress* v. *Baikanta*.
(1885) 1885 All. W. N. 43 (44), *Empress* v. *Chatter Singh*.

Note 4.

(1) (1895) 1 Weir 86 (86): 16 Mad. 463, In re *Viraswami Pillai*.
(1896) Rat. 850 (851), *Empress* v. *Purshotam*.
(2) (1918) 1918 Nag. 137 (137), *Thukaram* v. *Emperor*.

Note 5.

(1) (1886) 2 Weir 121 (122), In re *Lachmigadu*.
(2) (1884) 7 Mad. 274 (275) (F. B.), *Empress* v. *Saminada*.
(1893-1900) Low. Bur. R. 317 (318), *Nga Kwe* v. *Empress*.
(1926) 1926 Rang. 116 (117): 4 Rang-

preliminary to his arrest when there is evidence before the police to arrest him[2-a] inasmuch as an accused person cannot be examined as a witness (at the trial) either for or against himself.[3]

6. Purpose for which attendance required.—*See* S. 161, *infra*.

7. Service of order in writing.—The service of summons should be in accordance with Ss. 68 to 72.[1]

8. Police cannot summon production of documents.—This section does not authorise the Police-officer to summon the production of documents.[1]

9. "Before himself".—The order to attend must be to appear *before the Police-officer* who is making the investigation. Thus a Police-officer cannot order a person to appear *before a Magistrate* so that the Magistrate may record that person's statement under S. 164 of the Code.[1]

10. "Such person shall attend".—Where an order in writing by the Police-officer requiring the attendance of a person, is disobeyed, the only course is to prosecute that person for such disobedience. There is no provision of law empowering the police to *compel* that person to attend.[1] Even the District Magistrate cannot issue a warrant for his arrest and production before the investigating officer.[2] Nor can the Police-officer himself arrest and detain him in custody. If he does so, he may become liable for an offence of wrongful confinement.[3] But it will not amount to an offence of wrongful confinement if the person is merely taken to the Police-station and asked to wait till the Sub-Inspector saw him.[4]

The High Court of Calcutta has pointed out that where women have to be examined the examination can be done at the residence of the women and that it is not advisable to take them to the Police-station.[5]

11. If security bond can be taken from witness.—*Vide* Ss. 497 and 499, *infra*.

12. Effect of disobedience of summons.—A person who fails to attend on being served with an order under this section will be liable to be prosecuted under S. 174 of the Penal Code. But the conditions under this section should be fulfilled; namely

(*a*) that the Police-officer should be investigating into an offence[1] and

72 (F. B.), *Emperor* v. *Nga Tha Din*.
(1902) 4 Bom. L. R. 644 (645), *Emperor* v. *Ratan Satharam*.
(2-a) (1899) 27 Cal. 295 (299, 302), *Empress* v. *Jadub Das*.
(3) (1929) 1929 Nag. 17 (19, 20): 24 Nag. L. R. 158 (F. B.), *Gola* v. *Emperor*.

Note 7.

(1) (1917) 18 Cri. L. Jour. 733 (734): 1918 Mad. 815, In re *Gumparthi Venkatramiah*.

Note 8.

(1) (1902) 4 Bom. L. R. 644 (645), *Emperor* v. *Ratan*.

Note 9.

(1) (1889) Rat. 468 (469), *Empress* v. *Nana*.

Note 10.

(1) (1867) 7 Suth. W. R. 3 (5), *Queen* v. *Behary Singh*.
(1902) 4 Bom. L. R. 79 (80), *Emperor* v. *Sham Lal*.
(1896) Rat Un. Re. Cr. Cas. 850 (851), *Empress* v. *Purshotam Vanamali*.
(2) (1897) 24 Cal. 320 (323, 324), *Empress* v. *Jogendra Nath Mukerjee*.
(3) (1886) 2 Weir 121 (121, 122), In re *Lakshmigadu*.
(4) (1930) 1930 Oudh 505 (506), *Abdul Karim* v. *Emperor*.
(5) (1905) 2 Cri. L. Jour. 51 (53) (Cal.), *Haladhar Bhumij* v. *Sub-Inspector of Police Hura out Post*.

Note 12.

(1) (1889) 16 Cal. 349 (354, 355), *Empress* v. *Baikanta*.
(1885) 1885 All. W. N. 43 (44), *Empress* v. *Chatter Singh*.

S. 160, Notes 12—14.

(*b*) that the order should be in writing.[2] But a person refusing to attend cannot be convicted under S. 186 of the Penal Code.[3] S. 177 of the Penal Code will not apply to statements made by persons to the police.[4] *See* Notes to S. 161, *infra*.

A refusal to receive a notice or subpoena under this section is not an offence punishable under S. 173 of the Penal Code.[5]

13. Power of the District Magistrate.—The District Magistrate cannot interfere (except by way of suggestion and advice) with the exercise of discretion given to the police-officer under this section to summon a witness to appear before him.[1]

14. Privileges and duties of witnesses.—*Vide* Ss. 161 and 162, *infra*.

S. 161.

Examination of witnesses by police.

161*. (1) Any police-officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

Examination of witnesses by police.

161*. (1) Any police-officer making an investigation under this Chapter *or any Police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer* may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

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*(CODE OF 1882—S. 161.)

Examination of witnesses by Police.

161. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

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(2) (1895) 1 Weir 86 (86), In re *Virasami Pillai*.
(3) (1896) Rat. 850 (851), *Empress* v. *Purushotam*.
(4) (1869) 12 Suth. W. R. 23 (24), *Queen* v. *Luckhee*.
(5) (1926) 1926 All. 304 (304), *Bahadura* v. *Emperor*.
(1886) 1886 All. W. N. 93 (93), *Empress* v. *Ganga Ram*.
(1918) 1918 Oudh 412 (412): 21 Oudh Cas. 150, *Chandika Prasad* v. *Emperor*.
(1918) 1918 All. 409 (410): 40 All. 577, *Sahdeo* v. *Emperor*.

Note 13.

(1) (1878) Rat. 133, In re *Sankal Chand*.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
ANALOGOUS LAW	2
SCOPE AND OBJECT OF THE SECTION	3
"ANY POLICE OFFICER" SUB-S. (1).	4
"MAY EXAMINE ORALLY"	5
RECORD OF STATEMENTS	6
STATEMENTS—IF ATTESTATION PERMITTED	7
ANY PERSON SUPPOSED TO BE ACQUAINTED WITH THE FACTS AND CIRCUMSTANCES OF THE CASE ..	8
"SHALL BE BOUND TO ANSWER" SUB-S. (2).	9
STATEMENT OF WITNESSES UNDER THE SECTION— PRIVILEGE	10
REFUSAL TO ANSWER	11

(CODE OF 1872—Ss. 118, 119, Paras. 1 and 2 and S. 121.)

118. An officer in charge of a Police-station, or other officer making an investigation, may, by an order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station, who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required and shall answer all questions relating to such cases put to him by such officer:

Police-officer's power to summon witnesses.

Provided that no person shall be bound to answer any questions tending to criminate himself.

119. An officer in charge of a Police-station, or other Police-officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Oral examination of witnesses by Police.

Such person shall be bound to answer all questions relating to such case, put to him by such officer, other than questions criminating himself.

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121. No Police-officer shall record any statement, or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Police not to record statement or confession.

Provided that nothing in this section shall preclude a Police-officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Proviso.

(CODE OF 1861—S. 145.)

145. It shall be lawful to an officer in charge of a Police-station or other Police-officer making an enquiry, to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case. Nothing in this section shall preclude such Police-officer from reducing into writing any statement made by the person so examined:

Oral examination of witnesses by Police.

Provided that any statement so reduced into writing shall not be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

S. 161, Notes 1—6.

Other Topics.

Examination of accused before arrest. See Note 8, Pt. 1.
Nature of the proceedings. See Note 3, Pt. 1.
Oral statements. See Note 6, Pt. 1.
Special answer to general questions if necessary. See Note 6, Pt. 2.
Statements not the property of the police. See Note 6, Pt. 4.
When questions are ridiculous. See Note 8, Pt. 3.
Witness not bound to speak the truth. See Note 9.

1. Legislative changes.—The words "or any Police-officer.....of such officer" were introduced by S. 33 of the Code of Criminal Procedure Amendment Act of 1923.

2. Analogous Law.—For similar provisions under other Acts See:—

S. 13, Village Patels Act (VIII of 1867).

S. 78-A, Calcutta Police Act (IV of 1866).

S. 74, Excise Act, (Bengal Act V of 1909).

S. 41, Bombay Abkari Act (V of 1878).

3. Scope and object of the section.—S. 160, *ante*, provides for the power to require the *attendance* of witnesses. This section empowers the police to *examine* witnesses during the course of an investigation. But as has been seen in Note 2 to S. 160 the examination is not limited to such persons only as are *summoned* under that section. *Any one* who is present may be examined if he is acquainted with the circumstances of the case.

The examination contemplated by the section is not of a judicial character and need not be in the presence of the accused or his agents.[1] The section, however, applies, only to investigations made under this chapter, *i.e.*, relating to the *commission* of offences and not to merely *threatened or contemplated* offences.[2]

An inquest report does not come under this section.[3]

4. "Any Police-officer"—Sub-S. (1).—An Inspector of the Provincial Criminal Investigation Department is, for the purposes of this section, a Police-officer investigating within a local area extending over the whole province.[1]

5. "May examine orally."—The mere fact that a witness does not readily come forward immediately after the investigation begins, is no reason to discredit his testimony.[1] The Police-officer should not extract information by using force; such evidence is useless.[2]

6. Record of statements.—The corresponding section of the Code of 1882 contained the words "may reduce into writing any statement made by the person so examined." The omission of these words in the present section

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Section 161—Note 3.

(1) (1906) 4 Cri. L. Jour. 79 (81): 33 Cal. 1023, *Dadan Gazi* v. *Emperor.*
(2) (1926) 1926 Mad. 521 (522, 523): 49 Mad. 315, *Sanjivi Reddy* v. *Kondagari Koneri Reddy.*
(3) (1926) 1926 Rang. 116 (117): 4 Rang. 72 (F. B.), *Emperor* v. *Nga Tha Din.*
(1933) 1933 Cal. 861 (863), *Rajeswari Debi* v. *Emperor.*

Note 4.

(1) (1912) 13 Cri. L. Jour. 305 (316, 317): 35 Mad. 247, *Emperor* v. *Nilakanta* (See contra—*Per* Sankaran Nair, J.).
(1912) 13 Cri. L. Jour. 352 (362): 35 Mad. 397, *Muthukumaraswami* v. *Emperor.*

Note 5.

(1) (1931) 1931 Lah. 529 (530), *Miran Bakhsh* v. *Emperor.*
(2) (1916) 17 Cri. L. Jour. 351 (352): 1916 All. 360, *Gokul Singh* v. *Emperor.*

shows that it is not necessary to *record* any statements made by witnesses under this section. But a Police-officer is not prevented from making such a record if he wishes to do so.[1]

The provisions of Ss. 164 and 364, *infra*, do not apply to the statement recorded under this section. It is not necessary that these statements should, if recorded, be recorded in the form of questions and answers. It is enough if it is answer to one or more questions put to the witness.[2] If the Police officer does reduce into writing any statement made under this section, he does not do so for his personal benefit but in his official capacity and so should make High Court doubted whether an *inquest report* under S. 174 would come under this section. As to admissibility in evidence of such statement, *see* S. 162.

Delay in recording the statement of a witness is calculated to cast a suspicion on it.[5]

7. Statements—Attestation of.—It is not illegal, though unnecessary for a Police-officer after recording a statement under this section to obtain the signatures of persons present at the time other than the person making the statement to authenticate his record of such statement as witnesses.[1] But under the next section (S. 162) obtaining the signature of the person making the statement is expressly forbidden.

8. Any person supposed to be acquainted with the facts and circumstances of the case.—It has been seen in Note 5 to S. 160, *ante* that the expression "any person" in that section applies only to witnesses or possible witness and not to accused persons. This section also uses the words "any person" and it has been held, especially in view of the marginal note, that this section also applies only to witnesses and not to accused persons.[1] In *Syams Maha Patro* v. *Emperor*, A.I.R. 1932 Mad. 391 F.B. in which the question referred to the Full Bench was whether the words "statement made by any person" under S. 162, included statements made by persons accused of the offence under investigation, two of the judges constituting the Full Bench expressed the opinion that the words "any person" used in S. 161 were quite general and would include accused persons also, and that the marginal note could not be imported into the interpretation of the section so as to restrict its wide meaning. Waller, J., who was one of the referring judges, however, disagreed with that view.

It is only a person believed to be acquainted with the facts and circumstances of the case that may be examined under this section. A Police-officer

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Note 6.

(1) (1874) 11 Bom. H. C. 120 (122), *Reg.* v. *Uttamchand Kapurchand.*
(1928) 1928 Bom. 352 (361): 52 Bom. 832 (F. B.), *Narayan Hari* v. *Yeshwant Raoji and Dattatraya* v. *Annappa.*
(1934) 1934 Oudh 229, *Emperor* v. *Sital.*
[See (1912) 13 Cri. L. Jour. 679, *Surendra Narain* v. *Emperor.*]
(2) (1893) 15 All. 11 (13), *Queen* v. *Bagwantia.*
(1896) 1896 Pun. Re. No. Cr. 7, p. 19, *Queen* v. *Abdur Rahman.*
(3) (1897-01) 1 Upp. Bur. Rul. 29 (30), *Nga Po Hmi* v. *Queen-Empress.*
(4) (1933) 1933 Cal. 861 (863), *Rajeswari Debi* v. *Emperor.*
(5) (1915) 16 Cri. L. Jour. 155 (156), *Crown* v. *Ahmad.*

Note 7.

(1) (1893) 15 All. 11 (14), *Queen* v. *Bhagwantia.*

Note 8.

(1) (1927) 1927 Cal. 17 (18): 54 Cal. 237, *Azimaddy* v. *Emperor.*
(1928) 1928 Nag. 108 (110), *Sheobalak Prasad* v. *Emperor.*
(1925) 1925 Sind 237 (239): 19 Sind L. R. 142, *Umerduraz Munshi* v. *Emperor.*
(1926) 1926 Rang. 116 (117): 4 Rang. 72, *Emperor* v. *Nga Tha Din.*
(1900) 27 Cal. 295 (299), *Queen* v. *Jadub Das.*

S. 161, Notes 8—9.

is not authorised to summon a person and ask him his opinion as a "juryman"; the person so concerned is not bound to answer the question.[2] A person can be examined under this section only in respect of question *relating to the case*, *i.e.*, with regard to the offence investigated. A person cannot be summoned, for instance, and asked to examine the hands of any other person to see if there were marks showing that the hands were tied with rope.[3] Similarly a person who stood as surety for an accused person whose appeal was pending in the High Court cannot be examined as to the whereabouts of the accused who absconded after the dismissal of the High Court Appeal.[4]

9. "**Shall be bound to answer**"—**Sub-S. (2).**—In *Empress* v. *Kassim Khan*, I.L.R. 7 Cal. 121 F. B. it was held that the words "shall be bound to answer all questions" did not constitute an express provision of law to state the *truth*. Garth, C. J., observed as follows:—

"Ss. 118 and 119" (corresponding to Ss. 160 and 161 of this Code) "are, in our opinion, merely intended to oblige persons to give *such information as they can* to the police in answer to questions which may be put to them and they impose no legal obligation on those persons to speak the truth unless we import the word "truly" in each section after the word "question" which we clearly have no right to do."

In view of this decision, the word "truly" was introduced in the Code of 1882 after the word "answer" and so it was held under that Code, that a person who was examined by a Police-officer was bound to state the truth[1] except in the case of incriminating questions.[2] The said word has again been omitted in the present section with the result that the law as laid down in 7 Cal. 121 is still good law.[3]

A person making a false statement in answer to questions under this section cannot therefore be convicted for an offence under S. 193 of the Penal Code.[4] Nor can he be convicted for an offence under S. 203 of that Code inasmuch as he does not *volunteer* information, but only answers questions.[5] Nor

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(2) (1875) Rat. Un. Re. Cr. Cas. 92 (92), *Reg.* v. *Fakira.*
(1874) 11 Bom. H. C. 120 (122), *Reg.* v. *Uttamchand.*
(3) (1875) Rat. 92 (92), *Reg.* v. *Fakira.*
(4) (1885) 1885 All. W. N. 43 (44), *Empress* v. *Chattar Singh.*

Note 9.

(1) (1892) 15 All. 11 (12), *Empress* v. *Bhagwantia.*
(1893) 13 All. W. N. 124 (124), *Empress* v. *Bhajan.*
(1884) 8 Bom. 216 (219), *Empress* v. *Parshram Ray Singh.*
(1887) 11 Bom. 659 (661), *Empress* v. *Ismail Walud Fataru.*
(1884) 10 Cal. 405 (406), *Nathu Sheikh* v. *Empress.*
(2) (1889) Rat. Un. Re. Cr. Cas. 488 (489), *Empress* v. *Kalidas.*
(1890) Rat. Un. Re. Cr. Cas. 518 (518), *Empress* v. *Annia.*
(1892) Rat. Un. Re. Cr. Cas. 619 (619), *Empress* v. *Usuphkhan.*
(1889) Rat. Un. Re. Cr. Cas. 488 (489), *Kalidas Samal.*
(3) (1900) 23 Mad. 544 (546), *Empress* v. *Appigadu.*
(1899) 1 Weir 111 (111), In re *Savani Virabayi.*
(1913) 14 Cri. L. Jour. 252 (253): 6 Sind L. R. 143, *Crown* v. *Akhtiar Valad Sanwan.*
(1913) 14 Cri. L. Jour. 302 (302): 6 Sind L. R. 277, *Crown* v. *Mahomed Varis.*
(1905) 2 Cri. L. Jour. 590 (593), *Rabari Bhura Dewait* (Kathiawar).
(1917) 18 Cri. L. Jour. 844 (846): 1917 Low. Bur. 12, *Nga Pyu* v. *Emperor.*
(1903-04) 1 L. B. R. 101 (103), *Crown* v. *Mi Tan.*
(4) (1908) 7 Cri. L. Jour. 3 (4) (All.), *Muhammad Usman* v. *Emperor.*
(1893-1900) L. B. R. 101 (103), *Crown* v. *Mi Tan.*
(1917) 18 Cri. L. Jour. 98 (98): 1917 Low. Bur. 82, *Nga Po* v. *Emperor.*
[See also (1933) 1933 Rang. 119 (119), *Mi Choke* v. *Emperor.*]
(5) (1910) 11 Cri. L. Jour. 438 (438) (All.), In re *Sarju Saran* v. *Emperor.*
(1920) 1920 U. B. 20 (21): 3 U. B. R. 204, *Emperor* v. *Nga Po Lwin.*

can be for the same reason, be convicted under S. 211[6] or S. 182[7] of the Penal Code. S. 177 of the Penal Code does not apply to the case as it alludes to information being bound to be given by land-holders, *etc.*[8]

For cases under the Code of 1882 under which the person was bound to answer questions truly, *see* the undermentioned cases.[9]

10. Statement of witnesses under the section—Privilege.—*See* S. 162, *infra.*

11. Refusal to answer.—A refusal to answer questions under this section is not an offence under S. 176 or S. 179 or S. 187 of the Penal Code.[1]

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(6) (1902) 1 Weir 193 (193), *Veerapalli Penchalugadu.*
(1908) 31 Mad. 506 (508), *Chinna Ramana Gowd* v. *Emperor.*
(1909) 9 Cri. L. Jour. 170 (177): 32 Mad. 258 (F. B.), *Sessions Judge* v. *Siran Chetty.*
(1910) 11 Cri. L. Jour. 286 (286, 287) (Mad.), In re *Krishna Bai Padithaya.*
(1909) 19 Mad. L. J. (Sh. N.) 44 (45).
(1932) 1932 Mad. 24 (24), *Kodangi* v. *Emperor.*

(7) (1914) 1914 Lah. 360 (360), *Mangu* v. *The Crown.*
(1929) 1929 Pat. 4 (5): 7 Pat. 715, *Emperor* v. *Lachman Singh.*
(1905) 2 Cri. L. Jour. 474 (474, 475): (1905) 1 U. B. R. 13, *Emperor* v. *Nga Aung Po.*
(1925) 1925 Rang. 364 (366): 3 Rang. 577, *Sultan* v. *Wellbourne.*
(1935) 1935 Rang. 97 (98), *Maung Bo Ni* v. *Emperor.*
[But see (1933) 1933 Pat. 555 (555), *Bodhan Garain* v. *Emperor.*]
(1877) Rat. Un. Re. Cr. Cas. 124 (126), *Empress* v. *Bhikaiji.*]
[See also (1920) 1920 Lah. 349 (350): 1 Lah. 410, *Ponna Lal* v. *Emperor* (Dissenting from 1914 Lah. 360).]

(8) (1869) 12 Suth. W. R. Cr. 23 (24), *Queen* v. *Luckhee Singh.*

(9) *Liable under S. 193 of the Penal Code.*
(1893) 15 All. 11 (12), *Bhagwantia.*
(1893) 1893 All. W. N. 124 (124), *Empress* v. *Bhajans.*
(1884) 8 Bom. 216 (219), *Prishuram Raysingh.*
(1887) 11 Bom. 659 (661), *Empress* v. *Ismail valad Fataru.*
(1888) Rat. Un. Re. Cr. Cas. 401 (402). *Empress* v. *Bepu Narain.*
(1887) 1887 Cr. Rg. 26, *Kabhal Ujam.*
(1888) 1888 Cr. R. 62, *Bapu Naran.*
(1869) 12 Suth. W. R. Cr. 23 (24), *Queen* v. *Luckhee Singh.*
(1896) 1896 Pun. R. No. Cr. 7 (19), *Empress* v. *Abdur Rahman.*
S. C. (Oudh) No. 232, *Badal Khan.*
(1881) 8 C. L. R. 236 (237), In re *Juggernath Sahai.*
(1892-1896) 1 U. B. R. 195 (195).
(1873) 20 Suth. W. R. Cr. 41 (43), *Queen* v. *Nimchand Mookerjee.*
(1884) 10 Cal. 405 (406), *Nathu Sheik.*
(1880) 4 Bom. 479 (481), *Imperatrix* v. *Irbasapa* (False statement to a Police Patel under S. 13 of the Bombay Act VIII of 1867).
(1890) Rat. Un. Re. Cr. Cas. 503 (503), *Empress* v. *Wardan.*
False answers to incriminating questions not punishable under S. 193, I. P. Code even under the Code of 1882.
(1889) Rat. 488 (489), *Kalidas Samal.*
(1890) Rat. Un. Re. Cr. Cas. 518 (518), *Queen* v. *Annia.*
(1892) Rat. 619 (619), *Usuphkhan Valad Piroz Khan.*
(1893) Rat. Un. Re. Cr. Cas. 674 (675), *Queen* v. *Sada* (Cannot escape liability under S. 176, I. P. Code on this ground where information has already reached the Police).
False statements made under Police compulsion not punishable under S. 193.
(1865) 3 Suth. W. R. 6 (7, 8), *Nagena Ourut.*
Before conviction under S. 193, I. P. Code proof that the Police-officer was making investigation under Ch. XIV and the statement was made in answer to question by such officer is necessary.
(1889) 16 Cal. 349 (354, 355), *Baikanta Bauri.*
Statement made under this section is not made in a judicial proceeding and no sanction under S. 195 is necessary for prosecution.
(1887) 11 Bom. 659 (661), *Empress* v. *Ismal Valad Fataru.*
(1887) Rat. Un. Re. Cr. Cas. 336 (337), *Empress* v. *Kabhai.*
[But see (1897-1901) 1 Upp. Bur. Rul. 31 (40), *Nga Po Ke* v. *Empress.*]
Prosecution for false statement sustainable only if made to a Court or to an officer having power to investigate.
(1881) 6 Cal. 620 (621), *Empress* v. *Jamoona* (Case under Code of 1872—Complaint to a Military Officer).
(1890) 1890 Pun. Re. No. 27, p. 91, *Harnam Singh* v. *Empress* (Offence falls under latter part of S. 193 and **not first part).**

Note 11.

(1) (1900) 23 Mad. 544 (546), *Empress* v. *Sankaralinga Kone.*
(1909) 9 Cri. L. Jour. 105 (106): 1908 Pun. Re. 27, *Gul Hassan* v. *Emperor.*
(1931) 1931 Rang. 26 (27): 8 Rang. 511, *Mau Zanagyi* v. *Emperor* (Refusal to answer not an offence under S. 179, I. P. Code).
[See also (1892) Rat. Un. Re. Cr. Cas. 610 (610), *Empress* v. *Ravaji.*]
(1899) 1 Weir 111 (111), *Savani Virabayi.*

S. 162.

Statements to police not to be signed or admitted in evidence.

162.* (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence: Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof: and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.

Statements to police not to be signed; use of such statements in evidence.

162. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; *nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made*:

Provided that, when any witness is called for the prosecution *in such inquiry or trial* whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused refer to such writing *and**** *direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly*

***(CODE OF 1882—S. 162.)**

Statements to Police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

(CODE OF 1872—S. 119, Para. 3 and S. 121.)

119. .* * * * * * *

S. 162.

proved, may be used to contradict such witness in the manner provided by section 145 *of the Indian Evidence Act,* 1872. *When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination:*

Provided, further, that if the Court is of opinion that any part of any such statement is not relevant to the subject matter of the inquiry or trial, or that its disclosure to the accused is not essential in the interests of justice, and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1), of the Indian Evidence Act, 1872.

Proviso.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Police not to record statement or confession.

121. No Police-officer shall record any statement, or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Provided that nothing in this section shall preclude a Police-officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Proviso.

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SYNOPSIS.

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(CODE OF 1861—Ss. 145 and 147.)

145. It shall be lawful for an officer in charge of a Police-station or other Police-officer making an enquiry, to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case. Nothing in this section shall preclude such Police-officer from reducing into writing any statement made by the person so examined:

Oral examination of witnesses by Police.

Provided that any statement so reduced into writing shall not be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

147. No Police-officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Police-officer not to record confession.

Provided that nothing in this section shall preclude any Police-officer from reducing any such statement or admission or confession into writing for his own information or guidance.

Proviso.

Other Topics.

Admissibility of incriminating statements of accused made to the Police. See Note 4, Pts. 1-11.
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Ss. 2 (5), 25 (4), 26 (4), 27 (1,4,5, 6,), 32 (10,21), 145 (2,10, 16,), 155 (2, 21), 157 (2,3, 10, 21) 158 (10), 165 (10) and 167 (19).
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Right of accused to get copies—
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after close of prosecution evidence. See Note 13, Pts. (3-a)-5.
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Use of statement in prosecution for false evidence against witness. See Note 9, Pt. 4.

1. **Legislative Changes.—**

Difference between the Code of 1861 *and* 1872—

Except in form, there is practically no difference between the Codes of 1861 and 1872.

Changes introduced in 1882—

(*i*) The words "other than a dying declaration" "were added thereby exempting dying declarations from the purview of the section.

(*ii*) The words "made by any person to a police-officer in the course of an investigation under this chapter" were added.

(*iii*) The words "nor shall it be used as part of the record or as used as evidence" were substituted by the words "or be used as evidence against the accused."

(*iv*) The clause "nothing in this section shall be deemed to affect the provisions of S. 27 of the Indian Evidence Act" was newly added.

Changes introduced in 1898—

(*i*) The words "other than a dying declaration" were omitted but sub-Cl. (2) was added.

(*ii*) The words "or be used as evidence against the accused" were substituted by the words "nor shall *such writing* be used as evidence".[1] *See* Notes 11 and 12.

Section 162—Note 1. *Jagat Chandra Mali.*]

() [See (1894) 22 Cal. 50 (72), *Empress* v.

S. 162, Notes 1—2.

(*iii*) A proviso was newly added in 1898 by which the time, when the copies could be applied for, the mode and purpose for which such statements could be used, were laid down.

(*iv*) The proviso with regard to S. 27 of the Indian Evidence Act was omitted.

Amendments in 1923—

(*i*) The words "nor shall such writing be used as evidence" were substituted by the words "nor shall any such statement . . . when such statement was made." The effect of the change was to set at rest the controversy whether oral evidence of the statement could be let in though the writing itself could not be used as evidence. *See* Note 11.

(*ii*) The old proviso was repealed and two new provisos were added. By this change the discretion of the Court to grant the copies to the accused was curtailed, such grant being subject only to the conditions mentioned in proviso 2; and stress has been laid on proper proof of the statement. *Vide* Notes 14 and 15. The amended section has cleared up a number of misapprehensions which seem to have prevailed as to the scope of the section.[2]

2. Scope and object of the section.—Under the Evidence Act the previous statement of a witness can be used.

(1) Under S. 145, to contradict the witness.
(2) Under S. 155, to impeach his credit and
(3) Under S. 157, to corroborate his testimony.

This section provides that no statement made by any person to a police-officer in the course of an investigation under this Chapter shall be used for any purpose except

(1) by the *accused*.
(2) for the purpose of contradicting the witness as provided by S. 145 of the Evidence Act.[1]

The effect of this section is thus to limit considerably the provisions of the Evidence Act in regard to the matters covered by it.[2] The reason for such

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(2) (1926) 1926 Lah. 54 (59), *Mohammad* v. *Emperor*.

Note 2.

(1) (1902) 1902 Pun. L. R. No. 27, p. 127, *Azam Khan*.
(1926) 1926 Pat. 20 (22), *Badri Chaudhry* v. *Emperor*.
(1931) 1931 Oudh 172 (175), *Bhuneshwari Pershad* v. *Emperor*.
(1934) 1934 Cal. 717 (718), *Ram Lal Ghose* v. *Emperor* (Reference to such statements in charge to jury, for corroborating witness's deposition in Court amounts to misdirection).
(1935) 1935 All. 717 (719), *Bhagwan Das* v. *Emperor*.
(1934) 1934 Nag. 198 (198), *Mahomad Haneef* v. *Emperor*.

(2) (1933) 1933 Pat. 589 (592, 593), *Emperor* v. *Nijibuddin*.
(1926) 1926 Rang. 116 (121): 4 Rang. 72 (F. B.), *Emperor* v. *Nga Tha Din*.
(1926) 1926 Pat. 232 (237): 5 Pat. 33, *Jagwa Dhanuk* v. *Emperor*.
(1910) 11 Cri. L. Jour. 117 (117 and 119): 13 Oudh Cas. 7, *Bhulia Singh* v. *Emperor*.
(1925) 1925 Lah. 399 (400): 6 Lah. 171, *Rakha* v. *Crown*.
(1927) 1927 Cal. 372 (372), *Sajjad Mirza* v. *Emperor*.
(1927) 1927 Cal. 17 (19): 54 Cal. 237, *Azimaddy* v. *Emperor*.
(1898) 2 Cal. W. N. 702 (712), *Empress* v. *Bhairab Chunder*.
(1908) 32 Bom. 111 (142), *Emperor* v. *Raghunath*.

restriction is that such statements are recorded by police-officers in the most haphazard manner. Officers conducting the investigation not unnaturally record what seems in their opinion material to the case at that stage and omit many matters equally material and, it may be, of supreme importance as the case develops. Besides that in most cases they are not experts of what is and what is not evidence. The statements are often recorded hurriedly in the midst of a crowd and confusion subject to frequent interruptions and suggestions from by-standers. Over and above all they cannot in any sense be termed depositions, for they are not prepared in the way of depositions, they are not read over to nor are they signed by deponents. There is no guarantee that they do not contain much more or much less than what the witness has said.[3]

The section protects persons from being pinned down to statements recorded by the police.[4]

3. **"Statement," meaning of.**—The section applies only to a *statement* and if what is recorded does not amount to a statement of a witness, the record is privileged and the accused is not entitled to a copy thereof.[1-a] The word "statement" in this section includes both *oral* and written statements as is made clear by the use of the words "if reduced into writing".[1] It will also include *signs* and *gestures*.[2] In the undermentioned cases[3] it was held that a list of stolen properties supplied to the police during investigation is a "statement" within the meaning of the section.

The word "statement" will not, however include the record of a search made by the police,[4] or signatures taken on blank paper for the purpose of comparison.[5]

There is a conflict of decisions as to whether this section applies to evidence of identification of a person in the course of a police investigation. The High Courts of Allahabad[6] and Calcutta[7] have held that identification of a person amounts to a *statement* within this section and that therefore the fact of such identification is not admissible in evidence in the usual course. But the Nagpur Judicial Commissioner's Court has taken a different view[8] and the

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(3) (1894) 16 All. 207 (208), *Empress* v. *Nassiruddin*.
[See also (1910) 11 Cri. L. Jour. 235 (238) (All.), *Rustam* v. *Emperor*.]
(1881) 7 Cal. 121 (126), *Empress* v. *Kasim Khan*.
(1933) 1933 Mad. 372 (375), *Ponnuswami*, In re.
(1918) 1918 Pat. 459 (459), *Ram Charitra Singh* v. *Emperor*.]
(4) (1919) 1919 Mad. 487 (498), *Kumaramuthu* v. *Emperor*.
(1919) Upp. Bur. 38 (39): 3 U. B. R. 84, *Nga Yon* v. *Emperor*.

Note 3.

(1-a) (1935) 1935 Sind 145 (175, 176): 28 S. L. R. 397, *Emperor* v. *Hari*.
(1) (1928) 1928 Mad. 1028 (1032): 51 Mad. 967, *Chinna Krishnappa* v. *Talukunta Thimmappa*.
(1935) 1935 Sind 145 (172): 28 S. L. R. 397, *Emperor* v. *Hari* (Use of *oral* statement of witness is also prohibited).
(2) (1926) 1926 Rang. 112 (113), *Emperor* v. *Nga Kyaing*.
For the purpose of S. 32 of the Evidence Act also, *signs* are statements.
[See (1922) 1922 Cal. 409 (410): 49 Cal. 600, *Emperor* v. *Sadhu Churn Dass*.
(1924) 1924 Lah. 581 (581-582): 5 Lah. 305, *Ranga* v. *Emperor*.
(1922) 1922 Pat. 535 (539): 1 Pat. 401, *Chandrika Ram Khakar* v. *Emperor*.
(1886) 1886 Pun. Re. No. 2, p. 4, *Buta* v. *Empress*.]
(3) (1929) 1929 Cal. 448 (448), *Fulbash Sheikh* v. *Emperor*.
(1925) 1925 Cal. 959 (960), *Kalia* v. *Emperor*.
(1932) 1932 Lah. 488 (489), *Sucha Singh* v. *Emperor*.
(1912) 13 Cri. L. Jour. 244 (245) (Mad.), *Vellaya Rowther* v. *Emperor*.
(4) (1925) 1925 Mad. 574 (576), In re *Semalai Goundan*.
(5) (1932) 1932 Bom. 406 (409): 56 Bom. 304, *Emperor* v. *Rama Rao* (Case under S. 63 of the Bombay City Police Act, 1912, similar to this section).
(6) (1921) 1921 All. 215 (216), *Nagina* v. *Emperor*.
(7) (1935) 1935 Cal. 311 (311), *Krishna Chandra Dhenki* v. *Emperor*.
(1925) 1925 Cal. 161 (163), *Harendra Nath Saha* v. *Emperor*.
(8) (1929) 1929 Nag. 36 (38), *Ramadhin Brahmin* v. *Emperor*.

S. 162, Notes 3—4.

Patna High Court has held that such evidence is admissible under S. 157 of the Evidence Act.[9] It is submitted that the view of the Patna High Court and the Nagpur Judicial Commissioner's Court is not correct.

4. Statements made by an accused to a police-officer.—Where a statement to a police-officer is a *confession by an accused person*, it is, independent of this section, inadmissible in evidence against the accused under S. 25 of the Evidence Act,[1] except to the extent specified in S. 27 of that Act. Where a statement to a police-officer is by an *accused person*, but does not amount to a confession, there is a conflict of opinion whether it is inadmissible in evidence under the provisions of this section. According to the High Courts of

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(9) (1920) 1920 Pat. 334 (343), *Sarwar Khan* v. *Emperor*.

Note 4.

(1) (1883) 1883 All. W. N. 126 (127), *Empress* v. *Nanhe Beg*.
(1883) 1883 All. W. N. 188 (188), *Empress* v. *Thakur Das*.
(1926) 1926 All. 246 (247), *Dip Singh* v. *Emperor*.
(1929) 1929 All. 855 (856), *Nathu* v. *Emperor*.
(1874) 11 Bom. H. C. 242 (244, 245), *Reg.* v. *Jora Hasji*.
(1882) 6 Bom. 288 (291), *Empress* v. *Daji*.
(1923) 1923 Bom. 65 (65): 46 Bom. 961, *Emperor* v. *Sher Mahomed*.
(1865) 3 Suth. W. R. 21 (22), *Empress* v. *Bushnao Anent*.
(1865) 4 Suth. W. R. 18 (18), *Empress* v. *Bhugwan Dosadh*.
(1877) 1 Cal. L. R. 21 (21), In re *Hiram Miya* alias *Abdool Wahid*.
(1876) 1 Cal. 207 (215), *Queen* v. *Hurribole Chunder Ghose*.
(1898) 2 Cal. W. N. 71 (74), *Empress* v. *Bepin Behari Dey*.
(1902) 7 Cal. W. N. 220 (222), *Emperor* v. *Radhe Halvai*.
(1912) 13 Cri. L. Jour. 127 (128) (Cal.), *Paimullah* v. *Emperor*.
(1925) 1925 Cal. 887 (889), *Sheikh Abdul* v. *Emperor*.
(1888) 15 Cal. 589 (592-594), *Empress* v. *Meher Ali Mullick*.
(1894) 21 Cal. 392 (395), *Mohar Sheikh* v. *Empress*.
(1899) 27 Cal. 295 (302), *Jadab Dass*.
(1909) 10 Cri. L. Jour. 193 (195) (Cal.), *Rex* v. *Sheikh Taleb*.
(1921) 1921 Cal. 111 (112), *Emperor* v. *Lalit Mohan*.
(1918) 1918 Lah. 69 (69): 1918 Pun. Re. Cr. 4, *Harji* v. *Emperor*.
(1919) 1919 Lah. 466 (469): 1918 Pun. Re. Cr. 36, *Sikandar* v. *Emperor*.
(1925) 90 Ind. Cas. 148 (149) (Lah.), *Nur Muhammad* v. *Emperor*.
(1876) 1 Mad. 163 (163), *Reg.* v. *Ambigara Hulagu*.
(1918) 1918 Mad. 111 (113, 116), *Smith* v. *Emperor*.
(1932) 1932 Mad. 24 (24), *Kodangi* v. *Emperor*.
(1926) 1926 Nag. 1 (5), *Sheosatyanarayan Lal* v. *Emperor*.
(1914) 1914 Oudh 32 (33), *Malik Hussain* v. *Emperor*.
(1920) 1920 Pat. 378 (380), *Sadanand Misra* v. *Ramasray*.
(1916) 17 Cri. L. Jour. 512 (513): 1917 Low. Bur. 112, *Nga Tha Ku* v. *Emperor*.
(1912) 13 Cri. L. Jour. 465 (465, 466) (Rang.), *San Paw Aung* v. *Emperor*.
(1924) 1924 Rang. 173 (177): 1 Rang. 609, *Maung Lay* v. *Emperor*.
(1930) 1930 Sind 305 (307), *Dur Mahomed* v. *Emperor*.
(1897-1901) 1 Upp. Bur. Rul. 156 (157, 158), *Empress* v. *Nga Thet*.
(1893-1900) Low. Bur. Rul. 42 (46), *Empress* v. *Maung Ba U*.
(1902) 5 Oudh Cas. 321 (325), *Mandai* v. *Emperor*.
S. C. Oudh 98, *Empress* v. *Ali Baksh*.
(1910) 11 Cri. L. Jour. 612 (All.), *Emperor* v. *Chandan Singh*.
(1933) 1933 Cal. 146 (147), *Ramani Mohan De* v. *Emperor*.
(1908) 7 Cri. L. Jour. 398 (398) (Mad.), In re *Ippari Ramalingam*.
(1928) 1928 All. 25 (29), *Karam Singh* v. *Emperor* (A confession may be admissible in *favour* of the accused).
(1877) 2 Bom. 61 (64), *Imperatrix* v. *Pitambar Jina* (Do.).
(1911) 12 Cri. L. Jour. 79 (80) (Rang.), *Ebrahim* v. *Emperor* (Do.).
(1912) 13 Cri. L. Jour. 465 (466) (Rang.), *Sanpaw Aungh* v. *Emperor* (Do.).
(1933) 1933 Cal. 308 (310), *Ali Hussain* v. *Emperor* (Confessions made to police not used as such *may be used* to show that accused gave different versions to Court and police).
(1907) 6 Cri. L. Jour. 266 (268) (Lah.), *Khair Din* v. *Crown*.
(1923) 1923 Lah. 315 (316), *Gulab* v. *Emperor*.
(1916) 1916 Lah. 133 (136): 1915 Pun. Re. 106, *Bishen Das* v. *Ram Labhaya* (Confession made to Police is admissible in civil proceedings).
(1922) 1922 All. 24 (25), *Ramhit* v. *Emperor* (A statement by one accused to Police is not admissible against co-accused).
(1910) 11 Cri. L. Jour. 690 (691) (Bom.), *Emperor* v. *Harisingh Ganpat Singh* (Do.).
(1919) 1919 All. 110 (111), *Jalpa Prasad* v. *Emperor* (Do.).
(1933) 1933 Lah. 167 (167), *Kala Singh* v. *Emperor* (Do.).
(1934) 1934 Oudh 19 (20), *Jangli* v. *Emperor* (A Chaukidar is held to be a Police-officer; hence a confession to him by accused after arrest by the former is irrelevant).
(1934) 1934 Lah. 695 (695), *Mahomed* v. *Emperor*.

S. 162, Note 4.

Allahabad,[2] Calcutta,[3] Lahore,[4] Patna[5] and Rangoon[6] and the Courts of the Judicial Commissioner of Nagpur[7] and Sind,[8] this section does not apply to statements made by persons accused of an offence under investigation, but applies only to witnesses. The reasoning by which this result is arrived at is twofold:—*Firstly* that Ss. 160 and 161 apply only to witnesses and not to accused persons, that this section should be read along with Ss. 160 and 161 and that when so read this also applies only to witnesses; *secondly* that if this section be construed as applying to accused persons, S. 27 of the Evidence Act by which a statement by an accused to the police is under certain circumstances admissible, would be repealed and that this could not have been intended by the Legislature.

The High Court of Bombay[9] and the High Court of Madras[10] have on the other hand held that this section applies to all persons examined by the police, witnesses, as well as persons accused of the offence under investigation. In arriving at this opinion the Full Bench adopted the following reasoning:—

(1) It cannot be said that S. 161, does not apply to accused persons and S. 162 need not therefore by a reference to S. 161, be restricted to witnesses.

(2) The reasoning that the literal interpretation of S. 162 contradicts S. 27 of the Evidence Act and practically repeals it, is not

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(2) (1933) 1933 All. 440 (442): 55 All. 463, *Emperor* v. *Faujdar.*
[See also (1922) 1922 All. 24 (25), *Ramhit* v. *Emperor.*]

(3) (1927) 1927 Cal. 17 (18, 19, 20): 54 Cal. 237, *Azimoddy* v. *Emperor.*
(1929) 1929 Notes 6 (*a*) (Cal.), *Nawaj Ali Molla* v. *Emperor.*
(1929) 1929 Cal. 298 (300): 56 Cal. 1106, *Tota Meah Chowdhury* v. *Emperor.*
(1930) 1930 Cal. 710 (711), *Tura Sadar* v. *Emperor.*
[See also (1871) 15 Suth. W. R. Cr. 71 (71), *Queen* v. *Nabadwip Chandra.*
(1872) 10 Beng. L. R. App. 2 (2), *Queen* v. *Macdonald.*
(1881) 6 Cal. 530 (532), *Dabee Pershad.*
(1910) 11 Cri. L. Jour. 453 (473 to 475): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor.*
(1914) 15 Cri. L. Jour. 713 (715): 1915 Cal. 256: 41 Cal. 601, *Emperor* v. *Kanga Mali.*
(1929) 1929 Cal. 539 (540-541), *Ambar Ali* v. *Emperor.*
(1894) 21 Cal. 955 (970), *Wafdar Khan* v. *Empress.*
(1910) 11 Cri. L. Jour. 96 (96): 38 Cal. 446, *Sheikh Hazir* v. *Emperor.*
(1911) 12 Cri. L. Jour. 479 (479) (Cal.), *Ah Sein* v. *Emperor.*]
[But see (1934) 1934 Cal. 651 (653), *Kashim Ali* v. *Emperor* (Placing before jury statements by accused to Police amounts to misdirection and contravenes S. 162).]

(4) (1926) 1926 Lah. 88 (90): 7 Lah. 84, *Rannun* v. *Emperor.*
(1934) 1934 Lah. 695 (695), *Mahomed* v. *Emperor.*
[See also (1886) 1886 Pun. Re. No. 15 (27), *Lalji* v. *Empress.*
(1886) 1886 Pun. Re. No. 16, *Ilahi Baksh* v *Empress.*
(1921) 63 Ind. Cas. 822 (823) (Lah.), *Kaku* v. *Emperor.*
(1923) 1923 Lah. 232 (235), *Jaial* v. *Emperor.*]

(5) (1926) 1926 Pat. 232 (237): 5 Pat. 63, *Jagwa Dhanuk* v. *Emperor.*
(1928) 1928 Pat. 473 (474), *Rajkumar Singh* v. *Emperor.*
(1923) 73 Ind. Cas. 963 (969) (Pat.), *Madan Guru* v. *Emperor.*

(6) (1926) 1926 Rang. 116 (118, 120, 121): 4 Rang. 72, *Emperor* v. *Nga Tha Din.*

(7) (1928) 1928 Nag. 108 (110), *Sheobalak* v. *Emperor.*
(1929) 1929 Nag. 17 (22), *Gola* v. *Emperor* (1926 Nag. 368 overruled 1927 Nag. 203 impliedly overruled).
(1933) 1933 Nag. 136 (142, 143), *Rego* v. *Emperor.*
(1911) 12 Cri. L. Jour. 60 (61, 62): 6 Nag. L. R. 180, *Ganpati* v. *Emperor.*
(1907) 5 Cri. L. Jour. 434 (435): 3 Nag. L. R. 51, *Emperor* v. *Buddhu.*
(1935) 1935 Nag. 125 (126), *Potram* v. *Emperor.*

(8) (1925) 1925 Sind 237 (239): 19 Sind L. R. 142, *Umer Duraz Munshi* v. *Emperor.*
(1925) 1925 Sind 257 (258): 19 Sind L. R. 6, *Adho* v. *Emperor.*
(1926) 1926 Sind 151 (153): 20 Sind. L. R. 74, *Hussainbibi* v. *Emperor.*
[See also (1913) 14 Cri. L. Jour. 252 (253): 6 Sind L. R. 143, *The Crown* v. *Akhtiar Sanwan.*]
[See however (1932) 1932 Sind 16 (17): 25 Sind L. R. 391, *Chuto* v. *Emperor* (*Per* Mehta, A.J.C.).]

(9) (1931) 1931 Bom. 311 (312): 55 Bom. 435, *Issuf Mahomed* v. *Emperor.*
[See however (1903) 5 Bom. L. R. 312 (313), *Emperor* v. *Mahomed* (The Police was not investigating into any case).]

(10) (1932) 1932 Mad. 391 (398): 55 Mad. 903, *Syamo Mahapatro* v. *Emperor.*
(1935) 1935 Mad. 479 (482), *Krishna Iyer,* In re.
[See also (1931) 1931 Mad. 779 (780, 781, 782), *Shaik Kalesha* v. *Emperor.*]

S. 162, Notes 4—5.

correct inasmuch as a general provision does not derogate from a special provision. (As to the correctness of this view, *see* Note 5, *infra*.)

(3) The word "any" is wide and general, and as such the expression "any person" should include not only a witness but also persons suspected or accused of an offence.

As to what statements amount to confessions within the meaning of Ss. 25 and 26 of the Evidence Act, *see* the following cases.[11]

As to the admissibility of confessions made by a person while in the custody of a police-officer, *see* S. 26 of the Evidence Act and the following cases.[12]

5. Effect of this section on S. 27 of the Evidence Act.—As has been seen already a confession made *to* a police-officer is inadmissible in evidence under S. 25 of the Evidence Act against the person making it. A confession made to a third party is equally inadmissible under S. 26 of the Evidence Act if it is made while the person making it is in *the custody of a police-officer*, unless it is made in the immediate presence of a Magistrate. S. 27 of the Evidence Act provides an exception to these two sections and enacts that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much

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(11) (1882) 6 Bom. 34 (37), *Imperatrix* v. *Pandarinath* (Statements tending to incriminate, but not amounting to direct admission of guilt are inadmissible).
(1890) 14 Bom. 260 (263), *Empress* v. *Nana*.
(1894) 19 Bom. 363 (367, 368), *Empress* v. *Javecharam*.
(1925) 1925 Bom. 529 (530-31): 49 Bom. 642, *Emperor* v. *Anandrao Gangaram Phanse*.
(1884) 10 Cal. 1022 (1023), *Empress* v. v. *Mathews*.
(1926) 1926 Cal. 320 (322), *Keramat Mandal* v. *Emperor*.
(1905) 2 Cri. L. Jour. 230 (231): 1905 Pun. Re. 20, *Hakiman* v. *Emperor*.
(1915) 16 Cri. L. Jour. 257 (263): 1915 Lah. 487 (F.B.), *Crown* v. *Shuldam*.
(1927) 1927 Lah. 343 (343): 8 Lah. 326, *Behari Lal* v. *Crown*.
(1910) 11 Cri. L. Jour. 153 (154): 5 L. B. R. 131, *Mi Ein Thai* v. *Emperor*.
(1917) 18 Cri. L. Jour. 106 (107): 1917 Low. Bur. 87, *Zeta* v. *Emperor*.
(1925) 1925 Sind 237 (240): 19 Sind L. R. 142, *Umer Duraz Munshi* v. *Emperor*.
(1930) 1930 Sind 225 (234, 235), *Mohammad Yusif* v. *Emperor*.

(12) (1926) 1926 All. 737 (740): 49 All. 57, *Emperor* v. *Har Piari*.
(1933) 1933 All. 394 (397), *Mt. Gajrani* v. *Emperor*.
(1869) 12 Suth. W. R. 82 (82), *Domun Kahar*.
(1917) 18 Cri. L. Jour. 609 (611): 1918 Cal. 588, *Muhammad Ibrahim* v. *Emperor*.
(1900) 1900 Pun. Re. No. 12, p. 30, *Empress* v. *Jai Singh*.
(1904) 1904 Pun. L. R. 11, *Dasu* v. *Emperor*.
(1911) 12 Cri. L. Jour. 597 (601): 1911 Pun. Re. No. 14, *Kutab Ali* v. *Emperor*.
(1913) 14 Cri. L. Jour. 601 (601) (Lah.), *Fatta* v. *Emperor*.
(1916) 1916 Lah. 216 (218): 1916 Pun. Re. 26, *Karam Singh* v. *Emperor*.
(1914) 15 Cri. L. Jour. 6 (8): 1914 Lah. 32, *Faiz Ullah* v. *Emperor*.
(1914) 1914 Lah. 374 (377): 1914 Pun. Re. 8, *Nadir* v. *Emperor*.
(1923) 1923 Lah. 389 (390), *Wadhawa Singh* v. *Emperor*.
(1925) 1925 Lah. 557 (559), *Nazir Singh* v. *Emperor*.
(1933) 1933 Oudh 192 (194), *Pancham*.
(1932) 1932 Sind 149 (152, 154): 26 Sind L. R. 1, *Haroon* v. *Emperor*.
(1932) 1932 Sind 201 (204): 26 Sind L. R. 302, *Pharho* v. *Emperor* (Confessions made during the temporary absence of Police are inadmissible).
(1896) 20 Bom. 165 (166), *Empress* v. *Lester*.
(1928) 1928 Lah. 282 (283), *Emperor* v. *Sheoram*.
(1867) 7 Suth. W. R. 56 (56), *Queen* v. *Sageena and another* (Police overhearing confession, can depose to it).
(1932) 1932 Mad. 24 (24), In re *Kodangi* (It is not necessary that it should be confession of the crime which the Police-officer is at that moment investigating).
(1913) 14 Cri. L. Jour. 465 (483) (Mad.), *Vaithianatha Pillai*, In re (Sankaran Nair, J.—Statements made by accused person while in Police custody are notoriously untrustworthy and no reliance can be placed on such statements).
(1927) 1927 Bom. 4 (7): 51 Bom. 78, *Nanoo Sheikh Ahmed* v. *Emperor*.
(1875) 24 Suth. W. R. 33 (36), *Queen* v. *Monmohun Roy*.
(1914) 1914 P. C. 155 (161, 162), *Ibrahim* v. *King*.
(1931) 1931 Mad. W. N. 725 (726), *Guruswamy Chetty* v. *Emperor*.
(1882) 4 All. 198 (204), *Empress* v. *Pancham*.

of such information whether it amounts to a confession or not, as relates to the fact thereby discovered, may be proved. This contradicts *prima facie* the provisions of this section under which no statement made by *any* person to a police-officer in the course of an investigation shall be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. **S. 162, Note 5.**

The question has therefore arisen as to which provision is to prevail where a statement falls within both the sections. According to the High Court of Madras S. 162 is a general provision while S. 27 of the Evidence Act is a *special* one, that under general principles of law general provisions do not derogate from special provisions and that consequently S. 27 of the Evidence Act is not affected by this section.[1] The High Court of Allahabad has arrived at the same result from two alternative standpoints. *Firstly*, that S. 162 does not apply to accused persons at all, that consequently there is no contradiction between the two sections and that S. 27 of the Evidence Act is therefore not affected by S. 162 of the Code; *secondly*, that even if this section applies to accused person, S. 1, sub-S. (2) of the Code provides that, in the absence of any specific provision to the contrary nothing contained in the Code shall affect any special law, in force, that the Evidence Act is a special law and that consequently this section cannot in any way affect S. 27 of the Evidence Act.[2] All the other High Courts are agreed that S. 162 does not apply to accused persons at all and consequently S. 27 of the Evidence Act which applies to accused persons is not affected by this section.[3]

None of the said decisions have, however, adverted to the last paragraph of S. 2 of the Evidence Act which provides as follows:—"Nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India and not hereby expressly repealed." This is a "specific provision to the contrary" within the meaning of S. 1, sub-S. (2) of this Code and, in the case of a conflict between the Evidence Act and the Code, the Code will clearly prevail. It is therefore submitted that if this section be construed as applying to accused persons it will clearly have the effect of superseding S. 27 of the Evidence Act. This difficulty is avoided by construing this section as not applying to accused persons, in which case, it will not affect S. 27 of the Evidence Act.[4]

Note 5.

(1) (1932) 1932 Mad. 391 (395): 55 Mad. 903, *Syamo Maha Patro* v. *Emperor*.
(1928) 1928 Mad. 1028 (1031): 51 Mad. 967, *Chinna Thimmappa* v. *Talu Kunta Timmappa*.
[See also (1925) 1925 Mad. 574 (576), *Semalai Goundan*, In re.]

(2) (1933) 1933 All. 440 (442): 55 All. 463, *Emperor* v. *Faujdar*.
(1926) 1926 Rang. 116 (117, 119, 120, 121): 4 Rang. 72 (F.B.), *Emperor* v. *Nga Tha Din* (This would overrule 1925 Rang. 101 and 1926 Rang. 112).

(3) (1929) 1929 Nag. 17 (22), *Gola Takhat Khangar* v. *Emperor* (Overruling 1927 Nag. 203).
(1911) 12 Cri. L. Jour. 60 (62) (Nag.), *Ganapati* v. *Emperor*.
(1928) 1928 Nag. 108 (110), *Sheokalak Prasad* v. *Emperor*.
(1927) 1927 Cal. 17 (20): 54 Cal. 237, *Azimaddy* v. *Emperor*.
(1919) 1919 Lah. 466 (468): 1918 Pun. Re. 36, *Sikandar* v. *Crown*.
(1926) 1926 Lah. 88 (89, 90): 7 Lah. 84, *Rannum* v. *Emperor*.
(1926) 1926 Pat. 232 (237): 5 Pat. 63, *Jagwa Dhanuk* v. *Emperor*.

(4) See Note 5 *ante*.

S. 162, Note 5.

As to how much of the information received from a person accused of an offence, in the custody of a Police-officer is admissible under S. 27 of the Evidence Act and under what conditions, *see* the following cases.[5]

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(5) (1882) 4 All. 198 (204), *Empress* v. *Pancham*.
(1884) 6 All. 509 (543) (F.B.), *Empress* v. *Babul Lal*.
(1886) 10 Bom. 595 (596-7), *Empress* v. *Kamalia*.
(1878) 3 Bom. 12 (17, 18), *Empress* v. *Rama Birapal*.
(1890) 14 Bom. 260 (264) (F.B.), *Empress* v. *Nana*.
(1900) 2 Bom. L. R. 1089 (1091), *Empress* v. *Bashya bin Narasappa*.
(1919) 1919 Bom. 162 (163), *Hera Gooer* v. *Emperor*.
(1923) 1923 Bom. 183 (185): 47 Bom. 74, *Imperator* v. *Ahila M*.
(1930) 1930 Bom. 244 (248), *Emperor* v. *Shivputraya Baslingaya*.
(1932) 1932 Bom. 286 (288): 56 Bom. 172, *Gunuchandra Kashid* v. *Emperor*.
(1868) 9 Suth. W. R. (Cr.) 16 (17), In re *Bishoo Manjee*.
(1872) 17 Suth. W. R. (Cr.) 50 (51), *Empress* v. *Kamal Fukeer*.
(1873) 19 Suth. W. R. (Cr.) 51 (52), *Queen* v. *Pagaree Shaha*.
(1885) 11 Cal. 635 (640, 641), *Adu Shikdar* v. *Empress*.
(1888) 15 Cal. 589 (594), *Empress* v. *Meher Ali Mullick*.
(1897) 25 Cal. 413 (415), *Legal Remembrancer* v. *Chema Nashya*.
(1910) 11 Cri. L. Jour. 244 (245) (Cal.), *Janki* v. *Emperor*.
(1914) 15 Cri. L. Jour. 713 (715): 1915 Cal. 256: 41 Cal. 601, *Emperor* v. v. *Kanga Mali*.
(1918) 1918 Cal. 88 (93): 45 Cal. 557, *Amiruddin* v. *Emperor*.
(1930) 1930 Cal. 291 (292, 293): 57 Cal. 1062, *Superintendent and Remembrancer* v. *Bhajoo*.
(1932) 1932 Cal. 297 (299): 59 Cal. 1040, *Durlav Namasudra* v. *Emperor*.
(1933) 1933 Cal. 148 (149), *Sudam Chandra Beg* v. *Emperor*.
(1868) 1868 Pun. Re. No. 3, *Crown* v. *Chongutta*.
(1885) 1885 Pun. Re. No. 15, p. 32, *Ramdyal* v. *Empress*.
(1885) 1885 Pun. Re. No. 30, p. 69, *Gangu* v. *Empress*.
(1886) 1886 Pun. Re. No. 10, p. 18, *Maya Singh* v. *Empress*.
(1894) 1894 Pun. Re. No. 28, p. 94, *Ganu* v. *Empress*.
(1894) 1894 Pun. Re. No. 34, pp. 114-115, *Khana* v. *Empress*.
(1900) 1900 Pun. Re. No. 11, p. 28, *Piara Singh* v. *Empress*.
(1905) 2 Cri. L. Jour. 128 (129) (Lah.), *Khuda Baksha* v. *Emperor*.
(1906) 4 Cri. L. Jour. 177 (178): 1906 Pun. Re. 16, *Farid* v. *Emperor*.
(1908) 8 Cri. L. Jour. 460 (461) (Lah.), *Kaka Singh* v. *Emperor*.
(1909) 10 Cri. L. Jour. 321 (323) (Lah.), *Muzammal* v. *Emperor*.
(1909) 10 Cri. L. Jour. 584 (589) (Lah.), *Bhag Singh* v. *Emperor*.
(1911) 12 Cri. L. Jour. 35 (39) (Lah.), *Manna* v. *Emperor*.
(1913) 14 Cri. L. Jour. 190 (194) (Lah.), *Santa Singh* v. *Emperor*.
(1913) 14 Cri. L. Jour. 275 (276) (Lah.), *Amad* v. *Emperor*.
(1913) 14 Cri. L. Jour. 602 (602) (Lah.), *Mehru* v. *Crown*.
(1915) 16 Cri. L. Jour. 545 (547, 548): 1915 Pun. Re. 11: 1915 Lah. 365, *Tara Singh* v. *Crown*.
(1916) 17 Cri. L. Jour. 183 (183): 1916 Lah. 228, *Isher Singh* v. *Crown*.
(1918) 1918 Lah. 358 (359), *Gurdit Singh* v. *Emperor*.
(1919) 1919 Lah. 184 (186), *Kapur Singh* v. *Emperor*.
(1920) 1920 Lah. 21, *Emperor* v. *Turezi*.
(1922) 1922 Lah. 189 (191), *Bhai Khan* v. *Emperor*.
(1923) 1923 Lah. 434 (435), *Ali Ahmad* v. *Emperor*.
(1925) 1925 Lah. 371 (372), *Mansha Singh* v. *Emperor*.
(1926) 1926 Lah. 138 (139), *Sulakhan Singh* v. *Emperor*.
(1928) 1928 Lah. 476 (478): 9 Lah. 671, *Bulaqi* v. *Emperor*.
(1929) 1929 Lah. 338 (342, 343), *Karam Din* v. *Emperor*.
(1929) 1929 Lah. 344 (348, 350): 10 Lah. 283, *Sukhan* v. *Emperor*.
(1930) 1930 Lah. 530 (531, 532), *Mamun* v. *Emperor*.
(1926) 95 Ind. Cas. 603 (603) (Lah.), *Saifal* v. *Emperor*.
(1931) 1931 Lah. 278 (279), *Jalla* v. *Emperor*.
(1932) 1932 Lah. 609 (611), *Gurdial Singh* v. *Emperor*.
(1933) 1933 Lah. 516 (517), *Nawab Din* v. *Emperor*.
(1888) 12 Mad. 153 (154), *Empress* v. *Omar Sahib*.
(1908) 7 Cri. L. Jour. 325 (327): 31 Mad. 127, In re *Sankappa Rai*.
(1914) 1914 Mad. 61, *Manjunathaya* v. *Emperor*.
(1920) 1920 Mad. 109, *Ramaswami Boyan* v. *Emperor*.
(1921) 1921 Mad. 679 (680), *Nainamalai Konan*, In re.
(1933) 1933 Mad. 233 (234): 56 Mad. 231, *Kallam Narayana* v. *Emperor*.
(1896) 10 C. P. L. R. 25 (26), *Empress* v. *Gangaram Sona*.
(1903) 16 C. P. L. R. 122 (126), *Emperor* v. *Chaitu Gahera*.
(1917) 1917 Nag. 81 (82), *Salam* v. *Emperor*.
(1933) 1933 Nag. 252 (254), *Bala Huddar* v. *Emperor*.
(1905) 2 Cri. L. Jour. 811 (819): 8 Oudh Cas. 395, *Harbans* v. *Emperor*.
(1910) 11 Cri. L. Jour. 631 (633): 13 Oudh Cas. 309, *Aman Ali* v. *Emperor*.
(1916) 17 Cri. L. Jour. 33 (37): 1916 Oudh 86, *Emperor* v. *Tilak*.
(1925) 1925 Oudh 1 (6): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(1931) 1931 Oudh 119 (121), *Dwarka* v. *Emperor*.
(1933) 1933 Oudh 53 (56), *Lekha Singh* v. *Emperor*.
(1928) 1928 Pat. 22 (23): 6 Pat. 611, *Gokul Chamar* v. *Emperor*.
(1931) 1931 Pat. 145 (149): 10 Pat. 153, *Sonaram Mahton* v. *Emperor*.
(1933) 1933 Pat. 149 (151): 12 Pat. 241, *Santokhi Beldar* v. *Emperor* (1928 Pat. 491 should be considered as overruled).
(1907) 5 Cri. L. Jour. 300 (304): 1906 U. B. R. 3, *Nga Po Yin* v. *Em-*

S. 162, Notes 6—7.

6. Statements of approvers to the Police.—A statement by an approver to a Police-officer in the course of an investigation stands on the same footing as a statement made by any other person and is inadmissible in evidence except as provided by S. 27 of the Evidence Act or under the proviso to this section.[1] Thus, the discrepancies between the statements of a witness and the approver cannot be explained by referring to the evidence of the approver made before the Police during investigation.[2]

7. "In the course of an investigation under this chapter."—It is only a statement made *during the course of an investigation* that is prohibited from being used in evidence. A statement made to a Police-officer *before* the investigation began or after the investigation has *ended*[1] does not fall within this section. Thus the first information as to the commission of an offence is a statement made before the investigation begins and is admissible in evidence.[2] But a statement made to a Police-officer while acting under S. 174,

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peror.
(1908) 7 Cri. L. Jour. 82 (86): 4 L. B. R. 116, *Kha Hlaw* v. *Emperor*.
(1908) 8 Cri. L. Jour. 62 (64): 4 L. B. R. 244, *Gaung Gyi* v. *Emperor*.
(1909) 10 Cri. L. Jour. 239 (242): 2 Sind L. R. 27, *Crown* v. *Hazuri*.
(1911) 12 Cri. L. Jour. 119 (121): 4 Sind L. R. 209, *Imperator* v. *Dabud*.
(1912) 13 Cri. L. Jour. 529 (529): 5 Sind L. R. 257, *Crown* v. *Photo*.
(1929) 1929 Sind 175 (176), *Illahibux* v. *Emperor*.
(1930) 1930 Sind 168 (168): 23 Sind L. R. 417, *Billu* v. *Emperor*.
(1930) 1930 Sind 225 (234), *Mahomed Yusif* v. *Emperor*.
(1931) 1931 Sind 154 (155), *Dilo* v. *Emperor*.
(1928) 1928 Notes 82 (*c*), *Emperor* v. *Mela*.
(1926) 1926 Jour. 140 (140), *Saifal* v. *Emperor*.
(1893-1900) Low. Bur. Rul. 363 (363), *Maung Thaya* v. *Empress*.
(1885) 11 Cal. 635 (642), *Adu Shikdar* v. *Empress*.
(1911) 12 Cri. L. Jour. 429 (429) (Bom.), *Emperor* v. *Ranchod Gokal*.
(1875) 24 Suth. W. R. 36 (37), *Queen* v. *Ram Churan Chung*.
(1902) 1902 Pun. L. R. 92, p. 362, *Alah Baksh* v. *Emperor*.
(1916) 17 Cri. L. Jour. 273 (278): 1916 Lah. 433: 1916 Pun. Re. 7, *Ram Singh* v. *Crown*.
(1914) 1914 Lah. 431 (432), *Pathana and Walli* v. *The Crown*.
(1922) 1922 Lah. 315 (316), *Budha* v. *Emperor*.
(1927) 1927 Lah. 739 (740), *Adam Khan* v. *Emperor*.
(1925) 1925 Nag. 407 (408), *Kudaon* v. *Emperor*.
(1929) 1929 Nag. 350 (353), *Shamlal* v. *Emperor*.
(1917) 1917 Low. Bur. 5 (7), *Pan Gang* v. *Emperor*.
(1916) 17 Cri. L. Jour. 506 (510): 1916 Sind 13: 10 Sind L. R. 7, *Sulaman* v. *Emperor*.
(1929) 1929 Sind 250 (253), *Wahid Bux Bhutto* v. *Emperor*.
(1932) 1932 Mad. W. N. 113 (114), *Rangiah Chetty* v. *Emperor*.
(1928) 1928 Pat. 491 (494, 495): 7 Pat. 411, *Deonandan Dusadh* v. *Emperor*.
(1916) 17 Cri. L. Jour. 402 (404): 1917 U. B. 15: 2 U. B. R. 114, *Emperor* v. *Nga Aung Ba*.
(1928) 1928 Mad. 1028 (1031): 51 Mad. 967, *Chinna Timappa* v. *Talu Kunta Thimmappa*.
(1926) 1926 Bom. 513 (514): 50 Bom. 683, *Emperor* v. *Shiva Bhai*.
(1926) 1926 Mad. 638 (639), In re *Sogiamuthu*.
(1928) 1928 Lah. 308 (312, 315): 9 Lah. 626, *Harnam Singh* v. *Emperor*.
(1928) 1928 Pat. 162 (165): 6 Pat. 747, *Lalji Dusadh* v. *Emperor*.

Note 6.

(1) (1924) 1924 All. 207 (208), *Subedar* v. *Emperor*.
(1874) 11 Bom. H. C. R. 196 (197), *Reg.* v. *Malapa Bin Kapana* (Approver's statement to Police is no corroboration).
(1925) 1925 Cal. 161 (163), *Harendranath* v. *Emperor*.
(1928) 1928 Lah. 257 (257): 9 Lah. 389, *Hazara Singh* v. *Emperor*.
(1930) 1930 Pat. 510 (512): 9 Pat. 577, *Manmohan Rai* v. *Emperor*.
(2) (1934) 1934 Lah. 102 (103), *Asa Singh* v. *Emperor*.

Note 7.

(1) (1926) 1926 Rang. 116 (119): 4 Rang. 72, *Emperor* v. *Nga Tha Din*.
(2) (1933) 1933 Lah. 987 (990), *Amrit Lal* v. *Emperor*.
(1933) 1933 Bom. 266 (269): 57 Bom. 400, *Mazarali Inayat Ali Kureshi* v. *Emperor*.
(1925) 1925 Rang. 364 (365): 3 Rang. 577, *Sultan* v. *Welbourne*.
(1929) 1929 Pat. 4 (5, 7, 9): 7 Pat. 715, *Emperor* v. *Lachman Singh*.
(1928) 1928 Pat. 634 (636), *Habib Khan* v. *Emperor*.
(1923) 1923 Pat. 550 (553, 557): 2 Pat. 517, *Gansa Oraon* v. *Emperor*.
(1931) 1931 Oudh 83 (83), *Emperor* v. *Narain*.
(1931) 1931 Oudh 74 (75), *Autar* v. *Emperor*.
(1928) 1928 Mad. 791 (792), *Public Prosecutor* v. *Chidambaram*.
(1923) 1923 Lah. 315 (316), *Gulab* v. *Emperor*.
(1931) 1931 Cal. 745 (750): 58 Cal. 1312, *Moni Mohan Ghose* v. *Emperor*.
(1930) 1930 Cal. 130 (131), *Osman Gani Mistry* v. *Emperor*.

S. 162, Notes 7—8.

infra, is one in the course of investigation and is inadmissible under this section.[3]

The investigation must be one *under this chapter*. Where the investigation is under the Bombay City Police Act[4] or the Calcutta City Police Act[5] (to which, by virtue of S. 1, sub-S. (2), this Code does not apply) this section will not apply. Similarly an investigation under Chap. VIII (Security proceedings) is not one under this chapter and a statement made during such investigation is not within this section.[6] So also, a statement made by a person to an Excise Officer in the course of an investigation under the Opium Act is not within the section.[6-a] But it has been held that the section applies to an investigation by an Excise Officer under the *Bengal Excise Act of* 1909.[6-b]

A *departmental enquiry*, is not an investigation under this chapter and statements to a Police-officer during such enquiry are not inadmissible in evidence[7] under this section.

8. **"If reduced into writing".**—A Police-officer to whom a statement is made by any person in the course of investigation is not bound to reduce such statement into writing.[1] But if he does so reduce it he should record it correctly; otherwise he may become liable to be punished under Ss. 167 and 218 of the Penal Code.[2] The paper on which such statements are taken should be attached to the Police diary which should contain a narrative of events.[3] Police-officers who are charged with the duty of investigating crimes should not be in a position to take statements of witnesses, extract as much as they think is relevant or important for entry in their diaries and then destroy the original statement.[4]

It is not necessary that the Police-officer should have taken down the statement in *direct form*, or the very words used by the witnesses.[5] Even where

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(3) (1927) 1927 Mad. 512 (512): 50 Mad. 750, In re *Maruthamuthu Kudumban*.
(1935) 16 Lah. 345 (355), *Hans Raj* v. *Emperor* (Statements of witnesses recorded by the Police and embodied in the inquest report while the case is under Police investigation are governed by the provisions of S. 162).
[See also the following case (1933) 1933 All. 665 (665), *Khairati* v. *Emperor*.]
[But see (1933) 1933 Cal. 861 (863), *Rajeswari Debi* v. *Emperor* (Doubted whether inquest report comes under S. 161).]
(4) (1930) 1930 Bom. 158 (159): 54 Bom. 528, *Emperor* v. *Wahiduddin Hamiduddin*.
(1932) 1932 Bom. 196 (197, 198), In re *Barjorji Framji Bharucha*.
(1929) 1929 Cal. 257 (257), *Panchanan Mukerji* v. *Emperor*.
(5) (1926) 1926 Cal. 586 (588): 53 Cal. 650, *Satyan Charan Mitter* v. *Emperor*.
(6) (1933) 1933 Mad. 688 (689): 56 Mad. 987, *Hari Singh* v. *Emperor*.
(1869) 11 Suth. W. R. 35 (35), *Queen* v. *Komul Kishen*.
(1933) 1933 Mad. W. N. 919 (920), *Pakkiri Padayachi* v. *Emperor* (No right to copy of statement under the proviso).
(6-a) (1934) 1934 Cal. 616 (617): 61 Cal. 967, *Keratali* v. *Emperor*.
(6-b) (1935) 1935 Cal. 621 (622), *Jogendra Nath Goria* v. *Emperor*.
(7) (1914) 1914 Cal. 396 (406): 40 Cal. 898, *Weston* v. *Peary*.
(1920) 1920 Lah. 349 (350): 1 Lah. 410, *Panna Lal* v. *Emperor*.
(1919) 1919 Mad. 487 (492), *Kumaramuthu Pillai* v. *Emperor*.
(1927) 1927 Bom. 501 (504, 505, 509), *Emperor* v. *Jehangir Ardeshir*.
(1930) 1930 Oudh 505 (507), *Abdul Karim* v. *Emperor*.
(1935) 1935 Sind 13 (14) (F. B.), *Mahomed Rahim* v. *Emperor*.

Note 8.

(1) (1921) 1921 Sind 16 (17): 18 S. L. R. 342, *Pitumal* v. *Emperor*.
(1928) 1928 Bom. 352 (361): 52 Bom. 832 (F. B.), *Narayan Hari* v. *Yeswant Ravji*.
(2) (1928) 1928 Bom. 352 (361): 52 Bom. 832 (F. B.), *Narayan Hari* v. *Yeswant*.
[See however (1933) 1933 P. C. 124 (132), *Dwarkanath Varma* v. *Emperor* (Where it was left open).]
(3) (1924) 1924 Nag. 33 (34), *Laxman Namdeo* v. *Emperor*.
(4) (1929) 1929 Rang. 87 (88): 6 Rang. 672, *Sulaiman Mahomad* v. *Emperor*.
(5) (1933) 1933 Nag. 4 (4, 5): 28 Nag. L. R. 291, *Hamid Khan* v. *Emperor*.

only the gist or memorandum of what the witness said is taken down, it is a "statement" within the meaning of this section.[6] But it will not include a mere summary of it in the charge sheet.[7] S. 162, Notes 8—10.

Where the statements of two or more witnesses are taken down by the Police-officer *jointly* the accused is not entitled to copies of the "statements".[8] In 1932 Cal. 375, the matter was explained thus:—"If the *joint statement* means more than one statement is contained in one document or that a number of statements are recorded *seriatim*, then the defence may be allowed to see and use the statements.....If on the other hand it means that the stories told by a number of witnesses have been boiled down into a statement of his (Police-officer's own, then the defence should not be allowed to use such a statement".[9] Suppose the Police-officer examines a witness *S* and takes down his statement: Then he examines *A* who repeats the same story. The Police-officer states "A corroborates S". In such circumstances it would appear that the accused is entitled to the statements of S and A and can use them as contemplated by the section.[10] A map prepared by the Police-officer containing statements of witnesses is within the section.[11]

9. **"Statement not to be signed".**—The Police-officer to whom the statement is made in the course of investigation should not require the witness to sign such statement.[1] "The policy underlying the rule contained in this section seems to be that witnesses at the trial should be free to make statements in favour of the accused which they should wish to make, unhampered by anything which they might have been made to say to the police. The result of the witness's signature having been obtained on their statements reduced into writing would be to tie them down to the statements so recorded, at any rate to give them the impression that they were not free to make a different statement".[2]

The mere fact that a statement made during the investigation is signed by the person making it, does not thereby render it an information under S. 154, *supra*.[3]

Where a witness who had signed a statement to the Police denied his signature at the trial and he was sought to be prosecuted under S. 193 of the Penal Code, it was held that the procedure contravened the policy of the Ss. 161 and 162 of the Code; the order sanctioning prosecution was quashed.[4]

10. **Proviso—Limited use of previous statements.**—It has been seen in Note 5, *supra*, that where the provisions of this section are inconsistent with those of the Evidence Act the former will prevail over the latter. A previous

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(1935) 1935 Sind 145 (172): 28 Sind L. R. 397, *Emperor* v. *Hari*.
(6) (1927) 1927 Cal. 644 (646), *Mafi Zaddi* v. *Emperor*.
(1933) 1933 Pat. 589 (593), *Emperor* v. *Najibuddin*.
(1931) 1931 All. 262 (263): 53 All. 458, *Emperor* v. *Bansidhar*.
(1935) 1935 Sind 145 (172): 28 S. L. R. 397, *Emperor* v. *Hari*.
(7) (1904) 1 Cri. L. Jour. 1027 (1034), *Emperor* v. *Manthu Umed Singh*
(8) (1930) 1930 Lah. 457 (458), *Banta Singh* v. *Emperor*.
(9) (1932) 1932 Cal. 375 (377), *Emperor* v. *Karimuddi Shaikh*.
(10) (1927) 1927 Pat. 325 (326), *Ohedi Prasad Singh* v. *Emperor*.
(1933) 1933 Cal. 861 (863), *Rajeswari Debi* v. *Emperor*.
(11) (1926) 1926 Cal. 550 (551), *Bhagirathi Chowdhury* v. *Emperor*.

Note 9.

(1) (1887) 11 Bom. 659 (661), *Empress* v. *Ismail Walad Fataru*.
(1918) 1918 Mad. 731 (733), *Mallala Obiah of Owk*, In re.
(2) (1931) 1931 Oudh 172 (175), *Bhuneshwari Pershad* v. *Emperor*.
(1934) 1934 Sind 78 (83), *Muhammad Panah* v. *Emperor* (Taking signature affects value of evidence of witness).
(3) (1925) 1925 Mad. 106 (109, 112), In re *Narayana Menon*.
(4) (1913) 14 Cri. L. Jour. 302 (302): 6 Sind L. R. 277, *Emperor* v. *Mahomed Varis*.

S. 162. Note 10.

statement falling within this section and inadmissible under it, cannot therefore be used by reference to the provisions of the Evidence Act.

The proviso to this section enacts that a previous statement falling within this section can be used for a limited purpose under the circumstances specified therein. In order that the proviso might apply it is essential that

(1) a witness is called *for the prosecution* whose statement has been reduced into writing as referred to in the section;

(2) the person who uses it is the *accused* and

(3) the statement is used for the purpose of *condradicting* such witness under S. 145 of the Evidence Act.

Witness called for the prosecution.—Where a witness is called for the *defence* his previous statement cannot be used either by the prosecution or by the defence for the purpose of contradicting or corroborating him under S. 157 of the Evidence Act.[1] Similarly where a witness is called by the *Court* and not by the prosecution, a previous statement made by him to the Police cannot be used either by the prosecution or by the accused for any purpose.[2] A contrary view was taken in the undermentioned case.[3] The case was, however, one under the section as it stood before the amendment of 1923 and cannot be considered to be good law under the present section. Where a person is neither called for the prosecution nor for the defence, his statement to the police cannot of course be made use of in any manner.[3-a] It was, however, held in the case noted below[3-b] that where a statement made by a deceased person was admitted under S. 32, Cl. (3) of the Evidence Act, it could be contradicted under S. 158 of that Act by a statement made by him to the Police. It is submitted that this decision is not correct.[3-c]

Only the accused can use such statements.—It is only the *accused* that can claim to use the previous statements of a prosecution witness for the purpose specified in the proviso.[3-d] The *prosecution* cannot use it against the accused[4]

Note 10.

(1) (1892) 15 All. 25 (27), *Empress* v. *Madho.*
(1905) 1905 All. W. N. 64 (64), *Emperor* v. *Jagardeo Pande.*
(1900) 1900 Pun. Re. No. 18, p. 42, *Hashim Ali* v. *Empress.*
(1926) 1926 Lah. 367 (368): 7 Lah. 264, *Bahadur Singh* v. *Emperor.*
(1918) 1918 Upp. Bur. 16 (16): 3 U. B. R. 81, *Nga Ba Than* v. *Emperor.*
(1919) 1919 Upp. Bur. 38 (38): 3 U. B. R. 84, *Nga Yon* v. *Emperor.*
(1930) 1930 Oudh 60 (62): 4 Luck. 726, *Ganga* v. *Emperor.*
(1925) 1925 Oudh 1 (8): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor.*
(1926) 1926 Cal. 550 (551), *Bhagirathi* v. *Emperor.*
(2) (1927) 1927 Lah. 713 (714), *Gurudella Shah* v. *Emperor.*
[See also (1927) 1927 Cal. 372 (372), *Sajjad Mirza* v. *Emperor* (The point was raised but not decided).]
(3) (1918) 1918 Pat. 459 (460), *Ram Charitra Singh* v. *Emperor.*
(3-a) (1930) 1930 Lah. 318 (320): 10 Lah. 794, *Devi Das* v. *Crown.*
(3-b) (1926) 1926 Lah. 122 (124), *Hari Ram* v. *Emperor.*
(3-c) See (1928) 1928 Mad. 1028 (1032): 51 Mad. 967, *Chinna Thimmappa* v. *Talukunae Timmappa.*
(3-d) (1931) 1931 Cal. 622 (625), *Jasimuddin Sarkar* v. *Emperor.*
(1927) 1927 Cal. 17 (19): 54 Cal. 237, *Azimaddy* v. *Emperor.*
(4) (1926) 1926 Cal. 320 (321), *Keramat* v. *Emperor.*
(1932) 1932 Oudh 247 (248), *Ausan Singh* v. *Emperor.*
(1926) 1926 Lah. 363 (364), *Fazal* v. *Emperor.*
(1925) 1925 Lah. 295 (296), *Aziz* v. *Emperor.*
(1923) 1923 Lah. 516 (517), *Rajindar* v. v. *Emperor.*
(1906) 4 Cri. L. Jour. 176 (176) (Lah.), *Hamada* v. *Emperor.*
(1904) 1 Cri. L. Jour. 451 (453): 31 Cal. 1050, *Emperor* v. *Robert Stewart.*
(1930) 1930 All. 746 (749), *Abdul Jalil Khan* v. *Emperor.*
(1915) 1915 All. 144 (145), *Abdul Khaliq* v. *Emperor.*
(1915) 16 Cri. L. Jour. 221 (221): 1915 All. 125, *Chainsukh* v. *Emperor.*
(1910) 11 Cri. L. Jour. 612 (613) (All.), *Emperor* v. *Chandan Singh.*
(1895) 17 All. 57 (60), *Empress* v. *Taj Khan.*
(1898) 22 Bom. 596 (601), *Imperatrix* v. *Jijibhai Govind.*

either by way of corroborating the witness[4-a] or by way of contradicting him if he has been treated as a hostile witness.[5] Nor can the *Court* exercise its powers under S. 165 of the Evidence Act and use the statements as evidence.[6] It cannot compare the evidence given by the prosecution witnesses with previous statements made by them without their being brought on the record as provided by this section and as a result of such comparison, convict the accused.[7] Nor can it, after comparison of the statements of the witnesses in the Police-diary, use the statements to the prejudice of the accused by saying that "the defence is improving its story at every stage".[8] Nor can it refer to the failure of the defence to use the previous statements under this section and direct the jury to draw therefrom an adverse inference against the accused.[9] (*See also* Note 15, *infra*.)

S. 162, Note 10.

Statement can only be used for contradiction.—A previous statement by a prosecution witness falling under this section, can be used by the accused only for the purpose of contradicting such witness under S. 145 of the Evidence Act[9-a] and not for any other purpose such as *corroborating* a prosecution witness[10] or contradicting a *defence* witness.[11] Nor can it be used as *substantive* evidence in favour of or against the accused.[12]

This section does not, however, prevent a Police-officer from explaining his conduct even though it may inferentially have reference to the statements

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(4-a) (1925) 1925 Lah. 337 (368): 6 Lah. 24, *Laba Singh* v. *Crown*.

(5) (1923) 1923 Cal. 463 (464), *Emperor* v. *Satyendra*.
(1926) 1926 Cal. 793 (794), *Gahur Howldar* v. *Emperor*.
(1925) 1925 Lah. 399 (399): 6 Lah. 171, *Rakha* v. *Emperor*.
(1933) 1933 Pat. 488 (492), *Sachidanand* v. *Emperor*.
(1933) 1933 Nag. 384 (385): 30 Nag. L. R. 55, *Mohan Banjari* v. *Emperor*.
(1924) 1924 Jour. 103 (103).

(6) (1932) 1932 Mad. W. N. 625 (628-629), *Pullamma* v. *Emperor*.
(1931) 1931 Cal. 189 (190): 58 Cal. 1009, *Rahijaddi* v. *Emperor*.
(1926) 1926 Cal. 147 (148), *Keramat Mandal* v. *Emperor*.
(1918) 1918 Upp. Bur. 16 (16): 3 U. B. R. 81, *Nga Ba Than* v. *Emperor*.

(7) (1927) 1927 Rang. 74 (79): 4 Rang. 471, *Maung Htin Gyaw* v. *Maung Po Sein*.
(1907) 6 Cri. L. Jour. 224 (224) (Bom.), *Emperor* v. *Laxman*.

(8) (1933) 1933 Pat. 440 (441), *Deo Lal Mahton* v. *Emperor*.

(9) (1930) 1930 Pat. 513 (516): 9 Pat. 606, *Ram Sarup Singh* v. *Emperor*.

(9-a) (1928) 1928 Rang. 150 (151): 6 Rang. 137, *Bana Singh* v. *Emperor*.
(1926) 1926 Rang. 116 (118): 4 Rang. 72 (F.B.), *Emperor* v. *Nga Tha Din*.
(1924) 1924 Pat. 829 (830), *Mohiuddin Khan* v. *Emperor*.
[See also (1924) 1924 Nag. 281 (282), *Ganpat* v. *Emperor*.
(1930) 1930 Lah. 484 (485), *Basant Singh* v. *Emperor*.
(1928) 1928 Lah. 820 (823), *Emperor* v. *Ram Rang*.
(1928) 1928 Lah. 507 (510), *Dharam Singh* v. *Emperor*.
(1928) 1928 Lah. 380 (381), *Hayat* v. *Emperor*.
(1926) 1926 Lah. 54 (59), *Mahomed* v. *Emperor*.
(1925) 1925 Cal. 1017 (1018), *Thomas James Henry Arnup* v. *Kedarnath Ghosh*.
1925) 1925 Lah. 483 (485), *Ram Karan* v. *Emperor*.]

(10) (1924) 1924 Bom. 510 (511), *Emperor* v. *Vithu Balu Kharat*.
(1931) 1931 Pat. 152 (156, 157): 10 Pat. 107, *Bihari Mahton* v. *Emperor*.
(1925) 1925 Lah. 399 (400): 6 Lah. 171, *Rakha* v. *Emperor*.
(1926) 1926 Rang. 116 (118, 119): 4 Rang. 72, *Emperor* v. *Nga Tha Din*.
(1930) 1930 Bom. 158 (159): 54 Bom. 528, *Emperor* v. *Wahiduddin Hamiduddin*.
(1925) 1925 Sind 289 (291): 19 S. L. R. 71, *Bahadur* v. *Emperor*.
(1932) 1932 Notes 21 (c), *Diwan* v. *Emperor*.
(1924) 1924 Jour. 103 (103).
(1926) 1926 Lah. 367 (368): 7 Lah. 264, *Bahadur Singh* v. *Emperor*.

(11) (1924) 1924 Jour. 103 (103).
(1924) 1924 Bom. 510 (511), *Emperor* v. *Vithu Balu Kharat*.
(1890) Rat. Un. Re. Cr. C. 508 (508), *Empress* v. *Yakub*.

(12) (1923) 1923 All. 469 (469), *Shiam Sunder* v. *Emperor*.
(1895) Rat. Un. Re. Cr. C. 833 (833), *Empress* v. *Fula Dhana*.
(1883) 9 Cal. 455 (458), *Roghuni Singh*.
(1915) 16 Cri. L. Jour. 313 (314): 1915 Cal. 702, *Jung Rai* v. *Emperor*.
(1903) 2 Weir 820 (821), *The Public Prosecutor* v. *Cherath Choyi*.
(1908) 7 Cri. L. Jour. 325 (328): 31 Mad. 127, In re *Sankappa Rai*.
(1928) 1928 Pat. 31 (32): 7 Pat. 50, *Tajali Mian* v. *Emperor*.
(1927) 1927 Lah. 79 (80), *Yaru* v. *Emperor*.
(1925) 1925 Cal. 161 (163), *Harendranath* v. *Emperor*.
(1887) 11 Bom. 657 (658), *Queen* v. *Sitharam Vithal*.

S. 162, Note 10.

made by witnesses.[13] Thus where a Police-officer states in the witness box that no such case as is put forward by the defence before the Court was stated before him at the investigation, there is no use made of any previous statement of any witness to the Police-officer and the evidence is not inadmissible.[14]

There is a difference of opinion as to whether the statement before the Police can be used to show that the witness *omitted* to state a particular fact. It was held by the High Court of Patna in the undermentioned case[15] that the statement cannot be used at large for the purpose of showing that the statements did not corroborate or assist the story as put forward in the first information. In a subsequent case of the same High Court[16] it was held that if the contradiction consists in the fact that a statement made at the trial was not made in any part of the statement to the Police, such a contradiction can be proved. Recently it was held by Rowland, J., of the same High Court[17] that the omission of some detail in the note of a statement to a Police-officer is not always a sure indication that such detail was absent from the statement and that the Court should never use such an absence as a contradiction without taking the evidence to prove that no such thing was stated. According to the High Court of Madras "omission" and "contradiction" can never be identical and a statement to a Police-officer cannot be used during an enquiry or trial in order to show that a witness is making statements in the witness box which he did not make to the Police.[18] According to the Judicial Commissioner's Court of Nagpur it is an error to decline to allow the defence to draw the attention of the prosecution witnesses to the omissions and seek their explanations.[19] The High Court of Lahore has held that all omissions are not *necessarily* contradictions but that it must be left to the Court in each particular case to decide whether the omission is a contradiction or not. If it amounts to a contradiction, the Court should allow cross examination on that point.[20] According to the High Court of Calcutta the deposition of a witness to the effect that he did not make any statement to the police is not a statement within S. 162 of the Code.[21] It is submitted that the view of the High Court of Madras is correct. It was held in the undermentioned case[22] that a Police-officer could be questioned by the prosecution whether a witness made a particular statement to him. It is submitted that this is not correct.

The prosecution is not bound to produce in Court every person examined by the police. But the police ought not to avoid calling any witness merely because he is likely to give evidence in favour of the accused.[23]

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(13) (1929) 1929 Cal. 298 (300): 56 Cal. 1106, *Tota Meah* v. *Emperor*.
(14) (1930) 1930 Lah. 484 (485), *Basant Singh* v. *Emperor*.
(1931) 1931 Lah. 177 (177), *Mohan Lal* v. *Emperor*.
(15) (1926) 1926 Pat. 20 (22), *Badri Choudhry* v. *Emperor*.
(16) (1926) 1926 Pat. 362 (362, 363): 5 Pat. 346, *Iltaf Khan* v. *Emperor*.
(17) (1933) 1933 Pat. 440 (441), *Deo Lal Mahton* v. *Emperor*.
[See also (1933) 1933 Pat. 589 (593), *Emperor* v. *Najibuddin*.]
(18) (1933) 1933 Mad. 372 (373, 374): 56 Mad. 475, *Ponnuswamy Chetty*, In re
(19) (1933) 1933 Nag. 136 (144): 29 N. L. R. 251, *Reg.* v. *Emperor*.
(20) (1928) 1928 Lah. 257 (258): 9 Lah. 389, *Hazara Singh* v. *Emperor*.
(1932) 1932 Lah. 103 (111), *Mohindar Singh* v. *Emperor*.
[See also (1916) 17 Cri. L. Jour. 284 (285): 1916 Lah. 361, *Bala Singh* v. *Emperor*.]
(21) (1927) 1927 Cal. 257 (258): 53 Cal. 980, *Aseruddin* v. *Emperor*.
(22) (1925) 1925 Pat. 450 (451, 452): 4 Pat. 204, *Guhi Mian* v. *Emperor*.
[See also (1930) 1930 Cal. 802 (802), *Asoke Prasanna* v. *Emperor* (Magistrate can make use of general diary to corroborate case of complainant).]
(23) (1934) 1934 All. 908 (918), *Nem Singh* v. *Emperor*.

Moreover, it will be the duty of the Public Prosecutor to inform, (when necessary) the pleader for the defence that information of value to the defence is found in the police papers so as to enable him to apply for copies under this section.[24] S. 162, Notes 10—11.

As to the use of mashirnamas or panchnamas prepared in the course of police investigations, for refreshing the memory of a witness, *see* the undermentioned case.[25]

11. "**Nor shall any such statement or any record thereof . . . ".**— Before the amendment of 1923 the words used were "nor shall *such writing* be uesd as evidence"'. While all the High Courts agreed in holding that the *writing itself* could not be used as evidence,[1] there was a conflict of opinion as to whether *oral* evidence of the statement was admissible.[2] The amendment of the section by the insertion of the words "nor shall any *such statement* or *any record thereof* . . . be used for any purpose" has now set the conflict at rest and no oral evidence of the statement is now admissible.[3]

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(24) (1933) 1933 Rang. 378 (381), *Nga Lu* v. *Emperor*.

(25) (1933) 1933 Sind 220 (222), *Baloch Pirwali* v. *Emperor* (They can be used to refresh the memory of a witness under S. 159 of the Evidence Act).

Note 11.

(1) (1887) 11 Bom. 657 (658), *Empress* v. *Sitaram Vithal*.
(1907) 5 Cri. L. Jour. 353 (355, 356) (Bom.), *Emperor* v. *Babaji*.
(1872) 17 Suth. W. R. 5 (5), *Queen* v. *Wuzeerah*.
(1869) 11 Suth. W. R. (Cr.) 25 (27), *Queen* v. *Ahmad Ally*.
(1865) 3 Suth. W. R. (Cr.) L. 24.
(1867) 8 Suth. W. R. Cr. 35 (36), *Queen* v. *Bussiruddi*.
(1897) Rat. Un. Re. Cr. C. 935 (936), *Queen-Empress* v. *Harlbai*.
(1892) Rat. 619 (619), *Empress* v. *Usuph Khan*.
(1867) 7 Suth. W. R. 8 (9), *Queen* v. *Kisto*.
(1865) 4 Suth. W. R. (Cr.) L. 2 (2) Re *Oroon*.
(1865) 4 Suth. W. R. (Cr.) L. 6, *Anon*.
(1865) 4 Suth. W. R. (Cr.) L. 8 (8), *Anon*.
(1865) 2 Suth. W. R. (Cr.) L. 20 (20), Re *Mt. Mina*.
(1882) 8 Cal. 154 (156, 157), *Emperor* v. *Kalichuran Chunari*.
(1882) 8 Cal. 739 (745), *Empress* v. *Jhubboo Mahton*.
(1889) 16 Cal. 610 (616), *Bikao Khan* v. *Empress*.
(1886) 1886 Pun. Re. 17, p. 39, *Bahawala* v. *Empress*.
(1913) 14 Cri. L. Jour. 190 (191) (Lah.), *Santa Singh* v. *Emperor*.
(1918) 1918 Pat. 459 (459), *Ram Charitra Singh* v. *Emperor*.
(1904) 1 Cri. L. Jour. 184 (190): 2 L. B. R. 125, *Shwe Hla* v. *Emperor*.
(1910) 11 Cri. L. Jour. 498 (499): 4 S. L. R. 38, *Emperor* v. *Baloch Khan Wd. Kandero*.
(1897-1901) 1 U. B. R. 31 (37), *Nga Poke* v. *Empress*.
(1900-02) 1 L. B. R. 101 (103), *Crown* v. *Mi Zan*.
(1902) 5 Oudh Cas. 246 (249), *Samaidin* v. *Emperor*.

(2) (1915) 39 Bom. 58 (64, 67): 1914 Bom. 263, *Emperor* v. *Hanmaruddi* (Yes).
(1909) 9 Cri. L. Jour. 452 (455): 36 Cal. 281, *Fanindranath Banerjee* v. *Emperor* (Yes).
(1912) 13 Cri. L. Jour. 305 (317, 348): 35 Mad. 247, *Emperor* v. *Nilakanta* (Yes).
(1919) 1919 Mad. 487 (492), *Kumaramuthu Pillai* v. *Emperor* (Yes).
(1894) 7 C. P. L. R. 22, *Subhain* (Yes).
(1921) 1921 Pat. 122 (123, 124), *Baldeo Koeri* v. *Emperor* (Yes).
(1923) 1923 Pat. 158 (159), *Dasrath Singh* v. *Emperor* (Yes).
(1917) 18 Cri. L. Jour. 1022 (1023): 1918 Low. Bur. 138, *Noor Mahomed* v. *Emperor* (Yes).
(1921) 61 Ind. Cas. 650 (651) (Cal.), *Salim Sardar* v. *Emperor* (Yes).
(1887) 11 Bom. 657 (658), *Sitaram Vithal* Yes).
(1908) 32 Bom. 111 (118, 119, 124, 130, 142), *Emperor* v. *Narayan Raghunath Patki* (Yes).
(1920) 1920 Nag. 170 (172): 16 N.L.R. 30, *Ajodhi* v. *Emperor* (Yes).
(1910) 11 Cri. L. J. 235 (238, 239, 240) (All.), *Rustom* v. *Emperor* (No.).
[See also (1910) 11 Cri. L. Jour. 542 (543): 34 Bom. 599, *Emperor* v. *Akbar Badu*.
(1910) 11 Cri. L. Jour. 117 (120): 13 Oudh Cas. 7, *Bhulai Singh* v. *Emperor*.
(1908) 18 Mad. L. Jour. 183 (183), *Emperor* v. *Narayan Raghunath Patki*.
(1910) 11 Cri. L. Jour. 117 (119): 13 Oudh Cas. 7, *Bhulai Singh* v. *Emperor*.]

(3) (1928) 1928 Mad. 1028 (1031): 51 Mad. 967, *Chinna Timmappa* v. *Talu Kunta Timmappa* (Overruling 1925 Mad. 579).

S. 162, Note 12.

12. **"At any inquiry or trial of any offence under investigation at the time when such statement was made".**—A is alleged to have murdered X. In the course of the investigation by the police into the case of murder, *B* gives a statement to the Police-officer. Can *B's* statement be used in a subsequent inquiry or trial unconnected with the murder case? Before the amendment of 1923 there was a conflict of opinion on the point; some decisions holding that it could not be done[1] and some that it could be done.[2] Under the present section it is clear that statements made during the course of investigation can be used in a subsequent case which was not under investigation when the witness made the statement.[3]

Illustrations.

1. In the course of an investigation by the police into a case of dacoity P, stated that A & B had taken part in the dacoity. Three days after the statement was given, P was murdered. A and B were charged of the murder of P. *Held*, that the statement of P can be used in the murder case to show enmity.[4]

2. A makes a statement to the police during the investigation into an offence. The statement turns out to be false. It can be used as against A when he is prosecuted for offences under Ss. 182, 192, 193 or 211 of the Penal Code.[5]

3. A complaint is made to the police who after investigation under Ch. XIV reject the complaint as false. The complainant then presses the complaint before the Court. In the trial that takes place on such complaint statement of witnesses to the police during investigation can be used only in accordance with S. 162 of the Code.[6] The reason is that the accused is tried for the *same offence as* that into which the police investigated and in the course of which investigation the statements were made.

Note 12.

(1) (1908) 7 Cri. L. Jour. 3 (4) (All.), *Muhammad Usman* v. *Emperor* (Statement made to Police-officers under S. 162, Cr. P. Code, cannot be made the foundation for a prosecution under S. 193, I. P. Code).
(1919) 1919 All. 276 (277): 41 All. 311, *Parwari* v. *Emperor* (Cannot form the basis for defamation).
(1894) 18 Bom. 377 (380), *Empress* v. *Mugappa bin Ningappa*.
(1900) 28 Cal. 348 (351), *Isab Mandal*.
(1914) 1914 Lah. 360 (360), *Mangu* v. *Crown*.
(1909) 9 Cri. L. Jour. 77 (78): 31 Mad. 506, *Chinna Ramana Gowd* v. *Emperor*.
(1909) 9 Cri. L. Jour. 170 (177): 32 Mad. 258, *Sessions Judge* v. *Sivan Chetty*.
(1918) 1918 Mad. 731 (732), *Mallela Obiah of Owk* v. *Emperor*.
(1910) 11 Cri. L. Jour. 286 (286, 287) (Mad.), In re *Krishna Baipdithaya*.
(1905) 2 Cri. L. Jour. 474 (474, 475): 1905 U. B. R. 13, *Emperor* v. *Nga Aung Po*.
(1920) 1920 Upp. Bur. 20 (21): 3 U. B. R. 204, *Emperor* v. *Nga Po Lwin*.
(1913) 14 Cri. L. Jour. 252 (253): 6 S. L. R. 143, *Crown* v. *Akhtiar Wd. Sanwan*.
(1893-1900) 1893-1900 L. B. R. 187 (188), *Empress* v. *Nga Ye Gyan*.
[See also (1890) Rat. 503 (503), *Empress* v. *Wardhan*.
(1882) Rat. Un. Re. Cr. C. 401 (402), *Empress* v. *Bapu Naran*.
(1880) 6 Cal. L. R. 47 (48), *Sheikh Dabu*.
(1891) 1891 Pun. Re. No. 5, p. 13, *Keshar*.]
(2) (1920) 1920 Lah. 349 (350): 1 Lah. 410, *Panna Lal* v. *Emperor*.
[See also (1884) 8 Bom. 216 (219), *Empress* v. *Parsharam Ray Sing*.
(1889) 16 Cal. 349 (354), *Empress* v. *Baikanta Bauri*.
(1877) Rat. 124 (126), *Empress* v. *Bhikaji*.
(1918) 46 Ind. Cas. 411 (411): 1917 Bom. 192, *Esuffalli Abdul* v. *Emperor*.]
(3) (1933) 1933 Mad. 65 (65): 56 Mad. 154, *Subbayya* v. *Veerayya*.
(1927) 1927 Rang. 113 (116): 5 Rang. 26, *U Htin Gyaw* v. *Emperor*.
(1925) 1925 Sind 257 (258): 19 S.L.R. 6, *Adho* v. *Emperor*.
[See (1933) 1933 Pat. 555 (555), *Bodhan Garain* v. *Emperor*.]
(4) (1932) 1932 All. 442 (443), *Abdul Aziz* v. *Emperor*.
(5) (1931) 1931 Cal. 637 (639), *Jogesh Chandra Roy* v. *Surendra Mohun Roy Chowdhury*.
(1933) 1933 Pat. 555 (555), *Bodhan Garain* v. *Emperor*.
(6) (1927) 1927 Nag. 24 (25), *Hari Mahadeo Gore* v. *Emperor*.

The statements made during investigation can be used in proceedings under Ss. 517 and 523 of the Code[7] and also in a subsequent civil suit.[8] *See also* Note 14. **S. 162, Notes 12—13.**

As the section expressly applies both to enquiries and trials, commitment proceedings are within the ambit of the section.[9]

13. Application for copies when to be made.—The accused is not as a matter of course and without question entitled to get copies of statements made to the police during the course of investigation.[1] It is only when a *witness is called by the prosecution* and under the circumstances mentioned in the proviso that the accused may be given such copies.[1-a] The witness, a copy of whose statement is required should, it has been held, *be in the witness box* when the application for copies is made.[2] An application for copies cannot be granted where it is made *before* the witness is in the witness box[3] or *after* his examination is over. Thus where all the prosecution witnesses have been examined in the committing Court, the accused cannot apply to the committing Magistrate for copies.[3-a] He should only apply to the Sessions Judge at the time of trial.[4] Similarly in a warrant case, where the copies were not applied for during the cross-examination of the prosecution witnesses before charge was framed but were applied after charge and before the prosecution witnesses were called for re-cross-examination it was held that copies could not be granted till the witnesses were again in the box for cross-examination.[5] Again where a witness was tendered by the prosecution but was discharged without being examined, and *thereafter* application for a copy of his statement to the police was made, it was held that it should be refused.[6]

There is a difference of opinion as to whether the accused is entitled to get copies as soon as the prosecution witness enters the witness box, or only after his chief examination is over. It was held in the undermentioned cases[7] that the opportune moment to ask for copies was when the chief examination of the witness was over and the defence was about to begin its cross-examination.

In *Ramgulam Teli* v. *Emperor*[8] it was held that the right to apply for

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(7) (1885) 9 Bom. 131 (134), *Empress* v. *Tribhovan*.
(1920) 1920 Nag. 219 (220), *Ganpat* v. *Bani*.
(8) (1932) 1932 Oudh 137 (138), *Abheraj Singh* v. *Gaya Singh*.
(9) (1934) 1934 Nag. 138 (139), *Murtiza Khan* v. *Emperor*.

Note 13.

(1) (1894) 16 All. 207 (208), *Empress* v. *Nassiruddin*.
(1-a) (1907) 30 Mad. 466 (467), *Emperor* v. *Muthia Swamiar* (Accused under remand, before commencement of preliminary inquiry not entitled to copies).
(2) (1928) 1928 Bom. 23 (24): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor*.
(1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nag U Khine* v. *Emperor*.
(3) (1928) 1928 Bom. 23 (24): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor*.
(1907) 6 Cri. L. Jour. 346 (347): 30 Mad. 466, In re *Muthia Swamiyar*.
(3-a) (1934) 1934 All. 340 (342): 56 All. 750, *Suraj Bali* v. *Emperor*.
(4) (1929) 1929 Cal. 182 (184, 185): 56 Cal. 840, *Babar Ali Sardar* v. *Emperor*.
(1929) 1929 Nag. 172 (174), *Fasiuddin* v. *Emperor*.
(5) (1930) 1930 Mad. 185 (185), *Public Prosecutor* v. *Vedi*.
(6) (1929) 1929 Pat. 34 (36): 7 Pat. 153, *Wajid Ali* v. *Emperor*.
(1889) 16 Cal. 612 (618) (N.), *Mahomed Ali Hadji* v. *Empress*.
(1905) 4 Cri. L. Jour. 79 (85): 33 Cal. 1023, *Dadan Gazi* v. *Emperor*.
(7) (1928) 1928 Bom. 23 (25): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor*.
(1931) 1931 All. 34 (35): 53 All. 94, *Tahal Saithwar* v. *Emperor*.
(1929) 1929 Cal. 182 (184, 185): 56 Cal. 840, *Babarali Sardar* v. *Emperor*.
(1930) 1930 Mad. 185 (185, 186), *Public Prosecutor* v. *Vedi*.
(1928) 1928 Pat. 593 (593), *Sri Krishna Sinka* v. *Emperor*.
(8) (1928) 1928 Pat. 215 (215, 216, 217): 7 Pat. 205, *Ramgulam Teli* v. *Emperor*.

S. 162. Notes 13—14.

copies accrues the moment the witnesses appear before the Court to be examined. The same view has been held in the undermentioned case also.[9] According to the High Court of Lahore[10] though the accused person is entitled to a copy of the statement until the witness is sought to be cross-examined, there is no harm in granting such copies at an earlier stage. It was held in the cases noted below[11] that the accused was not entitled to copies until, not only the cross-examination had begun but until the cross-examination *had laid the foundation* for the suggestion that the evidence given by the witness in Court is contradicted by such statement. This view has, however, been dissented from in later cases.[12]

The application for copies need not be in writing—an oral application is sufficient.[13]

14. Duty of Court to grant copies.—Under the proviso to the section as it stood before the amendment of 1923 it was provided that "the Court shall on the request of the accused, refer to such writing, and *may then, if the Court thinks it expedient in the interests of justice,* direct that the accused be furnished with a copy thereof". The grant of copies was therefore a matter of judicial *discretion.*[1] This discretion has been taken away by the present section and the Court is *bound* to grant copies,[2] unless it is of opinion.

(1) that any part of such statement is *not relevant* to the subject matter of the inquiry or trial or

(2) that its disclosure to the accused is not essential in the interests of justice, *and* is inexpedient in the public interests.[3]

Thus a Court cannot refuse to grant copies on the ground that the statements had not been recorded in full and that all that was recorded was a memo-

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(9) (1927) 1927 Nag. 24 (25), *Hari Mahadeo Gore* v. *Emperor.*
[See also (1929) 1929 Cal. 182 (184, 185): 56 Cal. 840, *Babarali Sardar* v. *Emperor.*
See also (1934) 1934 Nag. 138 (139), *Murtiza Khan* v. *Emperor* (Accused is entitled to copy before witness is examined).]

(10) (1929) 1929 Lah. 429 (430), *Ghulam Nabi* v. *Emperor.*

(11) (1927) 1927 Cal. 514 (515): 54 Cal. 307, *Madari Sikdar* v. *Emperor.*
(1927) 1927 Pat. 243 (248): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*
(1926) 1926 Mad. 183 (184), In re *Peramasami Ragudu.*

(12) (1929) 1929 Cal. 182 (184, 185): 56 Cal. 840, *Babarali Sardar* v. *Emperor.*
(1928) 1928 Bom. 23 (24): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor.*
(1931) 1931 All. 34 (35): 53 All. 94, *Tahal Saithwar* v. *Emperor.*
(1928) 1928 Pat. 593 (593), *Sri Krishna Sinha* v. *Emperor.*
(1928) 1928 Pat. 215 (215, 216, 217): 7 Pat. 205, *Ramgulam Teli* v. *Emperor.*
(1930) 1930 Mad. 185 (185, 186), *Public Prosecutor, Madras* v. *Vedi.*

(13) (1930) 1930 All. 737 (738), *Ghassoo* v. *Emperor.*

Note 14.

(1) (1896) Rat. 874 (875), *Empress* v. *Shidlingapa.*
(1914) 1914 Mad. 376 (376, 377), In re *Tiruvengada Mudali.*

(2) (1927) 1927 Cal. 514 (515): 54 Cal. 307, *Madari Sikdar* v. *Emperor.*
(1930) 1930 All. 737 (738), *Ghassoo* v. *Emperor* (It does not depend on his volition or goodwill).
(1929) 1929 Nag. 240 (240), *Raghya* v. *Emperor.*
(1927) 1927 Pat. 325 (326), *Chedi Prasad Singh* v. *Emperor.*
(1930) 1930 Sind 153 (153, 154, 156): 24 S. L. R. 239, *Usman* v. *Emperor.*
(1929) 1929 Rang. 87 (88): 6 Rang. 672, *Sulaiman Mahomed Bholat* v. *Emperor.*
(1929) 1929 Pat. 268 (270): 8 Pat. 279, *Jhari Gopa* v. *Emperor.*
(1928) 1928 Pat. 215 (217): 7 Pat. 205, *Ram Gulam Teli* v. *Emperor.*
(1934) 1934 Nag. 138 (139), *Murtiza Khan* v. *Emperor.*
(1935) 1935 Sind 145 (175): 28 S. L. R. 397, *Emperor* v. *Hari Vishinji.*

(3) (1931) 1931 All. 262 (262): 53 All. 458, *Emperor* v. *Bansidhar.*
(1931) 1931 All. 273 (274), *Nek Ram* v. *Emperor.*
(1928) 1928 Bom. 23 (24): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor.*
(1927) 1927 Pat. 325 (326), *Chedi Prasad* v. *Emperor.*
(1929) 1929 Pat. 268 (270): 8 Pat. 279, *Jhari Gope* v. *Emperor.*
(1928) 1928 Pat. 215 (217): 7 Pat. 205, *Ram Gulam Teli* v. *Emperor.*
(1935) 1935 Rang. 98 (101): 13 Rang. 1 *Nga U Khine* v. *Emperor.*

S. 162, Note 14.

randum of the same[4] or that there was no contradiction between what the witness says in his evidence and his previous statement[5] or that the statements were of "no real value as evidence".[6] The words "the Court *shall refer to such writing*" are used, not for the purpose of restricting the right of the accused to obtain a copy, but for the purpose of enabling the Court to see whether the statement or any part thereof is *relevant* to the inquiry or whether its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests.[7] The reference should be made by the Court as soon as the request is made on behalf of the accused. The Court is not at liberty to postpone referring to the statement till after the witness's evidence is concluded.[8] Whenever necessary, the cross-examination of the witness must be adjourned until the necessary copy has been given.[8-a] To obviate delay in the trial due to such adjournment copies of police statements may be had in readiness at the commencement of the trial.[8-b] It would also be sufficient compliance with the section to allow the defence pleader to see the statement of the witness to the police and to cross-examine thereon while the copy is being prepared.[8-c]

Where a request is made for a copy of the previous statement of a witness, a copy of *all* the statements made by such witness during the investigation should be furnished. Thus where the witness gave statements on 2 days, it is not correct to grant a copy of the statement given on the first day only.[9] So also, the accused is entitled to a copy of the *whole* statement made by a witness excepting the portion that may be excluded under the second proviso to the section.[9-a]

Where in granting copies of statements material portions have been omitted by oversight on the part of the typist, and the omission is discovered only in the appellate Court, the appellate Court should furnish the accused with a correct copy and also give the accused an opportunity to recall the witness and cross-examine them.[10]

But the duty to grant copies under this section arises only if the case being inquired into or tried by the Court at the time is the same as the one which was under investigation when the statement was made. An accused is not entitled to copies of statements recorded in the course of investigation of *other cases*.[11] (*See* Note 12, *supra*.)

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(4) (1931) 1931 All. 262 (262): 53 All. 458, *Emperor* v. *Bansidhar*.

(5) (1931) 1931 All. 273 (274), *Nek Ram* v. *Emperor*.
(1930) 1930 Sind 153 (153, 154, 156): 24 S. L. R. 239, *Umar* v. *Emperor*.
(1929) 1929 Pat. 268 (270): 8 Pat. 279 *Jhari Gope* v. *Emperor*.
(1933) 1933 All. 535 (539): 55 All. 689, *Emperor* v. *Sheo Dayal*.
(1929) 1929 Nag. 172 (174), *Faziuddin* v. *Emperor*.
(1934) 1934 Nag. 138 (139), *Murtiza Khan* v. *Emperor*.
(1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

(6) (1927) 1927 Nag. 24 (25), *Hari Gore* v. *Emperor*.

(7) (1928) 1928 Pat. 215 (217): 7 Pat. 205, *Ramgulam Teli* v. *Emperor*.
(1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor*. (Reference is not for purpose of seeing if there is material for cross examining the witness).

(8) (1921) 1921 Lah. 93 (94), *Sultan* v. *Emperor*.
(1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

(8-a) (1935) 1935 Rang. 98 (100):13 Rang. 1, *Nga U Khine* v. *Emperor*.

(8-b) (1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

(8-c) (1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

(9) (1929) 1929 Pat. 268 (270): 8 Pat. 279, *Jhari Gopa* v. *Emperor*.

(9-a) (1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

(10) (1920) 1920 Pat. 378 (381), *Sadanand Mirsa* v. *Ramasray*.

(11) (1935) 1935 Nag. 23 (24), *Jagannaha Rao Doni* v. *Emperor* (Statements in the police diary are ordinarily privileged and cannot be given to outsiders except under S. 162).

S. 162, Notes 15—16.

15. "**On the request of the accused**".—A Court is not justified in admitting the previous statements of witnesses to the police, unless the accused or his advocate requests the Court to refer to them and to grant copies. The Court may, however, suggest to the accused that he should ask for a reference to the police papers.[1]

An *application* is not necessary for making the request. An oral request is enough.[2]

It has been held that the effect of this section is that a Court is not entitled to look into the police papers even privately, unless requested to do so by the accused.[3] But where objection is raised in appeal on the ground that copies of statements were not granted under this section and the appellate Court orders such copies to be furnished to the appellant, it is not open to the latter if there are no contradictions between the witness's deposition in the Court and his previous statement, to contend that the Appellate Court should not look at the statements unless requested to do so by him.[4]

16. **Contradicting witness under the section—Procedure.**—Under S. 145 of the Evidence Act

(1) A witness may be cross-examined as to previous statements made by him and reduced into writing, without such writing being proved.

(2) But if it is intended to *contradict him by such writing*, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

In view of the first paragraph of S. 162 the first portion of S. 145 of the Evidence Act can have no application. Thus the prosecution witness cannot be merely asked whether he made a previous statement to the contrary to the investigating Police-officer and the matter left there. The answer of the witness cannot be used as evidence. The only way in which the previous statement can be used is by *contradicting the witness by such writing* and this can be done only by drawing his attention to such recorded statements and then by only proving such record.[1] A contrary view has been taken in the under-

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Note 15.

(1) (1927) 1927 Rang. 80 (80): 4 Rang. 356, *Nga Po Chon* v. *Emperor.*
(2) (1930) 1930 All. 737 (738), *Ghasso* v. *Emperor.*
(3) (1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor* (Dissenting from 1933 Rang. 378 (1)).
[But see (1935) 1935 Rang. 370 (372) (F.B.), *Emperor* v. *Nga Lun* (Where it was held that the above does not apply to special police diaries under S. 172).]
(4) (1935) 1935 Rang. 98 (102): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

Note 16.

(1) (1933) 1933 All. 535 (539): 55 All. 689, *Emperor* v. *Sheodayal.*
(1934) 1934 All. 956 (957), *Raghurai Singh* v. *Emperor.*
(1934) 1934 Oudh 229, *Emperor* v. *Sital.*
(1934) 148 Ind. Cas. 913 (915), *Ram Bharosey* v. *Emperor.*
(1935) 1935 Rang. 299 (301), *Nga Tha Aye* v. *Emperor* (If defence pleader asks any question concerning statement to Police, Judge should ask pleader whether he wants to have copy of statement—If he does not require it, all questions concerning it should be disallowed—If he requires it, it should be supplied and should be proved).
[See also (1925) 1925 Lah. 337 (338): 6 Lah. 24, *Labh Singh* v. *Emperor* (There is no presumption as to the genuineness of the statements of witnesses entered in Police diaries).
(1928) 1928 Lah. 144 (146), *Emperor* v. *Ahmad.*
(1931) 1931 All. 34 (35): 53 All. 94, *Tahal Saikwar* v. *Emperor.*
(1867) 7 Suth. W. R. 31 (31), *Empress* v. *Bissen.*
(1931) 1931 Cal. 189 (190): 58 Cal. 1009, *Rahijaddi* v. *Emperor.*
(1933) 1933 Mad. 233 (239): 56 Mad. 231, *Narayana* v. *Empress.*
(1928) 1928 Lah. 17 (18): 8 Lah. 605, *Emperor* v. *Ibrahim.*

mentioned case namely that a witness can be asked about his previous statements to the Police and that if he *admits* having made the statement, it can be used in evidence without the record being proved.[2] It is submitted that this is not correct. S. 162, Note 16.

The record may be proved by asking the Police-officer when he gets into the witness box whether the witness made such statements to him and whether the record was made by him[3], or if the officer is not available, by showing that the statement was written in the handwriting of the particular officer.[4]

If necessary, in order to avoid delay, cross-examination may be allowed subject to subsequent proof of the statement.[4-a]

It is not necessary that the record should be proved *before* the witness's attention is drawn to it in cross-examination. The words in S. 145 of the Evidence Act that "his attention must, *before* the writing can be proved, be called, etc.," make it clear that the proof of the writing can be given *after* it is put to the witness. The view expressed in the undermentioned cases[5] that the proof must be given *before* it is put to the witness is, it is submitted not correct. Nor is it necessary to resort to the second paragraph of S. 136 of the Evidence Act as was suggested in the case noted below,[6] to get over the supposed necessity for proving the record before it is put to the witness.

It is the duty of the *defence* to prove the statements of which they make use in cross-examination and where they have not done so, it is not open to them thereafter, to object that such statements have been brought on the record without proof.[6-a]

If the procedure prescribed by S. 145 of the Evidence Act is not adopted and the witness's attention drawn to the written record, it cannot be used in

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(1928) 1928 Lah. 820 (823), *Emperor* v. *Ram Rang.*

(1930) 1930 Lah. 457 (459), *Banta Singh* v. *Emperor.*

(1894) 16 All. 207 (209), *Empress* v. *Nasiruddin.*

(1926) 1926 Pat. 20 (22), *Badri Chowdhuri* v. *Emperor.*

(1933) 1933 Pat. 589 (591, 592, 593, 596), *Emperor* v. *Najibuddin* (1931 Pat. 152 not approved).

See also (1926) 1926 Lah. 367 (368): 7 Lah. 264, *Bahadur Singh* v. *Emperor.*

(1930) 1930 Lah. 491 (495): 11 Lah. 460, *Gopi Chand* v. *Emperor.*]

(2) (1932) 1932 Lah. 103 (111), *Mohinder* v. *Emperor.*

(1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor* (Statement can be proved by admission of witness or by evidence of Police-officer to whom it was made).

[See also (1884) 10 Cal. 256 (262, 263), In the matter of petition of *Kristo Lall Nag.* (Depositions or confessions at Police investigation are not, so far as their subject-matter is concerned any more the property of the Police than the property of the prisoners and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client however improperly the client may have become possessed of such documents provided the pleader is neither party nor privy to their obtaining it).]

(3) (1931) 1931 Cal. 622 (625), *Jasimuddin* v. *Emperor.*

(1917) 18 Cri. L. Jour. 844 (847): 1917 Low. Bur. 12, *Nga Pyu* v. *Emperor.*

(1913) 14 Cri. L. Jour. 437 (437): 7 S. L. R. 10, *Achar* v. *Pirushah.*

(1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

[See also (1927) 1927 Cal. 514 (515): 54 Cal. 307, *Modari Sikdar* v. *Emperor.*

(1928) 1928 Lah. 507 (510), *Dharam Singh* v. *Emperor.*]

(4) (1924) 1924 Bom. 510 (511), *Vithu Balu Kharat* v. *Emperor.*

(4-a) (1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

(5) (1928) 1928 Bom. 23 (25): 52 Bom. 195, *Shaikh Usman Shaikh Umar* v. *Emperor.*

[See also (1928) 1928 Rang. 150 (151): 6 Rang. 137, *Bana Singh* v. *Emperor.*]

(6) (1932) 1932 Lah. 103 (111), *Mohinder* v. *Emperor.*

(6-a) (1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

S. 162, Notes 16—18.

evidence[7] and the Police-officer cannot be asked about it.[8] The cross-examination of the witness must be confined to the *contradiction* between his two statements.[8-a] Only those *portions* of the statements, as have been used to *contradict* the witness, will form part of the judicial record. The other parts of the statement cannot be relied upon by either side in determining the guilt or innocence of the accused and should not be relied upon by the Judge.[9] But subject to the power of the Judge or Magistrate to disallow any question which in his opinion does not fall within the purview of S. 145 of the Evidence Act, it is for the accused or his pleader to decide in what manner and to what extent he will use the statement for the purpose of cross-examination with reference to the alleged contradiction.[9-a]

As to the necessity of putting the writing to the witness before it can be used as evidence see the undermentioned cases.[10] In the undermentioned case[11] the tendency of Police-officers to try to remove all discrepancies in the evidence of witnesses as originally recorded in police statements was condemned.

17. Re-examination.—As has been seen already the prosecution cannot use the statement to the police either for contradicting the defence witness, or for corroborating or contradicting its own witnesses. Where, however, the accused has used one part of the statement given by a prosecution witness to the police, for the purpose of contradicting that witness, any other part of such statement may, under this proviso, be used by the prosecution for the purpose of *explaining any matter referred to in his cross-examination.* This provision was made by the Amending Act of 1923. But under the guise of re-examination the statement before the police cannot be used to *corroborate* a prosecution witness.[1] As to the duty of the public prosecutor to give the witness an opportunity to explain the contradictory statement see the undermentioned case.[2]

18. "Whether in a police Diary or otherwise".—Under this section as it stood before the amendment of 1923 there was a conflict of opinion as to whether, where the statement of witnesses were entered in the police *diary* the privilege under S. 172 attached to them and whether the accused could not use them as specified in this section.[1] The conflict has now been set as rest by

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(7) (1928) 1928 Rang. 150 (151): 6 Rang. 137, *Bana Singh* v. *Emperor.*
(1933) 1933 All. 535 (538, 539): 55 All. 689, *Emperor* v. *Sheodayal.*
(1928) 1928 All. 280 (282-283), *Kashiram* v. *Emperor.*
(1894) 17 All. 57 (60), *Empress* v. *Taj Khan.*
(1926) 1926 Lah. 54 (58, 59), *Mohammad* v. *Emperor.*
(1926) 1926 Lah. 365 (366), *Municipal Committee, Simla* v. *Mukand Singh.*
(1917) 18 Cri. L. Jour. 1028 (1035): 1917 All. 224, *Hansraj* v. *Emperor.*
(1933) 1933 Mad. 233 (239): 56 Mad. 231, *Narayana* v. *Emperor.*
(1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

(8) (1906) 4 Cri. L. Jour. 79 (83): 33 Cal. 1023, *Dadan Gazi* v. *Emperor.*

(8-a) (1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

(9) (1930) 1930 Lah. 449 (450), *Mt. Ibhai* v. *Emperor.*
(1926) 1926 Pat. 20 (22), *Badri Choudhuri* v. *Emperor.*

(9-a) (1935) 1935 Rang. 98 (100): 13 Rang. 1, *Nga U Khine* v. *Emperor.*

(10) (1915) 1915 P. C. 7 (11): 39 Bom. 441, *Bal Gangadhar Tilak* v. *Shrinivas Pandit.*
(1920) 1920 Pat. 291 (324), *Shah Deo* v. *Kusum.*
(1930) 1930 Lah. 991 (992): 11 Lah. 410, *Ghulam Murtaza* v. *Nagina.*
(1917) 39 Ind. Cas. 356 (357).: 1917 Cal. 79, *Shaikh Barkat* v. *Basant.*
(1916) 32 Ind. Cas. 267 (272): 1916 Cal. 110, *Upendranath Nag* v. *Bhupendranath Nag.*

(11) (1935) 1935 Lah. 230 (242), *Jahangiri Lal* v. *Emperor.*

Note 17.

(1) (1929) 1929 Pat. 268 (270): 8 Pat. 279, *Jhari Gopa* v. *Emperor.*

(2) (1894) 16 All. 207 (209), *Empress* v. *Nasiruddin.*

Note 18.

(1) *In the following cases it was held that no privilege could be claimed in respect of such statement:—*
(1893) 20 Cal. 642 (648), *Sheru Sha* v. *Empress.*
(1906) 4 Cri. L. Jour. 79 (82, 83): 33 Cal. 1023, *Dadan Gazi* v. *Emperor.*

the addition of the words "whether in a police diary or otherwise" and it is now clear that the statements of witnesses during investigation, even though taken down in the special diary, can be used by the accused for the purposes specified in the proviso.[2] The object of the proviso as amended is that a Police-officer should no longer claim privilege in respect of statements on the ground that it is recorded under S. 172.[3]

19. **Effect of admitting in evidence statements inadmissible under this section.**—It is the duty of the trial Court to refuse to admit evidence which is not admissible according to law. Even the consent of parties will not transform such inadmissible evidence into admissible ones.[1] But the mere fact that inadmissible evidence has been received will not render the trial void *ab-initio*. It is only an error curable under S. 537, *infra*. Thus if the reception of inadmissible evidence has not caused any prejudice to the accused and occasioned failure of justice, it will not render the trial void. It is a question of fact in every case whether there has been a failure of justice consequent upon such reception of evidence.[2] S. 167 of the Indian Evidence Act lays down "the improper admission or rejection of evidence shall not be of itself a ground for a new trial or reversal of any decision in any case if it shall appear to the Court before which such objection is raised that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision. . . ." If the Court of appeal or revision holds that inadmissible evidence has been received, it should wholly ignore such evidence and see if there is other evidence

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(1909) 10 Cri. L. Jour. 88 (89): 36 Cal. 560, *Salt* v. *Emperor*.
(1889) 16 Cal. 610 (616), *Bikao Khan* v. *Empress*.
(1889) 16 Cal. 612 (617), *Mohomad Ali Hadji* v. *Empress*.
(1882) 8 Cal. 154 (156), *Empress* v. *Kalichurn Chunari*.
(1895) 9 C. P. L. R. 33 (33, 34), *Empress* v. *Sadwa Teli*.
(1893-1900) 1893-1900 L. B. R. 47, *Sheru Sha* v. *Empress*.
(1897-1901) 1897-1901 Upp. B. R. 29 (29), *Nga Po Hmi* v. *Empress*.
(1897) 19 All. 390 (405, 414), *Empress* v. *Mannu* (16 All. W. N. 193, overruled).

In the following case it was held that the statements are privileged:—

(1894) 1894 Pun. Re. No. 17, p. 63, *Kallu* v. *Empress*.
(2) (1928) 1928 Cal. 260 (261), *Sadhu Shaik* v. *Emperor*.
(1927) 1927 Cal. 644 (646), *Mafizaddi* v. *Emperor*.
(1929) 1929 Cal. 257 (258), *Panchanan Mukerjee* v. *Emperor* (Investigation under S. 78-A of Calcutta Police Act).
(1927) 1927 Oudh 321 (323): 2 Luck. 605, *Jadunandan Brahman* v. *Emperor*.
(1933) 1933 Nag. 4 (5): 28 N. L. R. 291, *Hamid Khan* v. *Emperor*.
(1929) 1929 Rang. 87 (88): 6 Rang. 672, *Sulaiman Mohd.* v. *Emperor*.

[See also (1931) 1931 Pat. 150 (151), *Hafiz Mohammad Sani* v. *Emperor*.]

(3) (1927) 1927 Cal. 644 (646), *Mafizaddi* v. *Emperor*.
(1935) 1935 Sind 145 (172): 28 S.L.R. 397, *Emperor* v. *Hari*.

Note 19.

(1) (1923) 1923 Lah. 630 (631), *Sundar Singh* v. *Sham Singh*.
(1926) 1926 Pat. 211 (212), *Ramiyad Dasadh* v. *Emperor*.
(1931) 1931 Pat. 345 (345), *Phekan Singh* v. *Emperor*.
(2) (1930) 1930 Bom. 595 (596, 597): 54 Bom. 934, *Nur Mahomed Kadarbhai* v. *Emperor*.
(1882) 6 Bom. 34 (37), *Imperatrix* v. *Pandarinath*.
(1927) 1927 Bom. 501 (509), *Jehangir Ardeshir Cama* v. *Emperor*.
(1924) 1924 Bom. 480 (482), *Mhabli Rama Sail* v. *Emperor*.
(1931) 1931 Bom. 311 (313): 55 Bom. 435, *Emperor* v. *Issuf Mahomed*.
(1933) 1933 Bom. 266 (270): 57 Bom. 400, *Ebrahim* v. *Jainabi*.
(1889) 16 Cal. 610 (N.) (617), In re *Mohomed Ali Helji*.
(1910) 11 Cri. L. Jour. 96 (97) (Cal.), *Shaikh Hazir* v. *Emperor*.
(1910) 11 Cri. L. Jour. 244 (245) (Cal.), *Janki* v. *Emperor*.
(1925) 1925 Cal. 161 (164), *Harendranath* v. *Emperor*.
(1925) 1925 Cal. 959 (960), *Kalia* v. *Emperor*.
(1926) 1926 Cal. 147 (148), *Keramat Mandal* v. *Emperor*.
(1926) 1926 Lah. 367 (368): 7 Lah. 264, *Bahadur Singh* v. *Emperor*.
(1930) 1930 Lah. 318 (320): 10 Lah. 794, *Devidas* v. *Emperor*.
(1932) 1932 Lah. 103 (111, 112), *Mohinder Singh* v. *Emperor*.
(1894) 2 Weir 302 (302), In re *Savari Ayee*.
(1883) 2 Weir 573 (574), In re *Appaswami*.
(1908) 7 Cri. L. Jour. 358 (358) (Mad.), In re *Acchabba Beori*.
(1925) 1925 Oudh 1 (8): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(1920) 1920 Pat. 378 (382), *Sadanand Misra* v. *Emperor*.
(1926) 1926 Pat. 20 (23), *Badri Chaudhry* v. *Emperor*.
(1926) 1926 Pat. 211 (212), *Ramiyad*

S. 162, Notes 19—21.

on record to justify the decision of the lower Court.[3] The Privy Council will refuse to interfere on the mere ground of wrong reception of evidence.[4]

20. **Effect of refusal to grant copies to accused under this section.**—Where a Court illegally refuses to give copies to the accused and if on a reference to the statements it appears that the accused has been *prejudiced* the conviction will be quashed and a new trial ordered.[1] Each case must however be decided on its own facts and the extent of the prejudice to the accused in each case must determine whether the trial should be held altogether vitiated or whether the defect can be remedied.[2] Where the lower Court wrongly refuses to furnish a copy of the prior statement of a witness, the proper course in appeal is that the counsel should be furnished with a copy of the statement and any contradictions between that statement and those made in Court by the witness should be taken as left unexplained by him.[3] The case may also be remanded to the lower Court in a proper case.[4] Where a committing Magistrate refuses copies of statements, the committal need not be quashed because the accused has an opportunity to use the statement in the Sessions Court.[5]

20-A. Failure to observe provisions of section—Effect.—A failure to observe the provisions of this section is only an error curable under the provisions of S. 537.[1]

21. 'Dying declarations'.—Sub-Cl. (2) of this section exempts from its operation "dying declaration" falling within S. 32, Cl. (1) of the Evidence Act. A dying declaration made to a Police-officer during the course of investigation is not therefore subject to the limitations mentioned in the main clause of the section.[1] The admission of dying declarations as evidence rests on the doctrine of necessity; the injured person who is dead, is generally the principal witness and so is likely to know more or as much, about the circumstances of his

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Dasadh v. *Emperor*.
(1931) 1931 Pat. 96, *Sakal Ahir* v. *Palakdhari Ahir*.
(1925) 1925 Rang. 101 (101), *Bawa Rowther* v. *Emperor*.
(1897-1901) 1897-1901 U. B. R. 156 (157), *Empress* v. *Nga Thet*.
(1908) 32 Bom. 111 (142, 144), *Emperor* v. *Narayan*.
(3) (1876) 1 Cal. 207 (217), *Empress* v. *Haribob Chunder*.
(1932) 1932 Sind 201 (205): 26 S.L.R. 302, *Pharho* v. *Emperor*.
(4) (1925) 1925 P. C. 52 (53): 6 Lah. 45, *Umra* v. *Emperor*.

Note 20.

(1) (1931) 1931 All. 262 (263): 53 All. 458, *Emperor* v. *Bansidar*.
(1931) 1931 All. 273 (274), *Nek Ram* v. *Emperor*.
(1874) 11 Bom. H. C. 120 (124), *Reg.* v. *Uttamchand Kapurchand*.
(1927) 1927 Cal. 644 (646), *Mofizaddi* v. *Emperor*.
(1928) 1928 Cal. 260 (261), *Sadhu Shaikh* v. *Emperor*.
(1927) 1927 Cal. 372 (372), *Sajjad Mirza* v. *Emperor*.
(1933) 1933 Nag. 4 (5): 28 N. L. R. 291, *Hamid Khan* v. *Emperor*.
(1927) 1927 Nag. 24 (25), *Hari Gore* v. *Emperor*.
(1929) 1929 Pat. 268 (271): 8 Pat. 279, *Jhari Gope* v. *Emperor*.
(2) (1928) 1928 Lah. 257 (258): 9 Lah. 389, *Azara Singh* v. *Emperor*.
(3) (1928) 1928 Lah. 257 (258): 9 Lah. 389, *Azara Singh* v. *Emperor*.
(4) (1929) 1929 Nag. 240 (240), *Raghya* v. *Emperor*.
(5) (1928) 1928 Pat. 215 (216): 7 Pat. 205, *Ramgulam* v. *Emperor*.

Note 20-A.

(1) (1934) 1934 Sind 78 (83), *Muhammad Panah* v. *Emperor* (Taking signature to statement to police lessens value of evidence of witness affected but does not in itself render it necessary to quash conviction).
(1935) 1935 Sind 145 (178): 28 S.L.R. 397, *Emperor* v. *Hari*.
(1935) 1935 Rang. 98 (101): 13 Rang. 1, *Nga U Khine* v. *Emperor*.

Note 21.

(1) (1923) 1923 Cal. 463 (464), *Emperor* v. *Satyendra*.
(1886) 1886 Pun. Re. No. 13, p. 22, *Abdul Jalil* v. *Empress*.
(1886) 1886 Pun. Re. No. 17, p. 39 (Cr.), *Bahawala* v. *Empress*.
(1870) 1870 Pun. Re. No. 3, p. 8, *Ghazee*.
(1927) 1927 Cal. 17 (20): 54 Cal. 237, *Azimaddy* v. *Emperor*.
(1902) 6 Cal. W. N. 921 (922), *Emperor* v. *Daulat Kanjara*.
(1907) 5 Cri. L. Jour. 427 (429): 34 Cal. 698, *Jatindranath Chatterjee* v. *Emperor*.
(1930) 1930 Lah. 60 (61), *Chadgi* v. *Emperor*.

S. 162. Note 21.

death than or as any other person.[2] Further the declarant is in a condition in which according to the experience of mankind it is not less likely that what he says is true than if it had been said before a Magistrate under the sanction of an oath in the presence of the prisoner.[3] When a man gasps out his story soon after the occurrence it may be said that there was no time for him to fabricate or for his friends to suggest falsehood.[4] But simply on that ground it gets no greater sanctity than any other piece of evidence. As matter of fact it should be scrutinised with great care. It is not safe to base a conviction merely on the dying declaration.[5]

Before the enactment of the Indian Evidence Act of 1872, it was held that the declarant should, while making the declaration, be *under the belief that he is dying*. So evidence had to be let in to prove his state of mind and about his belief.[6] Under the Evidence Act dying declarations are now relevant whether the person who made them was or was not at the time when they were made, under the expectation of death.[7] In England the law is still as it was in India before the enactment of the Indian Evidence Act, namely that the injured person must be aware that he is dying. There is another distinction between the Indian and English Law. In England the rule applies only to *criminal* cases and to cases of homicide. This distinction also has been done away with by the Indian Evidence Act.[8]

The dying declaration is admissible only when the *declarant's* cause of death is in issue. Thus a statement of the deceased as to accused stabbing another person is inadmissible.[9]

(1932) 1932 Lah. 14 (15), *Rahman* v. *Emperor*.
(1916) 1916 Mad. 1211 (1212), In re *Karuppan Samban*.
(1931) 1931 Mad. 430 (434): 54 Mad. 678, *Krishnappa Naicken* v. *Emperor*.
(1893) 7 C. P. L. R. 14 (14, 15), *Empress* v. *Thakuria*.
(1922) 1922 Pat. 40 (41), *Lachmi Lal* v. *Emperor*.
(2) (1913) 14 Cri. L. Jour. 510 (511): 7 L. B. R. 33, *Nga Te* v. *Emperor*.
(3) (1866) 6 Suth. W. R. 75 (76), *Bissorunjun Mookerjee*.
(1871) 3 N.-W. P. 212 (215), *Queen* v. *Ujrail*.
(4) (1931) 1931 Mad. 180 (180), *Arumugha Thevan* v. *Emperor*.
(1910) 11 Cri. L. Jour. 171 (176), *Ahmad Yar Khan* v. *Emperor*.
(1911) 12 Cri. L. Jour. 528 (529), *Pattan* v. *Emperor*.
(1930) 1930 Notes 23 (*d*) (All.), *Bindraban* v. *Rajput Singh*.
(5) (1930) 1930 All. 532 (533), *Emperor* v. *Sikandar*.
(1901) 25 Bom. 45 (47), *Imperatrix* v. *Rudra*.
(1925) 1925 Cal. 876 (881): 52 Cal. 987, *Emperor* v. *Premananda Dutt*.
(1868) 1868 Pun. Re. No. 8, p. 22, *Sher Ali*.
(1909) 9 Cri. L. Jour. 156 (157) (Lah.), *Karim Khan* v. *Crown*.
(1933) 1933 Oudh 333 (336): 8 Luck. 570, *Ratan Lal* v. *Emperor*.
(1929) 1929 Pat. 249 (254), *Bullu Singh* v. *Emperor*.
(1933) 1933 Rang. 95 (96), *Nga Kan Htu* v. *Emperor*.
(1928) 1928 Notes 69 (*b*), *Inayat Ali* v. *Emperor*.
(1926) 1926 Jour. 141 (141), *Muzaffar* v. *Emperor*.
(1930) 1930 Mad. W. N. 1211 (1214), *Pichumma Naidu* v. *Emperor*.
(1925) 1925 Lah. 549 (550), *Bakhshish Singh* v. *Emperor*.
(6) (1868) 10 Suth. W. R. 11 (12), *Zuhir*.
(1871) 15 Suth. W. R. 11 (11, 14), *Sheikh Tenoo*.
(1866) 1866 Pun. Re. No. 46, *Gholam Muhammad*.
(7) (1873) 19 Suth. W. R. (Cr.) 44 (44), *Queen* v. *Degumber Thakoor*.
(8) (1924) 1924 Lah. 253 (256): 4 Lah. 451, *Autar Singh* v. *Crown*.
(1933) 1933 Nag. 136 (141): 29 N.L.R. 251, *Mrs. M. F. Rego* v. *Emperor*.
(1928) 1928 Pat. 162 (165): 6 Pat. 747, *Lalji Dusadh* v. *Emperor*.
(9) (1901) 1901 Pun. Re. No. 17, p. 47, *Fakir* v. *Empress*.
[See also (1925) 1925 All. 227 (228), *Dannu Singh* v. *Emperor*.
(1924) 1924 Lah. 253 (256): 4 Lah. 451, *Autar Singh* v. *Crown*.
(1931) 1931 Mad. 233 (234), *Kappinaih* v. *Emperor*.
(1931) 1931 Mad. 689 (697): 54 Mad. 931, *Venkatasubba Reddi* v. *Emperor*.
(1930) 1930 Oudh 249 (249), *Wali Mohammad* v. *Emperor*.
(1929) 1929 Sind 250 (252), *Wahid Bux* v. *Emperor*.
(1916) 17 Cri. L. Jour. 438 (439): 1916 Lah. 106: 1916 Pun. Re. 20, *Emperor* v. *Faiz*.
(1924) 1924 Nag. 115 (116), *Chunnilal* v. *Emperor*.]

S 162, Note 21.

When dying declarations are taken, the questions and answers should be taken and not merely in the narrative form.[10]

The dying declaration does not cease to be one merely because the declarant lingers for a few days and then only dies.[11]

But where a person who made the dying declaration chances to live his statement cannot be admitted in evidence as dying declaration under S. 32 of the Indian Evidence Act though it may be relied on under S. 157 of the said Act to corroborate the testimony of the complainant when examined in the case.[12] He can also be contradicted with that dying declaration under S. 155 of the Indian Evidence Act.

See also the following cases[13] which show that dying declarations should be properly proved before they can be acted upon.

S. 163.

163* (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, Section 24.

No inducement to be offered.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

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*(CODE OF 1882—S.163)

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, S. 24

No inducement to be offered.

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(10) (1925) 1925 Cal. 876 (881, 882): 52 Cal. 987, *Emperor* v. *Premanda*.
(11) (1929) 1929 Lah. 64 (65), *Thakur Singh* v. *Emperor*.
(12) (1902) 4 Bom. L. R. 434 (435), *Emperor* v. *Rama Sattu*.
(13) (1880) 6 Cal. L. R. 278 (279), *Emperor* v. *Bilchynden*.
(1874) 11 Bom. H. C. 247 (248), *Reg.* v. *Fata Adaji*.
(1868) 9 Suth. W. R. 2 (2), *Queen* v. *Soyumber Singh*.
(1869) 11 Suth. W. R. 2 (2), *Chintamonee Nya*, In re.
(1882) 8 Cal. 211 (213), In re *Samiruddin*.
(1902) 6 Cal. W. N. 72 (81), *Emperor* v. *Mathura Thakur*.
(1905) 5 Cri. L. Jour. 427 (429): 34 Cal. 698, *Jatindranath Chatterjee* v. *Emperor*.
(1915) 16 Cri. L. Jour. 759 (760): 1916 Mad. 1211, In re *Karuppa Samban*.
(1922) 1922 Cal. 382 (383): 49 Cal. 358, *Emperor* v. *Balaram Das*.
(1900) 10 Cri. L. Jour. 186 (188): 36 Cal. 659, *Gouridas* v. *Emperor*.
(1925) 1925 Cal. 821 (821): 52 Cal. 446, *Sarat Chandra* v. *Emperor*.
(1930) 1930 Cal. 228 (229), *Tafiz Pramanik* v. *Emperor*.
(1887) 1887 Pun. Re. No. 29, p. 58 (Cr.), *Zardad* v. *Empress*.
(1900) 1900 Pun. Re. No. 9 (22), *Hashim* v. *Empress*.
(1912) 13 Cri. L. Jour. 225 (226): 1911 Pun. Re. 17, *Ghazi* v. *Emperor*.
(1924) 1924 Lah. 12 (15-16), *Kuni Lal* v. *Emperor*.
(1929) 1929 Lah. 310 (311, 312): 7 Lah. 91, *Pratap Singh* v. *Emperor*.
(1930) 1930 Lah. 450 (452), *Kapur Singh* v. *Emperor*.
(1884) 2 Weir 750 (752), In re *Subba Tevan*.
(1886) 2 Weir 753 (754), *Kusal Singh*, In re.
(1910) 11 Cri. L. Jour. 193 (194) (Mad.), *Maddappa Kone*, In re.
(1912) 13 Cri. L. Jour. 468 (469) (Mad.), *Public Prosecutor* v. *Bala Nagi Reddi*.
(1914) 1914 Nag. 70 (71): 10 N.L.R. 19, *Bhagwan* v. *Emperor*.
(1913) 14 Cri. L. Jour. 396 (397) (Rang.), *Nga Po* v. *Emperor*.
1 Burma 157 (158), *Ram Loochun* v. *Empress*.
Oudh 29, *Emperor* v. *Haldar Alli*.

SYNOPSIS.

S. 163, Note 1.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
POLICE-OFFICER	3
PERSON IN AUTHORITY	4
INDUCEMENT, ETC.	5
EVIDENTIARY VALUE OF STATEMENT MADE UNDER INDUCEMENT, ETC.	6

Other Topics.

Illegal pardon by Court. See Note 5, Pts. 12 and 13.
Of a temporal nature. See Note 5, Pt. 9.
Pressure for detecting crimes. See Note 2, Pt. 1.

1. Legislative Changes.—The corresponding section of the Codes of 1861 and 1872 applied to *accused* persons and to *persons arrested.* The words "in authority" were also not found after the words "or person".

This section and the corresponding section of the Code of 1882 do not differ in any material particular.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free-will.

(CODE OF 1872—Ss. 120 and 184.)

No inducement to be offered to confess.

120. No Police-officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession, whether such person is under arrest or not.

But no Police-officer or other person shall prevent the person arrested, by any caution or otherwise from making any disclosure which he may be disposed to make of his own free-will.

Inducements to disclosure or confession.

184. No Police-officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

But no Police-officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free-will.

(CODE OF 1861—Ss. 98 and 146.)

No threat, promise or caution, as to disclosure by party arrested.

98. No Police-officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure. But no Police-officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free-will.

No inducement to be offered to accused person to confess.

146. No Police-officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession.

S. 163, Notes 2—3.

2. Scope of the section.—This section enacts that no Police-officer or other person in authority—

(1) shall induce any person *to make* any disclosure, or

(2) shall *prevent* him by caution or otherwise from making any statement which he may be disposed to make of his own free-will.

It applies only where an *investigation* is being made under this chapter. S. 343, *infra*, which occurs in the chapter dealing with general provisions as to *enquiries and trials*, enacts that no influence by means of any promise or threat or otherwise shall be used to an *accused* person to induce him to disclose or to withhold any matter within his knowledge.

Where a *confession* is obtained from an *accused* person by the use of any inducement, threat or promise, S. 24 of the Evidence Act enacts that such confession is inadmissible in evidence.

Any person causing hurt or wrongfully confining any person for the purpose of extorting any confession or information which may lead to the detection of an offence or misconduct may be guilty of an offence under Ss. 330, 331 or 328 of the Penal Code.[1]

3. Police-officer.—This expression "Police-officer" is also found in Ss. 25 to 27 of the Indian Evidence Act. In construing the expression under those sections of that Act it has been held that the expression "Police-officer" in Ss. 148, 149 and 150 of the Code of 1861 enacted the provisions now contained in Ss. 25, 26 and 27 of the Evidence Act. The words "Police-officer" referred to in the latter sections have been interpreted by judicial decisions and it has been held that they should be read not in any restricted sense but according to their more comprehensive and popular meaning.[1] Thus it has been held that the expression includes Police-officers in a foreign state as well as those in British India.[2] It has also been held that it is not restricted to the investigating Police-officer[3] or to the officers only of a regular police force[4] and that it includes an officer like the Deputy Commissioner of Police in Calcutta since in common parlance and amongst generality of people he is known as a Police-officer.[5]

The following persons have been held to be Police-officers within the meaning of Ss. 25 to 27 of the Evidence Act:—

Section 163—Note 2.

(1) (1871) 3 N.-W. P. 275 (279, 280), *Queen* v. *Rugonath Pershad*.
[*See the following cases*:—
(1916) 17 Cri. L. Jour. 351 (352): 1916 All. 360, *Gokul Singh* v. *Emperor*.]

Note 3.

(1) (1875) 1 Cal. 207 (215, 216), ***Queen*** **v.** ***Hurribole***.
(1893) 17 Bom. 485 (486), *Empress* v. *Bhima*.
(1927) 1927 Nag. 222 (224): 23 Nag. L. R. 23, *Emperor* v. *Ahia*.
(1917) 43 Ind. Cas. 111 (112): 1917 Nag. 81: 14 N. L. R. 192, *Salam* v. *Emperor*.
(2) (1917) 43 Ind. Cas. 111 (112): 1917 Nag. 81: 14 N. L. R. 192, *Salam* v. *Emperor* (Applies to Police-officer in Nizam's State).
(1912) 13 Cri. L. Jour. 528 (528, 529), ***Public Prosecutor*** **v.** ***Veeraraghava Pillai*** (Applies to a Police-officer in a French Territory).
(1901-1902) 6 Cal. W. N. cclv (Police in a Native State).
(1896) Rat. Un. Cr. 855 (856), *Empress* v. *Lakshmya bin Bhima* (Police-officer in a Native State).
(1898) 22 Bom. 235 (237), *Empress* v. *Nagla Kala* (In a Native State).
(1925) 1925 Bom. 529 (530): 49 Bom. 642, *Emperor* v. *Anandrao*.
(3) (1877) 1 Cal. L. R. 21 (22), In the matter of *Hiran Miya* alias *Abdul Wahid*.
(1917) 1917 Bom. 130 (131): 42 Bom. 1, *Emperor* v. *Mallan Gowda Parwat Gowda*.
(1924) 1924 Bom. 480 (483), *Emperor* v. *Mahabli Rama Sail*.
(4) (1901-1902) 6 Cal. W. N. ccxlvii.
(5) (1875) 1 Cal. 207 (215, 216), ***Queen*** **v.** ***Hurribole***.

(1) A police patel.[6]

(2) A *darogah*.[7]

(3) Sub-Inspector of *thanna*.[8]

(4) Police Sub-Inspector.[9]

(5) Police constable.[10]

(6) Head-constable.[11]

(7) Deputy Inspector making the investigation.[12]

(8) Village *Chowkidar* in Calcutta[13] and Oudh.[14]

(9) A ten house *gaung* appointed under Lower Burma Village Act, 1889.[15]

(10) Political *Maharrir* Oghi.[16]

(11) Kotwal.[16-a]

(12) Village Headman in Burma.[16-b]

The following persons have been held not to be Police-officers within the meaning of those sections:—

(1) Village munsif in the Madras Presidency.[17]

(2) A village *Chowkidar* in Punjab.[18]

(3) A *Ywathuggi* or a village headman under Lower Burma Village Act.[19]

(4) A Jailor.[20]

(1901-02) 6 Cal. W. N. ccxlvii.

(6) (1886) 10 Bom. 595 (596, 597), *Queen* v. *Kamalia*.
(1901-02) 6 Cal. W. N. ccxlvii.
(1925) 1925 Nag. 340 (340), *Mt. Machi* v. *Emperor*.

(7) (1882) 4 All. 198 (204), *Empress* v. *Panchan*.
(1901-02) 6 Cal. W. N. cclvi, *Darogh*.
(1933) 1933 Cal. 146 (147), *Ramani Mohan De* v. *Emperor*.

(8) (1877) 1 Cal. L. R. 21 (22), In the matter of *Hiran Miya* alias *Abdul Wahid*.
(1901-02) 6 Cal. W. N. cclvi.

(9) (1873) 19 Suth. W. R. (Cr.) 51 (52), *Queen* v. *Pagaree Shaha*.
(1901-02) 6 Cal. W. N. cclvi.

(10) (1873) 10 Beng. L. R. App. 2, *Queen* v. *J. Macdonald*.
(1878) 2 Bom. 61 (62), *Imperatrix* v. *Pitambar Jina*.
(1882) 6 Bom. 34 (35), *Imperatrix* v. *Pandarinath*.
(1884) 6 All. 509 (510), *Queen* v. *Babu Lal*.
(1901-02) 6 Cal. W. N. cclvi.
(1923) 71 Ind. Cas. 360 (362), *Khawaja Hassan* v. *Emperor*.

(11) (1873) 5 N.-W. P. 86 (87), *Queen* v. *Mt. Luchoo*.
(1901-02) 6 Cal. W. N. cclvi.

(12) (1882) 1882 Pun. Re. No. 8 (11) (Cr.), *Mt. Nurai* v. *Empress*.

(13) (1898) 2 Cal. W. N. 637 (638), *Empress* v. *Indra Chundar Pal*.
(1899) 26 Cal. 569 (570), *Empress* v. *Sale Mudding Sheik*.
(1901-02) 6 Cal. W. N. ccxlvii.
[See also (1900) 27 Cal. 366 (367), *Kalai* v. *Kalu Chowkidar* (Not a Police-officer for purposes of S. 59, Cr. P. Code).
(1897-98) 2 Cal. W. N. 71 (74), *Empress* v. *Bepin Behari Dey* (Contra—but dissented from in subsequent decisions).]

(14) (1933) 1933 Oudh 192 (194): 8 Luck. 410, *Emperor* v. *Pancham*.
(1915) 16 Cri. L. Jour. 62 (64): 1914 Oudh 414, *Dal* v. *Emperor*.

(15) (1907) 5 Cri. L. Jour. 421 (422): 3 L. B. R. 283, *Po Sin* v. *Emperor*.

(16) (1933) 1933 Pesh. 38 (40), *Kuldip Das* v. *Emperor*.

(16-a) (1920) 1920 Nag. 167 (168), *Bhagwatdin* v. *Emperor*.
(1924) 1924 Nag. 29 (30), *Sukhwaria Chamarin* v. *Emperor*.

(16-b) (1872-92) 1872-92 L. B. R. 479 (481).

(17) (1884) 7 Mad. 287 (288), *Empress* v. *Samapapi*.
(1901-02) 6 Cal. W. N. ccxlvii.

(18) (1918) 1918 Lah. 127 (128): 42 P. R. 1917, *Khuda Baksh* v. *Emperor*.

(19) (1900-02) 1 Low. Bur. Rul. 65 (67). *Crown* v. *Nga Pohla*.
(1924) 1924 Rang. 245 (246, 249): 2 Rang. 31 (F.B.), *Nga Myin* v. *Emperor*.
(1893-1900) 1893-1900 L. B. R. 22 (22, 23), *Maung Wun* v. *Empress* (See however *contra*).

(20) (1914) 1914 Lah. 374 (377): 8 P. R. 1914, *Nadir* v. *Crown*.
(1896) 20 Bom. 795 (797), *Queen* v. *Tatya Bin* (Even though his subordinate warders were Police-officers).
(1901-02) 6 Cal. W. N. cclv (cclv).

S. 163, Notes 3—4.

(5) Excise Inspector in Bengal,[21] Punjab,[22] Burma,[23] Patna,[24] Madras[25] and Sindh.[25-a] In Bombay a different view has been taken.[25-b]

(6) A Panchayat.[25-c]

It is a question whether these decisions, though under the Evidence Act are not relevant in interpreting the words "Police-officer" used in this section.

4. Person in authority.—The words "person in authority" occur in S. 24 of the Evidence Act also. The principle and object of that section and of this section being the same, the decisions bearing upon the interpretation of the words "person in authority" as used in S. 24 of the Evidence Act may be usefully referred to in interpreting this section also.

In deciding whether a certain person is a *person in authority* the test is to see whether he has authority to interfere with the matter. Any concern or interest in it would be sufficient to give such authority.[1] Generally speaking a "person in authority" is one who is engaged in the apprehension, detention or the prosecution of the accused or one who is empowered to examine him.[2] The following persons have been held to be "persons in authority":—

(1) A travelling auditor of a railway company, in relation to a railway clerk who had committed defalcations.[3]

(2) The prosecutor.[4]

(3) Wife of the prosecutor concerned in the management of their business.[5]

(4) A Magistrate.[6]

(5) A Police patel in Bombay.[7]

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(21) (1932) 1932 Cal. 122 (123), *Matilal Kalowar* v. *Emperor*.
(1919) 1919 Cal. 696 (698): 46 Cal. 411, *Ah Foong Chinaman* v. *Emperor*.
(1927) 1927 Cal. 527 (528): 54 Cal. 601, *Harbhajjan Sao* v. *Emperor*.
(1930) 1930 Cal. 710 (711), *Turia Sardar* v. *Emperor*.
[But see (1931) 1931 Cal. 350 (352): 58 Cal. 1260, *Ibrahim Ahmed* v. *Emperor*.
(1910) 11 Cri. L. Jour. 77 (78): (1907-09) 3 U. B. R. Ex. p. 1.]

(22) (1918) 1918 Lah. 372 (372): 3 Pun. Re. 1918, *Emperor* v. *Wazir Singh*.

(23) (1930) 1930 Rang. 49 (50): 7 Rang. 771, *Maung San Myin* v. *Emperor*.
(1912) 13 Cri. L. Jour. 465 (465), *Saw Paw Aung* v. *Emperor* (*Contra*: But this case seems to be prior to Burmah Excise Act, 1917—When Excise Inspector was specially enrolled as a Police-officer, as such persons by themselves had no power to arrest).

(24) (1932) 1932 Pat. 293 (296) (F. B.), *Radha Kishun* v. *Emperor*.

(25) (1932) 1932 Mad. W. N. 453 (454), *Mahalakshmyya* v. *Emperor*.
(1891) 1 Weir 632 (632).

(25-a) (1927) 1927 Sind 112 (112), *Emperor* v. *Budho*.
(1925) 1925 Sind 70 (70): 18 Sind L. R. 75, *Tillibai* v. *Emperor*.

(25-b) (1927) 1927 Bom. 4 (8): 51 Bom. 78 (F. B.), *Nanoo Sheikh Ahmed* v. *Emperor*.
(1929) 1929 Bom. 70 (71, 72), *Emperor* v. *Din Shaw Cursetji*.

(25-c) (1907) 11 Cal. W. N. 904 (907).

Note 4.

(1) (1872) 9 Bom. H. C. 358 (369), *Navroji Dadabhi*.
(1918) 1918 Mad. 111 (113, 114), *Smith* v. *Emperor*.
(1915) 1915 Bom. 249 (252): 40 Bom. 220, *Fakira Appaya* v. *Emperor*.

(2) (1933) 1933 Pat. 149 (150): 12 Pat. 241 (S. B.), *Santokhi Deldar* v. *Emperor*.

(3) (1872) 9 Bom. H. C. R. 358 (369), *Reg.* v. *Navroji*.

(4) (1921) 1921 Cal. 458 (458), *Asutosh Dutt* v. *Emperor*.

(5) (1872) 9 Bom. H. C. R. 358 (369), *Reg.* v. *Navroji* (Relies on an English case).

(6) (1879) 2 All. 260 (261), *Empress* v. *Asghar Ali*.
(1864) 1 Suth. W. R. 24 (24), *Ramdhun Singh*.
(1884) 10 Cal. 775 (776), *Queen* v. *Vzeer*.
(1913) 14 Cri. L. Jour. 417 (418, 419), *She Hmon* v. *Emperor*.

(7) (1915) 1915 Bom. 249 (252): 40 Bom. 220, *Fakira Appaya* v. *Emperor*.
(1878) 3 Bom. 12 (14), *Empress* v. *Rama Birapa*.

(6) The master of a vessel in respect of offence committed on board.[8]

(7) A lambardar.[9]

(8) A Zaildar.[10]

(9) The manager of a local branch of a firm over a clerk in that branch.[11]

(10) Any person in direct authority over the person making the statement as in the case of a Deputy Registrar of a High Court in respect of a Court clerk.[12]

(11) *Thuggi* or the headman of a village in Burma[13] and Oudh.[14]

(12) Village Moniagar in the Madras Presidency.[15]

(13) Any person who offers inducement at the instance of the police.[16]

The following persons are not persons in authority:—

(1) The wife of a constable.[17]

(2) Vakil's clerk.[18]

(3) The Mukhia of a village even though he would appear to a villager as a man of influence.[19]

(4) Zamindars *quo* Zamindars but if they are directly connected with the investigation at the instance of the police they are persons in authority.[20]

(5) The co-villagers of the accused, merely by reason of their being the principal residents of the village.[21]

(6) An *Inamkhor* who is inferior in office to an eligadar.[22]

(7) Members of a panchayat,[23] but where they are actively assisting the police in the investigation and thereby lead the accused to believe that they have authority, are persons in authority.[24]

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(8) [See (1872) 10 Bom. L. R. App. 1 (1), *Queen* v. *Hicks*.]

(9) (1922) 1922 Lah. 263 (265), *Muhammadar* v. *Crown*.

(10) (1911) 12 Cri. L. Jour. 554 (556), *Mutsaddi* v. *Emperor*.
(1916) 17 Cri. L. Jour. 226 (228): 1916 Lah. 216: 26 P. R. 1916, *Karam Singh* v. *Emperor*.

(11) (1911) 12 Cri. L. Jour. 597 (601): 14 P. R. 1911, *Kutab Ali* v. *Emperor*.
(1929) 1929 Oudh 272 (273), *Taule* v. *Emperor*.
(1929) 1929 Sind 64 (66): 26 Sind L. R. 191, *Emperor* v. *Altur Singh*.

(12) (1932) 1925 Pat. 772 (781): 4 Pat. 646, *Emperor* v. *Akhileshwar*.

(13) (1914) 15 Cri. L. Jour. 681 (682): 1914 Low. Bur. 175, *Thin* v. *Emperor*.

(14) (1929) 1929 Notes 27 (a), *Mt. Umrai* v. *Emperor*.

(15) (1903) 26 Mad. 38 (40), *Thandraya Mudaly* v. *Emperor*.
(1929) 1929 Mad. W. N. 791 (792), *Kuttiappa Chetty* v. *Emperor* (Assumed that he was a person in authority).

(16) (1928) 1928 Lah. 476 (478, 479): 9 Lah. 671, *Bulaqui* v. *Emperor*.

(17) (1900-02) 1 Low. Bur. R. 133 (135), *Aung Thein* v. *Emperor*.

(18) (1925) 1925 Oudh 597 (597), *Emperor* v. *Rama Avadh*.

(19) (1926) 1926 All. 737 (740), *Emperor* v. *Mt. Harpiari*.

(20) (1911) 12 Cri. L. Jour. 119 (120): 4 Sind L. R. 209, *Imperator* v. *Dobud*.
(1932) 1932 Sind 55 (56), *Nawat Kamal* v. *Emperor*.
(1917) 18 Cri. L. Jour. 58 (60): 1917 Sind 65: 10 Sind L. R. 140, *Aoung* v. *Emperor*.

(21) (1917) 18 Cri. L. Jour. 58 (60): 1917 Sind 65: 10 Sind L. R. 140, *Aoung* v. *Emperor*.
(1930) 1930 Cal. 633 (634-635): 57 Cal. 488, *Emperor* v. *Kutub Bux*.

(22) (1929) 1929 Lah. 558 (559), *Ghulam Muhammad* v. *Emperor*.

(23) (1901-02) 6 Cal. W. N. cclvi.
(1883) 1883 All. W. N. 129 (130), *Empress* v. *Gauri*.
(1882) 4 All. 46 (48), *Empress* v. *Mohanlal*.
(1902) 4 Bom. L. R. 785 (788), *Emperor* v. *Philip Juze Fernand*.
(1924) 1924 Mad. 230 (230, 231), *Mulimayandi* v. *Emperor*.

(24) (1905) 2 Cri. L. Jour. 255 (258), *Nazir* v. *Emperor*.
(1929) 1929 Pat. 275 (277): 8 Pat. 289, *Kunja Subudhi* v. *Emperor*.
(1923) 1923 Cal. 458 (459): 50 Cal. 127, *Emperor* v. *Ganesh Chandra*.
(1907) 6 Cri. L. Jour. 154 (157), *Emperor* v. *Jasha Bewa*.
(1916) 17 Cri. L. Jour. 188 (189): 1916 Cal. 352, *Emperor* v. *Aushi Bibi*.

S. 163, Notes 4—5.

It is not enough that the accused or the persons making the statement thought the party a person in authority but such person must be one in actual authority.[25]

5. **Inducement, etc.**—The inducement, threat or promise referred to in this section is of the nature and description as the inducement, etc., referred to in S. 24 of the Indian Evidence Act. Whether any threat or inducement was offered in any particular case is a question of fact and has to be decided with reference to the circumstances of each case.[1] If it *appears* to the Court that the statement was caused by any inducement on threat or promise, it must declare such statement irrelevant under S. 24 of the Evidence Act. As to cases bearing on the word "appears" in that section, *see* the undermentioned cases.[2] The onus of proving the existence of inducement, threat or promise is on the accused and he must prove his allegations[3] and in the absence of evidence illegal pressure will not be presumed.[4] So whenever a statement is retracted as having been made under unlawful inducement, the Court should have the Police-officers who had come into contact with the person, before him, for the purpose of searching by examining them as to the mode in which they had dealt with the accused and as to what led up to the making of confessions.[5] A Sessions Judge commits a grave error in law and procedure who refuses to enquire into the allegations of inducement, etc., and the circumstances under which a confession was made.[6] In order to make an act or omission amount to an inducement, threat or promise—

(1) It must be such as without it the person would not have made the statement.[7] It need not however be *express* but may be implied

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(25) (1917) 18 Cri. L. Jour. 58 (62): 10 Sind L. R. 140: 1917 Sind 65, *Laung* v. *Emperor.*

Note 5.

(1) (1929) 1929 Pat. 275 (277): 8 Pat. 289, *Kunja Subudhi* v. *Emperor.*

(2) (1901) 25 Bom. 168 (172), *Queen* v. *Basvanta.*
(1930) 1930 Nag. 259 (263), *Sheikh Shafi* v. *Emperor.*
(1925) 1925 Cal. 587 (591): 52 Cal. 67, *Emperor* v. *Panch Kari Dutt.*
(1901) 25 Bom. 543 (543), *Queen* v. *Narayan.*
(1900) 2 Bom. L. R. 761 (765), *Queen* v. *Basvanta.*
(1933) 1933 All. 31 (38), *Nazir* v. *Emperor.*
(1929) 1929 Notes 18 (a) (18), *Rahmat* v. *Emperor.*
(1932) 1932 Mad. 391 (404): 55 Mad. 903 (F. B.), *Syamo Maha Patro* v. *Emperor.*
(1926) 1926 Nag. 368 (369), *Dadi Lodhi* v. *Emperor.*
(1928) 1928 Lah. 676 (677), *Budhoo* v. *Emperor.*
(1925) 1925 Lah. 605 (609): 6 Lah. 415, *Pratap Singh* v. *Emperor.*
(1923) 1923 Pat. 13 (16), *Emperor* v. *Dewankahar.*
(1925) 1925 Cal. 587 (591): 52 Cal. 67, *Emperor* v. *Panchkari Dutt.*
(1921) 1921 Cal. 458 (459), *Ashutosh Dutt* v. *Emperor.*
(1901-02) 6 Cal. W. N. ccxxxvi (ccxxxvi).
(1933) 1933 Cal. 187 (188), *Baldeo Bin* v. *Emperor.*
(1914) 1914 P. C. 155 (160), *Ibrahim* v. *Emperor.*
(1909) 10 Cri. L. Jour. 65 (66), *Kesari Dayal Kanji.*
(1906) 4 Cri. L. Jour. 332 (333), *Emperor* v. *Bhagi Vedu.*
(1929) 1929 Cal. 726 (728), *Khiro Mandal* v. *Emperor.*
(1918) 1918 Cal. 72 (73), *Emperor* v. *Kabil Katoni.*

(3) (1901-02) 6 Cal. W. N. ccxxxvi (ccxxxvi).
(1874) 11 Bom. H. C. R. 137 (138), *Reg.* v. *Balvant* v. *Pandhakar.*
(1918) 1918 Cal. 72 (72), *Emperor* v. *Kabil Katoni.*

(4) (1901-02) 6 Cal. W. N. ccxxxvi.
(1890) 10 All. W. N. 173 (174), *Binda.*
(1926) 27 Cri. L. Jour. 983 (983).

(5) (1885) 5 All. W. N. 59 (59) (F. B.), *Madar.*
(1885) 5 All. W. N. 221 (224), *Ramanand.*
(1933) 1933 All. 31 (38), *Nasir* v. *Emperor.*
(1871) 8 Bom. H. C. R. 126 (137), *Keshinath Dinkar.*
(1901) 25 Bom. 543 (546, 547), *Narayan.*
(1886) Rat. Un. Re. Cr. Cas. 245, *Empress* v. *Rupya.*
(1894) Rat. Un. Re. Cr. Cas. 730 (731), *Empress* v. *Balappa.*
(1901-02) 6 Cal. W. N. ccxxxvi (ccxxxvi).
(1925) 1925 Lah. 605 (608): 6 Lah. 415, *Pratap Singh* v. *Emperor.*
(1901) 25 Bom. 168 (173, 174), *Queen* v. *Basvanta.*
(1913) 14 Cri. L. Jour. 417 (417), *Shwe Hmon* v. *Emperor.*
(1872-92) 1 Bur. 423 (424), *Padan Byu.*
(1866) 5 Suth. W. R. 6 (6), *Kudai Kahar.*

(6) (1871) 8 Bom. H. C. 126 (137), *Keshinath Dinkar.*
(1901-02) 6 Cal. W. N. ccxxxvi.

(7) (1887) 9 All. 528 (557), *Queen* v. *Gobardhan.*

from the circumstances of the case. So where a person in authority used the words "the truth has come out and the villagers are being worried about the affair; you had better say what you know" it was held there was a *veiled* inducement and threat.[8] **S. 163, Note 5.**

(2) It must be such as would make the person suppose that the advantage to be gained or evil to be avoided would be of a *temporal* nature.[9]

(3) It must be *sufficient in the opinion of the Court* to make the accused suppose that he would get the advantage. It is left to the Court entirely to form its own opinion as to whether the inducement, threat or promise held out in any particular case is sufficient to lead the person to suppose that he would gain an advantage of a temporal nature.[10] In doing so the mind of the person making the statement has to be judged rather than that of the person in authority. That being so, not merely actual words, but words accompanied by acts or conduct as well on the part of the person in authority which may be construed by the accused, situated as he then is, as amounting to an inducement, threat or promise, will have to be taken into account. A perfectly innocent expression coupled with acts or conduct on the part of the person in authority together with the surrounding circumstances may amount to inducement, threat or promise. In scrutinising a case of this kind the Court will have to perform a threefold function. It will have to determine the sufficiency of inducement, threat or promise, as affording certain grounds. It will have to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a supposition mentioned in the section. (Section 24 of the Evidence Act). Lastly it will have to judge as a Court if the confession appears to have been caused in consequence of inducement, threat or promise.[11]

The following have been held to be inducements within the meaning of S. 24 of the Evidence Act:—

(1) Offer of pardon[12] even though the offer of pardon turns out illegal as contravening the provisions of S. 337, *infra*.[13]

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(8) (1929) 1929 Pat. 275 (277): 8 Pat. 289, *Kunja Subudhi* v. *Emperor*.

(9) (1926) 1926 All. 246 (247), *Dip Singh* v. *Emperor*.

(1922) 1922 Lah. 263 (265), *Muhammadan Yar* v. *Crown*.

(1925) 1925 Cal. 587 (590): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.

(1901-02) 6 Cal. W. N. ccxxxv Notes (ccxxxv).

(10) (1932) 1932 Sind 64 (66): 26 Sind L. R. 191, *Emperor* v. *Attursingh*.

(1925) 1925 Lah. 605 (608): 6 Lah. 415, *Pratap Singh* v. *Emperor*.

(11) (1925) 1925 Cal. 587 (590, 591): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.

(12) (1904) 1 Cri. L. Jour. 211 (213), *Abdul Karim* v. *Emperor*.

(1900) 25 Mad. 61 (86, 87): 28 Ind. App. 257 (P.C.), *Subramaniya Iyer* v. *Empress*.

(1872-1892) Low. Bur. Rul. 396 (397), *Nga Po Kyaw* v. *Empress*.

(1879) 2 All. 260 (262), *Empress* v. *Asghar Ali*.

(1904) 1 All. L. J. 110 (112), *Abdul Karim* v. *Emperor*.

(1932) 1932 Sind 55 (56), *Nawat Kamal* v. *Emperor*.

(1899) 1899 Pun. Re. No. 1 (4), *Muhammad Shaffi* v. *Queen*.

(1869) 1869 Pun. Re. No. 9 (17), *Crown* v. *Radha Kishen*.

(1867) 8 Suth. W. R. 53 (54), *Radha Nath*.

(1925) 1925 All. 606 (607, 608), *Fateh Chand* v. *Emperor*.

(13) (1907) 5 Cri. L. Jour. 142 (145), *Deputy Legal Remembrancer* v. *Banu Singh*.

S. 163, Note 5.

(2) Promise of immunity from prosecution in another case which the person considers more serious.[14]

(3) Offer to make him an approver.[15]

(4) The following expressions, *viz.*:—

"If you would tell the truth you would be let off".[16]

"We would save you from the consequences of your crime".[17]

"It would be to your interest if you make a clean breast of it".[18]

"Tell me what you know about it; if you will not I can do nothing for you and I will send for the constable".[19]

"You will not be punished if you have not taken part in the offence".[20]

"You had better tell the truth because if the other side called witnesses the truth against you would come out".[21]

"If you speak the truth we would speak to the constable and arrange".[22]

"You will be dealt with leniently if you confess".[23]

"My own brother had committed a murder but had got off by making a clean breast of it".[24]

"You would get some benefit from the Government if you speak the truth".[25]

"If you confess we will compromise the matter".[26]

"If you confess to the Magistrate you will get off".[27]

"It will be better for you to confess".[28]

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(14) (1907) 5 Cri. L. Jour. 437 (437), *Kalloo* v. *Crown.*

(15) (1924) 1924 All. 72 (75): 45 All. 633, *Tara* v. *Emperor.*
(1923) 1923 All. 352 (353): 45 All. 300, *Khetal* v. *Emperor.*

(16) (1923) 1923 Cal. 458 (459): 50 Cal. 127, *Emperor* v. *Ganesh Chandra Godra.*
(1868) 9 Suth. W. R. 16 (17), *Bishoo Manjee.*
(1882) 1882 Pun. Re. 8 (11), *Mussamat Nurai* v. *Empress.*
(1867) 8 Suth. W. R. 13 (14), *Dhurum Dutt.*
(1929) 1929 Notes 27 (a) (27), *Mt. Um Rai* v. *Emperor.*
(1872-1892) 1 Bur. 396 (397), *Nga Po Kyaw.*
(1892-1896) Upp. Bur. R. 83 (84), *Nga San Bwin* v. *Empress.*
(1911) 12 Cri. L. Jour. 597 (600, 601): 14 P. R. 1911, *Kuteb Ali* v. *Emperor.*
(1873) 5 N.-W.P. 86 (88), *Queen* v. *Mussamat Luchoo.*

(17) Rat. 245 (247), *Rupya Valad Shiva.*
(1911) 12 Cri. L. Jour. 119 (120): 4 Sind L. R. 209, *Imperator* v. *Dabud.*

(18) (1898) 2 Cal. W. N. 125 (N) (125).
(1893-1900) 1893-1900 Low. Bur. R. 52 (54), *Queen* v. *Nga Shwe Tha.*
(1928) 1928 Lah. 858 (860), *Des Raj* v. *Emperor.*
(1932) 1932 Sind 64 (66): 26 Sind L. R. 191, *Emperor* v. *Attur Singh.*

(19) (1897-1901) U. B. R. 147 (148), *S. N. Mukerjee* v. *Empress.*

(20) (1914) 15 Cri. L. Jour. 681 (682): 1914 Low. Bur. 175, *Nga Kya Thin* v. *Emperor.*

(21) (1917) 18 Cri. L. Jour. 106 (107): 1917 Low. Bur. 87, *Zeta* v. *Emperor.*

(22) (1903) 26 Mad. 38 (39, 40), *Thandraya Mudaly* v. *Emperor.*

(23) (1916) 17 Cri. L. Jour. 402 (402): 1916 U. Bur. 1: U. B. R. (1916) 113, *Nga Kyaw Zan Hla* v. *Emperor.*
(1928) 1928 Lah. 476 (477): 9 Lah. 671, *Bulaqi* v. *Emperor.*
(1872-1892) 1872-1892 Low. Bur. R. 289 (289), *Empress* v. *Nga Paw Lon* ("Will be dealt with leniently").

(24) (1916) 17 Cri. L. Jour. 226 (227): 1916 Lah. 216: 26 P. R. 1916, *Karm Singh* v. *Crown.*

(25) (1911) 12 Cri. L. Jour. 554 (556), *Mutsaddi* v. *Emperor.*

(26) (1916) 17 Cri. L. Jour. 188 (189): 1916 Cal. 352, *Emperor* v. *Aushi Bibi.*

(27) (1901-02) 6 Cal. W. N. ccxxxvi (ccxxxvi).
(1864) 1 Suth. W. R. Cr. 24 (24), *Queen* v. *Ramdhun Singh.*

(28) (1903-04) 2 Low. Bur. Rul. 316 (317), *Nga Pye* v. *Emperor.*

S. 163, Note 5.

"If you tell me where my goods are I will be favourable to you "and" if you are guilty do confess. It will perhaps save your neck you will have to go to prison. Pray tell me if you did it".[29]

"Do not expect any advantage or *disadvantage* therefrom".[30]

"Confess the truth and nothing would happen".[31]

"You had better pay the money than go to jail and it would be better for you to tell the truth".[32]

"Tell me what happened and I would take steps to get you off".[33]

(4) "The offer by the complainant to drop proceedings".[34]

(5) The warning by a Magistrate "what you say would go against you so speak the truth".[35]

(6) The expression "unless you admit the guilt.....you would be dealt with severely and sent to jail".[36]

The expression "you had better tell the truth" has always been held to import a threat or promise and the expression. "I must know more about it" amounts to a threat.[37] A threat to put the women folk to trouble[38] or to detain the wife of the person illegally[39] or to implicate in a crime[40] or beating with a view to extort a confession[41] have all been held to render a confession inadmissible under S. 24 of the Evidence Act.

The following have been held not to be an inducement threat or promise rendering a statement inadmissible under S. 24 of the Evidence Act:—

(1) Moral exhortation to speak the truth.[42]

(2) Threat of excommunication for life.[43]

(3) Where the Magistrate said "if you want to make any statement of your own freewill you may do so." "If you admit any thing it will be recorded as evidence against you" and thereupon the accused said "I want to make a clean breast of everything for the reason that if I serve the Government in any way it may take pity on me" and confessed.[44]

(4) Where a person was told "or what you say will be used as evidence against you or for or against you".[45]

(5) Where a person was told "I know the whole thing now".[46]

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(29) (1901-02) 6 Cal. W. N. ccxxxvi Notes.
(30) (1906) 3 Cri. L. Jour. 324 (325), *Emperor* v. *Basora.*
(31) (1873) 5 N.-W.P. 86 (87, 88), *Mt. Luchoo.*
(32) (1872) 9 Bom. H. C. R. 358 (369, 370), *Reg.* v. *Nawroji Dadabhai.*
(33) (1879) 3 Bom. 12 (13, 14), *Emperor* v. *Rama Birapa.*
(1921) 1921 Bom. 70 (71): 45 Bom. 1086, *Dinanath* v. *Emperor.*
(34) (1921) 1921 Cal. 458 (459), *Ashotosh Dutt* v. *Emperor.*
(35) (1884) 10 Cal. 775 (776), *Queen* v. *Uzeer.*
(36) (1897) 19 All. 291 (292, 293), Re *Gudar* (Proceedings under S. 110, Cr. P. Code).
(37) (1901-02) 6 Cal. W. N. ccxxxvi Notes.
(38) (1920) 1920 Cal. 663 (665), *Emperor* v. *Anant Kumar Benerji.*
(39) (1910) 11 Cri. L. Jour. 41 (43): 1910 U. B. R. 3, *Nga San Ya* v. *Emperor.*
(40) (1921) 1921 Lah. 267 (269), *Sundar Singh* v. *Emperor.*
(41) (1907) 6 Cri. L. Jour. 266 (270), *Khair Din* v. *Emperor.*
(1916) 17 Cri. L. Jour. 351 (352): 1916 All. 360.
(42) (1907) 6 Cri. L. Jour. 154 (157), *Jasha Bewa.*
(1925) 1925 Pat. 772 (781): 4 Pat. 646, *Emperor* v. *Akhileshwar Prasad.*
(1894) 1894 Pun. Re. No. 9 Cr. p. 31, *Gulaba* v. *Empress.*
(43) (1882) 4 All. 46 (48), *Empress* v. *Mohan Lal.*
(44) (1928) 1928 Cal. 500 (503), *Samiuddin* v. *Emperor.*
(45) (1901-02) 6 Cal. W. N. ccxxxvi Notes.
(46) (1901) 3 Bom. L. R. 404 (406), *Rango Hanmant.*

S. 163, Notes 5—6.

(6) The words "Do not cry but speak the truth".[47]

(7) Where the Magistrate said "it is no use your trying to get out of it; you were seen with the pair of shoes".[48]

A confession otherwise voluntarily made does not become inadmissible because it was obtained by deceit.[49]

See also the following cases.[50]

6. Evidentiary value of statement made under inducement, etc.—No *confession* made to a Police-officer whether under an inducement or not can under S. 24 of the Evidence Act be proved *against any person accused of any offence* except to the extent specified in S. 27 of that Act.

Under S. 162, *ante*, no statement made by *any person* to a Police-officer in the course of an investigation under this chapter, can be used for any purpose (same as provided by the proviso to the section) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The question therefore as to the effect of inducements, etc., on the admissibility of the statements made in the course of investigation is really of very little importance and is only of academical interest.

S. 164. Power to record statements and confessions.

164. (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this chapter or at

Power to record statements and confessions.

164.* (1) *Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the 2nd class specially empowered in this behalf by the Local Govern-*

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*(CODE OF 1882—S. 164.)

Power to record statements and confessions.

164. Any Magistrate, not being a Police-officer, may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in S. 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that, it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

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(47) (1929) 1929 Mad. W. N. 791 (792), *Kuttiappa Chetty* v. *Emperor.*

(48) (1897-1901) 1 Upp. Bur. Vol. 147 (148), *Mukerji* v. *Empress.*

(49) Rat. Un. Re. Cr. Cas. 756 (759), *Empress* v. *Mattur Kuber.*
(1906) 4 Cri. L. Jour. 49 (53), *Emperor* v. *Muhamadbuksh.*
(1873) 20 Suth. W. R. 33 (35), *Queen* v. *Ram Churn Ghose.*

(50) (1901-02) 6 Cal. W. N. ccxxxv (ccxxxv) Notes.
(1873) 10 Ben. L. R. App. 1 (1), *Hicks.*
(1901-02) 6 Cal. W. N. ccxxxvi.
(1901-02) 6 Cal. W. N. ccxxxv Notes (ccxxxv).

any time afterwards before the commencement of the inquiry or trial.

ment may, if he is not a police officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial. S. 164.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in Section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) *A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him, and* no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) A. B.
Magistrate."

"*I have explained to* (*name*) *that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and* I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) A. B.
Magistrate."

S. 164. *Explanation.*—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

SYNOPSIS.

	Note No.
I LEGISLATIVE CHANGES	1
II SCOPE AND APPLICABILITY OF THE SECTION ..	2
III WHO CAN RECORD STATEMENT OR CONFESSION ..	3
(1) 'IF HE IS NOT A POLICE-OFFICER'	4
(2) MAGISTRATE ACTING UNDER THE SECTION NEED NOT HAVE JURISDICTION IN THE CASE—EXPLANATION ..	5
(3) CONFESSION TO MAGISTRATE OF FOREIGN STATES—ADMISSIBILITY IN EVIDENCE	6
IV "STATEMENT OR CONFESSION"	7
(1) STATEMENT OF APPROVER ON TENDER OF PARDON ..	8
V "MAY RECORD"	9
VI "IN THE COURSE OF AN INVESTIGATION.....INQUIRY OR TRIAL"	10
VII MODE OF RECORDING AND PROCEDURE ..	11
VIII "SHALL THEN BE FORWARDED"	12
IX WARNING TO THE ACCUSED	13
X CONFESSION MUST BE VOLUNTARY	14
XI "UPON QUESTIONING THE PERSON"	15
XII MEMORANDUM AT THE FOOT OF THE CONFESSION.	16

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) A. B.,
Magistrate."

(CODE OF 1872—S. 122.)

Powers of Magistrates to record statements and confessions.

122. Any Magistrate, may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police-officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily and he shall make a memorandum at the foot of any such confession to the following effect:—

"I believe that this confession was voluntarily made."

(*Signed.*) A. B.,
Magistrate.

(CODE OF 1861—Nil.)

		Note No.	S. 164,
XIII	CONFESSIONS IMMEDIATELY, AFTER POLICE CUSTODY	17	Note 1
XIV	RETRACTED CONFESSIONS	18	
XV	CONFESSIONS OF CO-ACCUSED	19	

Other Topics.

Admissibility in evidence of oral confession. See Note 9, Pts. 3-6.

Applicability of S. 80, Evidence Act to confessions. See Note 6, Pts. 4-5 and Note 7, Pts. 13-15.

Applicability of S. 91, Evidence Act to confessions. See S. 533, Note 7.

Applicability of section to Presidency Towns of Calcutta and Bombay. See Note 3, Pts. 3-5.

Confessions.—

Admission of confession in evidence —conditions precedent. See Note 11, Pts. 5-13.

Distinguished from statements. See Note 7, Pts. 7-9.

Recorded by a Presidency Magistrate. See Note 3, Pts. 3-5.

Recorded by a Magistrate of a Native State. See Note 6, Pt. 2.

Recorded by a third class Magistrate. See Note 7, Pts. 5-6.

When and at what stage may be recorded. See Note 10, Pts. 1, 2, 5, 6 and 8.

False statement—Prosecution for. See Note 7, Pts. 3-4.

Language of record of confession. See S. 364.

Liability of accused under S. 180, Penal Code for refusing to sign statement or confession. See Note 11, Pt. 14 and S. 364.

Magistrate may be examined. See S. 533, Note 5.

Provisions as to the mode of recording confession. See Note 11.

Refusal to make a memorandum. See Note 11, Pt. 4.

Rejection of confession under S. 24, Evidence Act. See S. 533, Note 6.

Relevancy of admission of accused. See S. 533, Note 2.

Statement recorded by Magistrate of Foreign State. See Note 10, Pt. 4.

1. Legislative Changes.—

There was no provision corresponding to this section in the Code of 1861. It was introduced for the first time in the Code of 1872.

1. *Changes made in the Code of* 1882—

(1) After the words "Any Magistrate" the words "Not being a Police-officer" were added.

(2) The words "In the course of an investigation under this chapter or at any time afterwards before the commencement of the inquiry or trial" in para. 2 were added.

(3) The words "it was taken in my presence.....of the statement made by him" were added in the form of the Memorandum.

2. *Changes made in the Code of* 1898—

(1) In sub-S. (1) the words "Every Magistrate" were substituted for the words "Any Magistrate".

(2) The *explanation* was newly added.

S. 164, Notes 1—3.

3. *Changes made in* 1923—

(1) In sub-S. (1) for the words "Every Magistrate not being a Police-officer may" the words "any Presidency Magistrate..... .....is not a Police-officer" were substituted.

(2) In sub-S. (3) before the words "No Magistrate" the words "A Magistrate shall.....against him and" were added.

(3) In the Memorandum in sub-S. (3) before the words "I believe" the words "I have explained.....evidence against him and" were added.

2. Scope and applicability of the section.—Sections 24 to 30 of the Evidence Act deal with the *relevancy* and admissibility of confessions. This section provides the *manner* in which confessions and statements are to be recorded[1] and does not prevent the admissibility of confessions which are otherwise admissible under the Evidence Act.[2]

In recording a confession under this section, a Magistrate only exercises a power with which he is invested and as the jurisdiction and powers of a Magistrate are, under S. 12, *supra*, limited to the District in which he is appointed, he can exercise this power in such District only.[3]

3. Who can record a statement or confession.—Before the amendment of 1923 the section enabled *every* Magistrate (including a Third Class Magistrate) to record statements or confessions thereunder.[1] Under the present section as amended, the only Magistrates that can act under it are:—

(1) any Presidency Magistrate,

(2) any Magistrate of the first class, and

(3) any Magistrate of the second class specially empowered in this behalf by the Local Government.

A Third Class Magistrate cannot now act under this section.[2]

Can a Presidency Magistrate record a statement or confession made in the course of an investigation in the town of Calcutta or Bombay by the Police of Calcutta or Bombay? Before the amendment of 1923 it was held in the undermentioned cases[3] that inasmuch as S. 1, sub-S. (2) provided that nothing

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Section 164—Note 2.

(1) (1934) 1934 All. 81 (83): 56 All. 302 (S. B.), *Mohammad Ali* v. *Emperor*.
(1933) 1933 Sind 166 (168), *Salu Mangan* v. *Emperor*.
(1932) 1932 Mad. 500 (501): 55 Mad. 717, *Arunachala Reddy*, In re.
(1932) 1932 Mad. 431 (432): 55 Mad. 711, *Vellamoonji Goundan*, In re.

(2) (1932) 1932 Mad. 500 (501): 55 Mad. 717, *Arunachela Reddy*, In re.
[See also (1882) Weir 3rd Edn. 799 (799). Re *Arumugam* (Confession made to a village magistrate in Madras).]

(3) (1921) 1921 All. 61 (62), *Nahar Singh* v. *Emperor*.

Note 3.

(1) (1918) 1918 Pat. 179 (183), ***Ghinna Uraon*** v. *Emperor*.
(1870) 13 Suth. W. R. Cr. 69 (70), *Queen* v. *Gopeenath Kollu*.
(1925) 1925 Cal. 161 (162), *Harendranath* v. *Emperor* (The statement in this case was taken before the date of the amendment).

(2) (1930) 1930 Lah. 60 (61), *Chadgi* v. *Emperor*.

(3) (1888) 15 Cal. 595 (606), *Empress* v. *Nilmadhub Mitter*.
(1897) 21 Bom. 495 (498, 499), *Empress* v. *Visram Babaji*.
[See also (1926) 1926 Bom. 151 (152): 50 Bom. 111, *Emperor* v. *Ramanath Mahabir* (A case of coroner in Bombay town taking down a confession—This section was held not to apply to such a confession).]

S. 164, Notes 3—5.

in the Code applied to the Police in the towns of Calcutta and Bombay, S. 164, did not apply to confessions made in the course of an investigation in the towns of Calcutta and Bombay and that the Presidency Magistrate could not therefore act under this section. In *Emperor* v. *Panchkhari Dutt*[4] a case decided after the amendment, Mukerji, J., held that the alteration of the section did not enable a Presidency Magistrate to act under this section where the investigation was made in Calcutta by the Police of Calcutta, the reason being that S. 164 is still subject to S. 1 which remains the same as before. The High Court of Patna, on the other hand, has taken a contrary view.[5]

4. 'If he is not a Police-officer'.—It is only a Magistrate that is not a Police-officer that can record a statement or confession under this section. Under S. 25 of the Evidence Act no confession made to a Police-officer can be proved against a person accused of any offence.[1-a] The mere fact that the Police-officer is also a Magistrate will not render the confession admissible in evidence. Thus a confession made to a Police *patel* in Bombay is inadmissible.[1] Similarly a confession made to a Deputy Superintendent of Police who is also a Magistrate is inadmissible.[2]

5. Magistrate acting under the section need not have jurisdiction in the case—Explanation.—Before the explanation was added to the section in 1898, there was a difference of opinion as to whether a Magistrate having no jurisdiction in the case could act under this section.[1] The addition of the present explanation now makes it clear that a Magistrate acting under this section need not necessarily be one having jurisdiction in the case.[2]

A Magistrate is not incompetent to act under this section merely because he—

(*a*) directs the police investigation[3], or

(*b*) is going to hold the preliminary inquiry afterwards[4] or

(*c*) has begun an enquiry into the guilt of persons alleged to have been confederates of the confessing prisoner.[5]

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(4) (1925) 1925 Cal. 587 (589, 590): 52 Cal. 67, *Emperor* v. *Panchkari Dutt.*

(5) (1926) 1926 Pat. 279 (282): 5 Pat. 171, *Nilmadhab Chaudhury* v. *Emperor.*

Note 4.

(1-a) [See also (1934) 1934 Pat. 256 (257), *Srikant Das* v. *Emperor* (A Sub-Divisional Magistrate is not a Police-officer).]

(1) (1893) 17 Bom. 485 (486), *Queen* v. *Bhina.*

(2) 7 Bur. 100, *Nwe Ka.*
(1930) 1930 Rang. 227 (228): 8 Rang. 52, *Jas Bahadur Thapa* v. *Emperor.*
(1876) 1 Cal. 207 (214, 215), *Queen* v. *Hurribole Chunder Ghose.*

Note 5.

(1) (1870) 7 Bom. H. C. 56 (57), *Reg.* v. *Vahala Jetha* (Yes).
(1873) 10 Bom. H. C. 166 (174), *Reg.* v. *Bai Ratan* (Yes).
(1897) 10 C. P. L. R. Cri. 16 (19), *Emperor* v. *Banko Bihari* (Yes).
(1886) Rat. Un. Re. Cr. 254 (261), *Empress* v. *Revubai* (The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purposes of getting a confession is not generally desirable).
(1889) Rat. 468 (469, 470), *Empress* v. *Nana Raju* (No).

(2) (1918) 1918 Pat. 179 (183), *Ghinna* v. *Emperor.*
[See however (1902) 29 Cal. 483 (487), *Emperor* v. *Nur Sheik.*]

(3) (1911) 12 Cri. L. Jour. 489 (491, 492): 5 S. L. R. 31, *Imperator* v. *Misri Welad Sanwal.*

(4) (1910) 11 Cri. L. Jour. 453 (463, 470): 37 Cal. 467, *Barindra Kumar* v. *Emperor* (10 Bom. H. C. R. 166, 5 Cal. 954, 23 W. R. 16 declared obsolete).
(1899) 3 Cal. W. N. 387 (391), *Empress* v. *Lal Sheikh.*
(1877) Rat. Un. Re. Cr. Cas. 121 (121), *Thana Magistrates Letter No. 767.*

(5) (1932) 1932 Lah. 103 (108), *Mohinder Singh* v. *Emperor.*

S. 164, Notes 6—7.

6. **Confessions to Magistrates of foreign states—Admissibility in evidence.**—The words "police-officer" and "Magistrate" in S. 26 of the Evidence Act include Police-officers and Magistrates of foreign states also.[1] Consequently the mere fact that a confession was made before a Magistrate of a foreign state does not render it inadmissible in evidence.[2] Though such a confession will not be entitled to the same weight as a confession recorded by a British Magistrate in strict compliance with the terms of S. 164 of the Code.[2-a] All that has to be seen in such cases is whether there is anything in the substantive or natural law to vitiate it.[2]

There is a difference of opinion as to whether such confession or statement can be *presumed* to be genuine under S. 80 of the Evidence Act. In *Queen Empress v. Sunder Singh*, I.L.R., 12 All. 595, it was held that it could be so presumed inasmuch as the word "Magistrate" in S. 80 included Magistrates of foreign states also. In the undermentioned case,[4] the High Court of Bombay held, however, that the word "Magistrate" in S. 80 did not include Magistrates of foreign states, that no presumption under that section can therefore be drawn, and that it is necessary to examine the Magistrate who took down the confession as a witness in the case before the document could be admitted in evidence. The same view has been taken by the High Court of Madras also.[5]

7. **Statement or confession.**—The section provides for the recording of confessions by accused persons and statements whether by an accused person or not which are not confessions.[1] The distinction is made for the purpose of prescribing different modes of record. A statement (which is not a confession) is to be recorded in the manner prescribed for recording *evidence*, while a confession should be recorded in the manner provided by sub-S. (2) of S. 364 of this Code.[2]

Note 6.

(1) (1898) 22 Bom. 235 (237, 238), *Empress v. Nagia Kala.*
(1933) 1933 All. 286 (287), *Emperor v. Hulasi.*
(1896) Rat. Un. Re. Cr. Cas. 855 (856), *Empress v. Lekshmya Bin Bhima.*
(1925) 1925 Bom. 529 (530): 49 Bom. 642, *Emperor v. Anandrao Phanse Gangaram.*
(1921) 1921 Nag. 39 (40): 17 Nag. L. R. 113, *Govinda v. Emperor.*
[See however (1934) 1934 Sind 103 (105), *Mahomed Bux v. Emperor* (Magistrate of a Native State is not a Magistrate for the purpose of this section).]

(2) (1907) 6 Cri. L. Jour. 377 (377): 1907 Pun. Re. No. 8, *Bhola v. Emperor.*
(1921) 1921 Nag. 39 (40): 17 Nag. L. R. 113, *Govinda v. Emperor.*
(1934) 1934 Lah. 873 (874): 15 Lah. 491, *Kanshi Ram v. Emperor.*
(1921) 1921 Nag. 39 (40): 17 Nag. L. R. 113, *Govinda v. Emperor.*
[See (1934) 1934 Sind 103 (105), *Mahomad Bux v. Emperor* (The confession recorded by a Magistrate of a Native State is admissible as extra judicial confession, though it does not come under this section).]
[See also (1890) 12 All. 595 (597), *Queen v. Sundar Singh.*]
See also the cases cited in foot note (1).

(2-a) (1909) 9 Cri. L. Jour. 297 (300): 1909 Pun. Re. No. 2, *Badan Singh v. Emperor.*
(3) (1932) 1932 Lah. 367 (368), *Bhan Singh v. Emperor.*
(4) (1914) 1914 Bom. 41 (41), *Emperor v. Dhanka Amra.*
(5) (1881) 2 Weir 125 (125), *China Venkata.*

Note 7.

(1) (1893) 1893 Pun. Re. No. 2, p. 23 (27), *Lalu.*
(1925) 1925 Cal. 926 (927), *Abdul Rahim v. Emperor.*
(1922) 1922 Cal. 342 (345): 49 Cal. 167, *Legal Remembrancer v. Lalet Mohan Singh Roy* (Dissenting from 2 Cal. W. N. 702).
(1919) 1919 Pat. 584 (590), *Madan Guru v. Emperor.*
(1878) 2 Bom. 643 (644), *Empress v. Malka.*
(1912) 13 Cri. L. Jour. 33 (34): 5 S. L. R. 174, *Emperor v. Andal Walad Khamiso.*
(1916) 17 Cri. L. Jour. 195 (196): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramanujamma.*
[See also (1932) 1932 Mad. 748 (752): 56 Mad. 63, *Public Prosecutor v. Mitta Venkatamma.*]

(2) (1893) 1893 Pun. Re. No. 2, p. 23 (27), *Lalu v. Empress.*
(1878) 2 Bom. 643 (644), *Empress v. Malka.*

S. 164, Note 7.

S. 5 of the Oaths Act provides that no oath or affirmation shall be administered to an accused person and consequently a confession by an accused person cannot be made the basis of a prosecution for perjury under S. 193 of the Penal Code.[3] But a *statement* which is to be recorded in the manner prescribed for recording *evidence*, may be made the basis of a charge for perjury.[4]

Where a Magistrate not empowered to act under this section as, for instance, a third class Magistrate records a statement under this section, the statement cannot be said to have been taken in the course of a "judicial proceeding" and cannot form the basis of a charge of "giving false evidence in any stage of judicial proceeding" within the 1st part of S. 193 of the Penal Code.[5] Such statement may, however, form the basis of a charge of "giving false evidence in *any other case*" within the 2nd part of S. 193 of the Penal Code.[6]

A confession, in criminal law, means an admission of certain facts which constitute an offence, made by a person who is charged with the offence which is the subject matter of the statement.[6-a] Whether a statement is to be called a confession or not, depends not merely on the nature of the statement itself but on the use that was intended to be made of it. Whether a statement is taken as a statement or as a confession the record can be used only for the purpose for which it was taken.[7] A 'statement' which is not a confession as for example one which inculpates a co-accused but exculpates the person making it, cannot be used as a confession, whether against the person making it or against others

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(1916) 17 Cri. L. Jour. 195 (196): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramaniyamma.*

(3) (1916) 17 Cri. L. Jour. 195 (196, 197): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramaniyamma.*

(1933) 1933 Mad. W. N. 251 (252), *Public Prosecutor* v. *Boya Bisatiga.*

(4) (1933) 1933 Lah. 321 (323): 14 Lah. 507, *Emperor* v. *Prama Nand.*

(1906) 4 Cri. L. Jour. 183 (191) (Bom.), *Emperor* v. *Vishwanath Krishna Sathe.*

(1893) 16 Mad. 421 (422, 423), *Empress* v. *Alagu Kone.*

(1906) 29 Mad. 89 (90), *Subba Teven* v. *Emperor.*

(1916) 17 Cri. L. Jour. 195 (196): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramaniyamma.*

(1933) 1933 Mad. 125 (125, 126), *Maromma* v. *Emperor.*

(1933) 1933 Mad. 767 (767, 768), *A. T. Krishnamachari* v. *Emperor.*

(1925) 1925 Oudh 660 (660, 661), *Patraji* v. *Emperor.*

(1912) 13 Cri. L. Jour. 33 (35): 5 S. L. R. 174, *Emperor* v. *Andal.*

(1878) 2 Bom. 643 (644), *Empress* v. *Malka.*

(1899) 1899 All. W. N. 207 (207), *Empress* v. *Khem.*

(1893) 1893 Pun. Re. Cr. No. 2, p. 23 (28), *Lalu* v. *Empress* (Not approved in 1933 Lah. 321).

(1934) 1934 Lah. 981 (982), *Brahm Datt* v. *Emperor.*

[See also (1933) 1933 Lah. 868 (869), *Emperor* v. *Hussaina.*]

(5) (1887) 11 Bom. 702 (704), *Empress* v. *Ningappa.*

(1912) 13 Cri. L. Jour. 709 (710) (Bom.), *Emperor* v. *Shettepa Satapa Mudenavar.*

(1899) 1899 All. W. N. 39 (39, 40), *Empress* v. *Puran.*

(6) (1921) 1921 Bom. 3 (7, 14): 45 Bom. 834 (F.B.), *Purushottam Ishvar Amin* v. *Emperor.*

(1932) 1932 Lah. 254 (254), *Sajawal* v. *Emperor.*

(6-a) (1912) 13 Cri. L. Jour. 352 (393): 35 Mad. 397, *Muthu Kumaraswami* v. *Emperor.*

(1884) 6 All. 509 (539) (F.B.), *Empress* v. *Babu Lal.*

[But no formal accusation is necessary, See (1865) 4 Suth. W. R. 10 (11), *Queen* v. *Ram Ohuran Ohamar.*]

[See also (1934) 1934 Pat. 651 (652), *Mt. Ram Sakhia* v. *Emperor* (Statement containing denial by accused of dishonest intention is not confession).]

(7) (1912) 13 Cri. L. Jour. 352 (393): 35 Mad. 397, *Muthu Kumaraswami* v. *Emperor.*

(1916) 17 Cri. L. Jour. 195 (196, 197): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramaniyamma.*

S. 164, Note 7.

with whom he may be jointly tried[8] but may be admissible to prove a relevant fact.[9]

A statement recorded under this section cannot be admitted as evidence against an accused person but it can only be used for contradicting the maker of the statement.[10] Nor can it be used for the purpose of contradicting the statements by other witnesses made at the trial.[11]

Though a Magistrate *can* administer oath to the deponent of a statement, a statement is not inadmissible in evidence merely because no oath or affirmation was administered.[12] *See* S. 13 of the Oaths Act.

Statements recorded under this section should, under S. 80 of the Evidence Act, be presumed to be genuine and need not be formally proved.[13] They are public documents, being the acts of a judicial officer done under the provisions of the Code and the public servant, in whose custody those documents are, is bound to issue copies thereof[14] and allow inspection of the same by the

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(8) (1916) 17 Cri. L. Jour. 195 (196, 197): 1917 Mad. 316: 39 Mad. 977, In re *Maddela Ramaniyamma.*
(1905) 2 Cri. L. Jour. 22 (23, 24) (All.), *Bishan Datt* v. *Emperor.*
(1905) 2 Cri. L. Jour. 59 (63) (All.), *Sri Ramand Choti* v. *Emperor.*
(1930) 1930 All. 746 (747, 748), *Abdul Jalil Khan* v. *Emperor.*
(1909) 10 Cri. L. Jour. 369 (370, 371) (Bom.), *Emperor* v. *Santya Bandu.*
(1929) 1929 Bom. 296 (301): 53 Bom. 479, *Emperor* v. *O. E. Ring.*
(1867) 7 Suth. W. R. 8 (10), *Queen* v. *Kisto Mundul.*
(1881) 6 Cal. 279 (282), *Noor Bux Kazi* v. *Empress.*
(1918) 1918 Cal. 88 (90): 45 Cal. 557, *Amiruddin* v. *Emperor.*
(1919) 1919 Cal. 696 (699): 46 Cal. 411, *Ah Foong Chinaman* v. *Emperor.*
(1920) 1920 Cal. 78 (81), *Emperor* v. *Pramathanath Baghi.*
(1928) 1928 Cal. 416 (417), *Bhadreswars Sardar* v. *Emperor.*
(1902) 1902 Pun. Re. No. 6, p. 17 (18), *Nazru* v. *Emperor.*
(1909) 10 Cri. L. Jour. 584 (586) (Lah.), *Bhag Singh* v. *Emperor.*
(1910) 11 Cri. L. Jour. 604 (608, 609): 1910 Pun. Re. No. 24, *Gul Hussain* v. *Emperor.*
(1925) 1925 Lah. 334 (335), *Batan Singh* v. *Emperor.*
(1925) 1925 Lah. 532 (533), *Maulu* v. *Emperor.*
(1931) 1931 Lah. 196 (199), *Mt. Aimna* v. *Emperor.*
(1910) 11 Cri. L. Jour. 701 (702) (Mad.), *Sivasami Pillai* v. *Emperor.*
(1911) 12 Cri. L. Jour. 562 (562) (Mad.), *M. Venkata Reddy* v. *I. Nagi Reddi.*
(1925) 26 Cri. L. Jour. 1380 (1383) (Nag.), *Raghunath* v. *Emperor.*
(1929) 1929 Nag. 350 (353), *Shamlal* v. *Emperor.*
(1930) 1930 Oudh 502 (503), *Emperor* v. *Chattarpal Singh.*
(1929) 1929 Pat. 275 (279): 8 Pat. 289, *Kunja Subudhi* v. *Emperor.*
(1915) 16 Cri. L. Jour. 25 (26, 27): 1915 Low. Bur. 115, *Nga Po Thein* v. *Emperor.*
(1925) 1925 Sind 116 (119), *Topandas* v. *Emperor.*
(1929) 1929 Sind 250 (252), *Wahid Bux Bhutti* v. *Emperor.*
(1931) 1931 Sind 154 (155, 156), *Dito* v. *Emperor.*
(1904) 1 Cri. L. Jour. 590 (590), *Emperor* v. *Jiwan Bhagwan* (Kathiawar).

(9) (1925) 1925 Pat. 536 (539): 4 Pat. 327, *Golam Mohammad Khan* v. *Emperor.*

(10) (1914) 1914 Oudh 388 (389): 17 Oudh Cas. 363, *Puttu* v. *Emperor.*
(1927) 1927 All. 705 (706, 707), *Bishen Datt* v. *Emperor.*
(1930) 1930 Oudh 406 (407), *Manni* v. *Emperor.*
(1930) 1930 Sind 308 (309), *Mahomad Khan* v. *Emperor.*
(1927) 1927 Mad. 1112 (1112), *Karuppana Pillai*, In re.
(1919) 1919 All. 13 (13), *Noor* v. *Emperor.*
(1908) 5 All. L. Jour. N. 53 (53), *Durganand Lal* v. *Emperor.*
(1905) 2 Cri. L. Jour. 59 (63) (All.), *Sri Ram and Choti* v. *Emperor.*
(1935) 1935 Pat. 19 (20), *Emperor* v. *Sanika Munda.*
(1935) 1935 Bom. 26 (27): 59 Bom. 120, *Harnam Kisha* v. *Emperor* (Statement made under this section is not substantive evidence).
[See also (1934) 1934 Cal. 616 (617): 61 Cal. 967, *Keratali* v. *Emperor* (Cannot be used as substantive evidence, but can be used for the purpose of impeaching credit under S. 155, Evidence Act).
(1895) Rat. Un. Re. Cr. Cas. 762 (762), *Empress* v. *Ramdin.*
(1897) Rat. 894 (894), *Empress* v. *Subraya.*]

(11) (1926) 1926 Lah. 122. (124), *Hari Ram* v. *Emperor.*

(12) (1925) 1925 Sind 289 (291): 19 S. L. R. 71, *Bahadur Walad Rano Khas Kheli* v. *Emperor.*

(13) (1909) 10 Cri. L. Jour. 24 (25), *Emperor* v. *Nanji Jeth* (Kathiawar).
(1917) 1917 Pat. 247 (248), *Guja Majhi* v. *Emperor* (Confession).
[See also (1931) 1931 Lah. 59 (60, 61), *Harichand* v. *Emperor.*]

(14) (1932) 1932 All. 327 (329), *Bashiruddin* v. *Emperor.*
(1929) 1929 Lah. 429 (430), *Ghulam Nabi* v. *Emperor.*
(1931) 1931 Lah. 59 (60, 61), *Harichand* v. *Emperor.*

accused person.[15]

S. 164, Notes 7—10.

8. **Statement of approver on tender of pardon.**—Before the amendment of S. 337 of the Code in 1923 it was held that a pardon could be tendered to an approver only *during an inquiry* and that consequently no confession by him could be recorded under the provisions of this section.[1] S. 337 as now amended enables the tender of pardon to be made at any stage of the *investigation* or inquiry and therefore where a pardon is tendered during investigation and the approver makes a statement there is no legal bar to its being recorded under this section.[2] But unless so recorded under this section, a statement of the approver on a tender of pardon under S. 337 is not governed by this section.[3]

9. **"May record".**—The section is merely an enabling one and it is not obligatory on the Magistrate to record a confession made to him.[1] In other words, the section permits Magistrates to record confessions without compelling them to do so.[2] An oral confession to a Magistrate is not in any way affected by the provisions of this section and is admissible in evidence under S. 26 of the Evidence Act.[3] It can be proved by the oral evidence of the Magistrate to whom it is made.[4] The High Court of Calcutta has however held that such oral statement or confession is inadmissible and cannot be proved by the evidence of the Magistrate.[5] It is submitted that the Calcutta view is not correct. As observed by Addison, J., in *Abdulla* v. *Emperor*,[6] "It would be anomalous . . . to hold that a confession made to an ordinary individual could be orally proved while a confession made either to a Magistrate not empowered to record confessions under S. 164 of the Criminal Procedure Code or to a Magistrate empowered to record confessions under S. 164 could not be so proved."

10. **"In the course of an investigation . . . inquiry or trial".**—Under the Code of 1872 it was held that a confession if recorded by a Magistrate having jurisdiction in the case should be treated as an examination under

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[But see (1907) 30 Mad. 466 (467, 468). In re *Muthia Swamiyar* (A case of a copy application by an accused person under remand and as such distinguished in 1929 Lah. 429).]

(15) (1932) 1932 All. 327 (329), *Bashiruddin* v. *Emperor*.

(1931) 1931 Lah. 59 (60, 61), *Harichand* v. *Emperor*.

Note 8.

(1) (1922) 1922 Bom. 138 (144): 46 Bom. 61, *Emperor* v. *Motilal Hiralal*.

(2) (1933) 1933 Lah. 868 (869), *Emperor* v. *Hussaina*.

(1933) 1933 Lah. 321 (323): 14 Lah. 507, *Emperor* v. *Parma Nand*.

[But see (1925) 1925 Rang. 286 (286): 3 Rang. 224, *Emperor* v. *Nga Bo Gyi*.]

(3) (1928) 1928 Lah. 320 (322): 9 Lah. 608, *Ramnath* v. *Emperor*.

Note 9.

(1) (1930) 1930 Lah. 534 (536, 539), *Jog Raj* v. *Emperor*.

(1933) 1933 Lah. 716 (717): 14 Lah. 290 (F.B.), *Abdulla* v. *Emperor*.

(1934) 1934 All. 351 (353): 56 All. 730, *Sidheswar Nath* v. *Emperor*.

(2) (1922) 1922 Mad. 40 (42): 45 Mad. 230, *Tangedupallee Pedda Obigadu* v. *Pullassipedda*.

(8) (1933) 1933 Oudh 432 (435, 436), *Itwari* v. *Emperor*.

(1935) 16 Lah. 454 (457), *Karam Singh* v. *Emperor* (But it will not have the weight which a confession recorded under this section has—A retracted oral confession will have much less value).

(1918) 1918 Lah. 92 (93): 1918 Pun. Re. No. 11, *Feroz* v. *Emperor*.

(4) (1934) 1934 All. 351 (353, 354, 355, 356): 56 All. 730, *Sidheshwarnath* v. *Emperor*.

(1920) 1920 Bom. 322 (329, 330), *Emperor* v. *Maruti* (*Per* Hayward, J.—Shah, J. Contra at pp. 323 to 326).

(1933) 1933 Lah. 716 (717, 718): 14 Lah. 290 (F.B.), *Abdulla* v. *Emperor* (Oral confession—Magistrate making memorandum).

(1918) 1918 Lah. 92 (93): 1918 Pun. Re. No. 11, *Feroz* v. *Emperor*.

(1922) 1922 Mad. 40 (42): 45 Mad. 230, *Tangedupallee Pedda Obigadu* v. *Pullassipedda*.

(1881) 1881 Pun. Re. 21, p. 36 (39), *Shere Singh* v. *Empress*.

(1887) 1887 Pun. Re. No. 52, p. 139 (141), *Buta* v. *Empress*.

(5) (1922) 1922 Cal. 342 (345): 49 Cal. 167, *Legal Remembrancer* v. *Lalit Mohan Singh*.

(1898) 2 Cal. W. N. 702 (708, 714), *Empress* v. *Bhirab Chunder*.

(1890) 17 Cal. 862 (867, 870).

(6) (1933) 1933 Lah. 716 (718): 14 Lah. 290 (F.B.), *Abdulla* v. *Emperor*.

S. 164, Note 10.

S. 193 of that Code (now S. 342) notwithstanding that police investigation had not concluded, and that in other cases it should be treated as a confession under this section.[1] The words "in the course of . . . enquiry or trial" were added in 1882 thus negativing the above view.

A confession, in order to come within this section must be made either—

(1) In the course of an investigation under Chap. XIV of the Code, or

(2) at any time *afterwards* and *before the commencement* of the inquiry or trial.[2]

Where a statement is made at a time when there is no investigation under *Chap. XIV* of the Code, it is not made under this section.[2-a] Thus a statement made in the course of a *departmental* investigation held for the purpose of granting sanction under S. 197, is not one made in the course of an investigation under Chap. XIV of the Code and is therefore not one under this section.[3] An investigation held by the Police of a foreign state is not one under Chap. XIV of the Code and a statement taken by a Magistrate of a foreign state in the course of such investigation is not under this section.[4] Where an accused person was arrested at Calcutta and produced by the Calcutta Police before the Calcutta Magistrate in pursuance of a request made by the Police of Burdwan—who were holding an investigation under Chap. XIV of the Code, it was held that the arrest and production of the accused must be considered as something done in the course of the investigation in Burdwan and that therefore S. 164 would apply.[4-a]

A statement of confession recorded *after* the commencement of the inquiry or trial is not within this section.[5] But the condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has *ceased* and not when the confession is made in the course of the investigation.[6] Thus where a charge is laid against two persons one of whom is absconding and the inquiry or trial commences as regards the accused apprehended, while investigation continues against the absconding accused, and in the course of such investigation the absconding accused is apprehended, and a confession, by him is recorded, such confession is properly one within this section.[7]

A statement made at an inquiry which is held *before* any investigation is held is not within this section. Thus a statement recorded in an inquiry under

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Note 10.

(1) (1880) 5 Cal. 954 (957), *Empress* v. *Anuntram Singh*.
(1880) 5 Cal. L. R. 238 (240, 241), In re *Behari Hadji*.
(1875) 23 Suth. W. R. 16 (16), *Queen* v. *Jettoo*.
(1880) 6 Cal. L. R. 289 (293), *Krishna Monee* v. *Empress*.

(2) (1910) 11 Cri. L. Jour. 453 (462, 463, 470): 37 Cal. 467, *Birandji* v. *Emperor* (5 Cal. 954, 5 Cal. L. Jour. 238 distinguished).

(2-a) (1935) 1935 Oudh 416 (419), *Sheo Persad* v. *Emperor*.
(1935) 36 Cri. L. Jour. 1007 (1011) (Oudh), *Hari Krishna* v. *Emperor*.

(3) (1927) 1927 Bom. 501 (504), *Emperor* v. *Jehangir Ardeshir Cama*.

(4) (1925) 1925 Bom. 529 (530): 49 Bom. 642, *Emperor* v. *Anand Rao*.

(4-a) (1926) 1926 Cal. 742 (743), *Emperor* v. *Garib Hari*.

(5) (1922) 1922 Lah. 189 (191), *Bhai Khan* v. *Emperor*.
(1930) 1930 Lah. 454 (456), *Pahlwan* v. *Emperor*.
[See also (1928) 1928 Lah. 724 (725, 726), *Sullah* v. *Emperor*.
(1883) 1883 All. W. N. 238 (238), *Empress* v. *Baljit*.]

(6) (1910) 11 Cri. L. Jour. 453 (462): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor*.
(1932) 1932 Lah. 103 (108), *Mohinder Singh* v. *Emperor*.

(7) (1932) 1932 Lah. 103 (108), *Mohinder Singh* v. *Emperor*.
[See also (1928) 1928 Cal. 500 (501, 502), *Sami Uddin* v. *Emperor*.]

S. 202 of the Code is not within this section.[8]

This section has no application where there is no record of any *statement* at all. Where the accused points out certain places to a Magistrate who makes *notes* in respect thereof, the accused cannot be said to have made any statement to the Magistrate under this section.[9]

S. 164, Notes 10—11.

11. Mode of recording and procedure.—Sub-S. (2) provides that statements should be recorded in the manner prescribed for recording evidence, *viz.*, under Ss. 353 to 363 and confessions, as prescribed under S. 364, *infra*. The provision should be strictly followed.[1]

The word "record" means "write down" and not merely "file". Consequently the mere 'filing' of a confession already written and signed and handed over to the Magistrate does not amount to 'recording' a confession.[2] Even the *writing out* of the confession is not sufficient to make it a "record". The writing must be made a *part of the judicial record*.[3] Therefore, where a Magistrate writes out a confession, but refuses to make the memorandum under sub-S. (3), on the ground that the confession in his opinion has not been voluntarily made, such confession cannot form part of the judicial record and is therefore inadmissible in evidence.[4]

A confession not recorded in accordance with the provisions of this section is not admissible in evidence except where the defect is one which has not injured the accused as to his defence on the merits and is cured by taking evidence that the statement was duly made.[5] (*See* S. 533, *infra*). Thus where

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(8) (1906) 3 Cri. L. Jour. 138 (140): 32 Cal. 1085, *Sat Narain Tewari* v. *Emperor*.

(9) (1929) 1929 Lah. 794 (796), *Baghet Singh* v. *Emperor*.

Note 11.

(1) (1934) 1934 All. 81 (83): 56 All. 302 (S.B.), *Mohamraad Ali* v. *Emperor*.
(1933) 1933 All. 356 (358): 55 All. 426, *Ram Baran Shukla* v. *Emperor*.
(1934) 1934 Lah. 315 (317), *Bhartu* v. *Udmi*.
(1934) 1934 Oudh 151 (153), *Bhagwan Din* v. *Emperor* (Questions and explanations must be recorded word for word—Mere memoranda is not sufficient).

(2) (1933) 1933 All. 356 (357): 55 All. 426, *Ram Baran Shukla* v. *Emperor*.

(3) (1907) 5 Cri. L. Jour. 4 (5) (Bom.), *Emneror* v. *Kadar Ghulam Mahamad*.

(4) (1918) 1918 Oudh 295 (296), *Ram Sudh* v. *Emperor*.

(5) (1934) 1934 All. 81 (83 to 85): 56 All. 302, *Mohammad Ali* v. *Emperor*.
(1934) 1934 Lah. 18 (19), *Balaudmi* v. *Emperor*.
(1932) 1932 Notes 7 (d) (7), *Allah Dad* v. *Emperor*.
(1902) 2 L. B. R. 19 (23), *Nga Ta Pev* v. *Emperor*.
(1887) 1887 Pun. Re. No. 52, p. 139 (141), *Buta* v. *Empress*.
(1892-1896) Upp. Bur. R. Vol. I, 205 (205, 206), *Nga Nyi* v. *Queen-Empress*.
(1910) 11 Cri. L. Jour. 41 (44) (Rang.), *Nga Sanya* v. *Emperor*.
(1932) 1932 Mad. 748 (752): 56 Mad. 63, *Public Prosecutor* v. *Mitta Venkatamma* (In the case of confessions, this section deals with persons who are accused at the time of making the statements and not with persons who are regarded as witnesses).
(1934) 1934 Pat. 651 (652), *Mt. Ram Sakia* v. *Emperor*.
[See also (1935) 36 Cri. L. Jour. 287 (289) (Lah.), *Mangal Singh* v. *Emperor* (Officer recording confession having no authority to do so—Confession is not admissible in evidence—But such officer can give oral evidence of the confession).]
The following decisions decided before the introduction of S. 533 in the Code of 1882 are now no longer law.
(1873) 10 Bom. H. C. 166 (178), *Reg.* v. *Bai Ratan*.
(1875) 24 Suth. W. R. 42 (43), *Empress* v. *Chunder Bhuttacharjee*.
(1879) 4 Cal. 696 (696, 698), *Empress* v. *Manoo Tamoolee*.
(1873) 10 Bom. H. C. 497 (498), *Reg.* v. *Amrita Govinda*.
(1874) 11 Bom. H. C. 44 (45), *Reg.* v. *Daya Anand*.
(1875) 24 Suth. W. R. 29 (29), *Empress* v. *Kala Chand Pal*.
(1880) 5 Cal. 958 (959), *Noshai Mistri* v. *Empress*.
(1890) 17 Cal. 862 (870), *Jai Narayan Rai* v. *Empress*.
(1880) 5 Cal. L. R. 209 (210), *Empress* v. *Hari Kisto Biswas*.
(1878) 2 Mad. 5, *Empress* v. *Ramanjiyya*.
(1886) 9 Mad. 224 (227), *Empress* v. *Viran*.
(1881) 1881 Pun. Re. No. 20 Cri. p. 33 (34, 35), *Ahmed Din* v. *Empress*.
(1881) 1881 Pun. Re. No. 21 Cri. p. 36 (38 to 47), *Shere Singh* v. *Empress*.
(1876) 1 Bom. 219 (221), *Reg.* v. *Shivya*.
(1882) 6 Bom. 288 (291), *Empress* v. *Dafi Narsu*.

S. 164, Note 11.

the Magistrate does not get the confession signed by the accused[6] or where he does not himself sign the record or memorandum at the foot of it[7] or where he records the confession not in the form of questions and answers but in a *narrative* form[8] or where he does not certify the voluntariness of the confession[9] or where he does not record the confession in the language in which it was made but in English[10] or where he does not himself take down the confession[11] the record

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(1903) 7 Cal. W. N. 220 (221), *Emperor* v. *Radhe Halwai.*
(1871) 15 Suth. W. R. 63 (63), *Queen* v. *Bhikaree.*
(6) (1883) 1883 All. W. N. 243 (243), *Empress* v. *Gajadhar.*
(1934) 1934 All. 81 (86): 56 All. 302, *Mohammad Ali* v. *Emperor.*
(1899) 23 Bom. 221 (225), *Empress* v. *Raghu.*
(1899) 3 Cal. W. N. 387 (390), *Empress* v. *Lal Sheikh.*
(1909) 10 Cri. L. Jour. 325 (337) (Cal.), *Khudiram Bose* v. *Emperor.*
(1932) 1932 Lah. 73 (77), *Nanakchand* v. *Emperor.*
(1894) 8 C. P. L. R. 21 (21, 22), *Empress* v. *Tularam Chamar.*
(1930) 1930 Rang. 53 (55): 7 Rang. 759, *Bayin* v. *Emperor.*
(1904) 2 L. B. R. 317 (318), *Nga We* v. *Emperor.*
[But see (1866) 10 Bom. H. C. 166 (178), *Reg.* v. *Bai Ratan.*]
(7) (1899) 3 Cal. W. N. 387 (391), *Empress* v. *Lall Sheikh* (Magistrate not signing the record or memorandum).
(1934) 1934 All. 81 (86): 56 All. 302, *Mohammad Ali* v. *Emperor.*
[See also (1899) 3 Cal. W. N. ciii (ciii), *Empress* v. *Bepin Manjhi.*]
(8) (1892) 1892 All. W. N. 60 (61), *Empress* v. *Anta* (Confession made by questions and answers but recorded in a narrative form).
(1934) 1934 All. 81 (85): 56 All. 302, *Mohammad Ali* v. *Emperor.*
(1902) 4 Bom. L. R. 785 (786, 787), *Emperor* v. *Fernand.*
(1929) 1929 Bom. 327 (328, 329), *Rama Kriyappa Pichi* v. *Emperor.*
(1909) 10 Cri. L. Jour. 325 (335, 336) (Cal.), *Khudiram Bose* v. *Emperor.*
(1915) 16 Cri. L. Jour. 354 (385, 386): 1915 Lah. 16: 1915 Pun. Re. No. 17, *Balmokand* v. *Emperor.*
(1931) 1931 Lah. 763 (766), *Abdul Ghani* v. *Emperor.*
(1932) 1932 Lah. 204 (209), *Rambir Singh* v. *Emperor.*
(1894) 8 C. P. L. R. 21 (21, 22), *Empress* v. *Tularam Chamar.*
S. C. Oudh 102, *Empress* v. *Karim.*
(1933) 1933 Oudh 313 (314, 315), *Sahaj Ram* v. *Emperor.*
(1918) 1918 Pat. 179 (183), *Ghinua Oraan* v. *Emperor.*
(1897-1901) Upp. Bur. R. Vol. I, 47 (50), *Nga Po Sin* v. *Empress.*
(1935) 1935 All. 653 (654), *Naubat Singh* v. *Emperor* (Magistrate recording confession gave evidence that he put all the questions and was satisfied that confession was voluntary—Defect held cured).
[See (1932) 1932 Lah. 180 (182), *Gehna* v. *Emperor* (It is not necessary to put series of questions to person making confession—He should be allowed to narrate his story without any unnecessary interference).]
[See also (1864) 2 Bom. H. C. R. 398 (398), *Reg.* v. *Vithoji Valad Abba.*
(1885) 2 Weir 437 (438), In re *Majji Chendramma* (Nonrecording the whole of the questions put to the accused—Omission not prejudicing him—Error will not vitiate the record).]
(9) (1911) 12 Cri. L. Jour. 15 (17) (All.), *Ramsanehi* v. *Emperor* (Omission to certify voluntariness of the confession).
(1921) 1921 Lah. 32 (33): 2 Lah. 129, *Umar Din* v. *Emperor.*
(1923) 1923 Lah. 345 (346), *Jehana* v. *Emperor.*
(1925) 1925 Lah. 605 (611): 6 Lah. 415, *Partap Singh* v. *Emperor.*
(1930) 1930 Lah. 534 (538), *Jog Rai* v. *Emperor.*
(1931) 1931 Lah. 196 (198), *Mt. Aimna* v. *Emperor.*
(1900) 22 Mad. 15 (19), *Empress* v. *Anga Valayan.*
(1932) 1932 M. W. N. 714 (716, 717), *Annamalai Pillai* v. *Emperor.*
(1905) 2 Cri. L. Jour. 811 (817, 820): 6 Oudh Cas. 395, *Harbans* v. *Emperor.*
(1904) 2 L. B. R. 317 (318), *Nga We* v. *Emperor.*
(1921) 1921 Sind 145 (146): 16 S. L. R. 143, *Emperor* v. *Mahomed Bux.*
(1929) 1929 Notes 18 (a) (18), *Rahmati* v. *Emperor.*
(10) (1892) 1892 All. W. N. 60 (61), *Empress* v. *Anta* (Record not made in the language in which confession was made but in English).
(1923) 1923 All. 90 (91): 45 All. 166, *Deo Datt* v. *Emperor.*
(1902) 4 Bom. L. R. 785 (786, 787), *Emperor* v. *Fernand.*
(1891) 18 Cal. 549 (555), *Lalchand* v. *Empress.*
(1895) 22 Cal. 817 (819), *Empress* v. *Razai Mia.*
(1909) 10 Cri. L. Jour. 325 (336, 337) (Cal.), *Kudi Ram Bose* v. *Emperor.*
(1899) 1899 Pun. Re. No. 7 Cri. p. 19 (20, 21, 22), *Ratti Ram* v. *Empress.*
(1927) 1927 Lah. 285 (286), *Nawab* v. *Emperor.*
(1931) 1931 Lah. 763 (766), *Abdul Ghani* v. *Emperor.*
(1932) 1932 Lah. 73 (77), *Nanakchand* v. *Emperor.*
(1894) 8 C. P. L. R. 21 (21, 22), *Empress* v. *Tularam Chamar.*
(1903) 16 C. P. L. R. 122 (127), *Emperor* v. *Chaitu Gahera.*
S. C. Oudh 277, *Binda* v. *Empress.*
(1926) 1926 Pat. 279 (283): 5 Pat. 171, *Nil Madhab* v. *Emperor.*
(1893-1900) 1893-1900 Low. Bur. Rul. 70 (71), *Queen* v. *Ramzan Ali.*
[See also (1900) 5 Cal. W. N. xlvii (xlviii), *Empress* v. *Mungroo Bhoojah.*]
(1907) 6 Cri. L. Jour. 94 (96): 10 Oudh Cas. 112, *Bawar* v. *Emperor.*
(1887) 14 Cal. 539 (542), *Fakoo Mahtoo* v. *Empress* (Where it was held that the absence of an English record was not a non-compliance with the provisions of S. 364 and no evidence even under S. 533 was required).]
(11) (1909) 9 Cri. L. Jour. 297 (300, 301):

S. 164, Notes 11—13.

is inadmissible in evidence unless cured under S. 533, *infra*. Where no record at all is made of a confession, S. 533 will not cure the defect.[12] Where an accused person is able to write his name his thumb impression is not a signature within the meaning of this section.[13]

It is of the essence of a confession made by the accused that it should be *voluntarily made*. It cannot be considered to be complete until *signed* by the accused person and this is inconsistent with the use of any compulsion or sanction for the purpose of obtaining such signature. An accused person therefore who refuses to sign a statement or a confession is not liable for punishment under S. 180, Penal Code.[14]

The record of a confession should be in plain and legible writing.[15]

Though there is no provision of law which forbids a Magistrate from recording a confession on a Sunday or any other holiday and at a place other than the open Court-house[16] it is not ordinarily proper to record a confession at night in a Police-station[17] or in the Magistrate's house.[18] If the matter is urgent and the surroundings have to be accepted as unavoidable, exceptional care should be taken to observe very strictly the directions prescribed by the rules for recording confessions.[19] But the mere fact that a confession was not recorded at the Court-house or in day time is not sufficient to show that it was not made voluntarily.[20]

Where the accused person is making a confession a third party should not be allowed to put or suggest questions to be put to the accused person.[21]

12. **"Shall then be forwarded".**—Under sub-S. (2) all statements and confessions recorded by a Magistrate shall, if he himself does not inquire into or try the case, be forwarded to the Magistrate by whom the case is to be inquired into or tried. This provision is imperative[1] and where a Magistrate, after recording a confession, made it over to the Police-officers it was held that the procedure adopted was objectionable.[2]

13. **Warning to accused.**—Before the amendment of 1923, it was held that it was illegal for a Magistrate recording a confession to warn the accused

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1909 Pun. Re. No. 2, *Badan Singh* v. *Emperor* (Magistrate not himself taking down the confession).

(12) (1929) 1929 All. 855 (857), *Nathu* v. *Emperor*.
(1897-1901) 1 Upp. Bur. R. 41 (44), *Nga Myat Kyan* v. *Empress*.
(1913) 14 Cri. L. Jour. 211 (211): 35 All. 260, *Emperor* v. *Gulabu*.
(1920) 1920 Bom. 322 (325), *Emperor* v. *Maruti Santu More*.
(1922) 1922 Cal. 342 (345): 49 Cal. 167, *Legal Remembrancer, Bengal* v. *Lalit Mohan*.
(1887) 1887 Pun. Re. No. 36, p. 79 (81, 82) (F. B.), *Nadir* v. *Empress*.
(1904) 2 L. B. R. 317 (318), *Nga We* v. *Emperor*.

(13) (1905) 2 Cri. L. J. 405 (405, 406): 32 Cal. 550, *Sadanandapal* v. *Emperor*.

(14) (1877) 4 Bom. 15 (18, 19), *Imperatrix* v. *Sirsape*.

(15) (1896) Rat. Un. Re. Cr. C. 837 (838), *Empress* v. *Raghappa*.

(16) (1930) 1930 Lah. 171 (172), *Khanum* v. *Emperor*.
(1926) 1926 Pat. 279 (283): 5 Pat. 171, *Nimadhab Chaudhury* v. *Emperor*.
(1931) 1931 Lah. 763 (766), *Abdul Gani* v. *Emperor*.

(17) (1932) 1932 Lah. 204 (208), *Rambir Singh* v. *Emperor*.

(18) (1920) 1920 Cal. 78 (80), *Emperor* v. *Pramatha Nath Baghi*.
(1934) 1934 Lah. 675 (676), *Ghulam Mahomed* v. *Emperor* (But this fact cannot vitiate the confession which is otherwise valid).

(19) (1932) 1932 Lah. 204 (208), *Rambir Singh* v. *Emperor*.

(20) (1927) 1927 Cal. 398 (400, 401), *Azimuddy* v. *Emperor*.
(1925) 1925 Cal. 587 (594, 595): 52 Cal. 67, *Emperor* v. *Panchkari*.
(1922) 1922 Cal. 107 (113): 49 Cal. 573, *Abdul Salim* v. *Emperor*.

(21) (1909) 10 Cri. L. Jour. 125 (133) (Cal.), *Jogjiban Ghose* v. *Emperor*.
[See also (1934) 1934 All. 908 (913), *Nem Singh* v. *Emperor* (Dying declaration—Unauthorised persons should not be allowed to crowd when it is made—No influence should be brought to bear on declarant).]

Note 12.

(1) (1931) 1931 Lah. 59 (60), *Harichand* v. *Emperor*.
(2) (1931) 1931 Lah. 408 (414), *Indar Datt* v. *Emperor*.

S. 164, Notes 13—14.

"not to expect any advantage or disadvantage therefrom"[1] or to say to the accused that everything he may say will go as evidence against him.[2] Under the section as amended, a Magistrate is required, before recording a confession, to explain to the accused, that he is not bound to make a confession and that if he does so, it may be used as evidence against him.[3] He is also bound to append a memorandum to the confession containing a clause to the effect that he has so explained the matter to the accused. Such a record is conclusive, in the absence of anything to the contrary, as to the fact that such a warning was given before the confession was recorded.[4] Where the accused is not told that he need not make a confession, his confession is inadmissible in evidence and S. 533 will not cure the defect.[5] Though where a warning is actually given but the record does not show it, the defect can be cured under S. 533 by the evidence of the Magistrate that he did give the warning.[6] The *exact words* of the warning are not material provided the Magistrate, recording the confession, explains and the person making it clearly understands that he need not make a confession.[7] It is not necessary that there should be any note of the warning at the beginning of the confession. It is sufficient if that is recorded in the memorandum which is required to be made at the foot.[8]

A Magistrate recording a confession should warn the accused that he is a Magistrate[9]; but there is no illegality in an omission to do so, when the accused is aware of that fact.[10]

14. Confession must be voluntary.—A Magistrate should not record any confession unless he has reason to believe that it is made voluntarily and he should therefore begin inquiry into that point before recording it.[1]

(1935) 16 Lah. 345 (351), *Hans Raj* v. *Emperor* (But where the record is not tampered with in transit and accused is not prejudiced, there will be deemed to be substantial compliance with law).

Note 13.

(1) (1906) 3 Cri. L. Jour. 324 (325, 326) (All.), *Emperor* v. *Basora.*
(2) (1884) 10 Cal. 775 (777), *Empress* v. *Uzeer.*
(3) (1925) 1925 Lah. 367 (367, 368), *Mussammat Rao* v. *Emperor.*
(4) (1933) 1933 Bom. 145 (146): 57 Bom. 336 (F. B.), *Tukaram Khandu Koli* v. *Emperor.*
(1871) 8 Bom. H. C. 126 (137), *Reg.* v. *Kashinath Dinkar.*
(5) (1921) 1921 Pat. 306 (306), *Madhu Majhi* v. *Emperor.*
(1925) 1925 Lah. 432 (433): 6 Lah. 183, *Bahawala* v. *Crown.*
(1932) 1932 Bom. 553 (556): 56 Bom. 542, *Honsabai Bala Shinde* v. *Emperor* (Overruled by 1933 Bom. 145 on other points).
[But see (1932) 1932 Mad. W. N. 449 (450), *Vellamoonji Goundan* v. *Emperor* (S. 29 of the Evidence Act is not overridden by this section).]
(6) (1925) 1925 Lah. 367 (367, 368), *Musammat Rao* v. *Crown.*
[But see (1932) 1932 Mad. 431 (432): 55 Mad. 711, *Vellamoonji Goundan* v. *Emperor* (Which holds that on a question of admissibility of evidence it is the Evidence Act that has to be looked to and that this section cannot override S. 29, Evidence Act under which it is admissible notwithstanding a failure to warn the accused).]
(1933) 1933 Oudh 404 (406, 407), *Khitali* v. *Emperor.*
(1921) 1921 Pat. 327 (339), *Maksud Ali* v. *Emperor.*
(1933) 1933 Bom. 145 (146): 57 Bom. 336 (F. B.), *Tukaram Khandu Koli* v. *Emperor.*
(1925) 1925 Lah. 448 (449), *Bawa Singh* v. *Emperor.*
(1933) 1933 Lah. 311 (312), *William Michael Drummond* v. *Emperor.*
(1925) 1925 Pat. 191 (192): 3 Pat. 872, *Ramai Ho* v. *Emperor.*
(7) (1925) 1925 Lah. 448 (449), *Bawasingh* v. *Emperor.*
(8) (1933) 1933 Bom. 145 (145, 147): 57 Bom. 336 (F. B.), *Tukaram Khandu Koli* v. *Emperor* (Overruling 1932 Bom. 553).
(9) (1930) 1930 Oudh 449 (451), *Prag* v. *Emperor.*
(10) (1932) 1932 Lah. 103 (109), *Mohinder Singh* v. *Emperor.*
(1909) 10 Cri. L. Jour. 325 (335) (Cal.), *Khudiram Bose* v. *Emperor.*
[But see (1932) 1932 Notes 20 (*b*), *Ghulam Husain* v. *Emperor* (Obiter—The evidence is inadmissible).]

Note 14.

(1) (1918) 1918 Pat. 179 (183), *Ghinna Uraon* v. *Emperor.*
(1917) 18 Cri. L. Jour. 721 (724): 1917 Pat. 322, *Ragho Laya* v. *Emperor.*
(1898) 2 Cal. W. N. 702 (707), *Empress* v. *Bhairab Chunder.*
(1903) 7 Cal. W. N. 345 (349), *Emperor* v. *Bhutnath Ghose.*

A confession which is recorded without asking questions as to its voluntariness is inadmissible in evidence and cannot be acted upon.[2] As to whether the defect is one that can be cured under S. 533, *see* Note 15. The Magistrate should record the circumstances under which confessions are made, showing in whose custody the prisoners were and how far they were free agents.[3] S. 164, Note 14.

If the Magistrate, after questioning the accused is not satisfied that a confession is voluntary and made without any pressure it is not admissible in evidence.[4]

If the Court sees any ground of exclusion mentioned in S. 24 of the Evidence Act such as inducement, threat or promise, it may reject the confession as not voluntary.[5] But a Magistrate is not justified in refusing to record

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(1909) 10 Cri. L. Jour. 125 (133) (Cal.), *Jogjiban Ghose* v. *Emperor*.
(1925) 1925 Cal. 587 (592): 52 Cal. 67, *Emperor* v. *Panchkari*.
(1899) 1 Bom. L. R. 357 (358), *Empress* v. *Appa*.
(1925) 1925 Lah. 605 (611): 6 Lah. 415, *Partap Singh* v. *Emperor*.
(1885) 2 Weir 136 (136), *Rayappan*, In re.
(1886) 2 Weir 140 (141), In re *Kuttubadi Narasinga*.
(1914) 1914 Oudh 194 (198), *Kandai* v. *Emperor*.
(1930) 1930 Oudh 449 (451), *Prag* v. *Emperor*.
(1917) 1917 Pat. 322 (325), *Ragho Laya* v. *Emperor*.
(1906) 4 Cri. L. Jour. 385 (387): 3 L. B. R. 213, *Shwe Sin* v. *Emperor*.
(1904) 2 L. B. R. 317 (318), *Nga We* v. *Emperor*.
(1921) 1921 Bom. 70 (71): 45 Bom. 1086, *Dinanath Sundaraji Ravti* v. *Emperor* (Where confessor tells the Magistrate at the time of confessing that he has been induced to confess, the Magistrate should not record the confession).
(1935) 1935 Lah. 230 (244), *Jahangiri Lal* v. *Emperor* (The method of finding out whether the confession is voluntary is to see that he is left alone for some time to collect his mind before taking his statement).
(2) (1920) 1920 All. 108 (109, 110), *Emperor* v. *Azimuddin*.
(1898) 2 Cal. W. N. 702 (709, 717), *Empress* v. *Bhairab Chander Chukerbutty*.
(1898) 25 Cal. 711 (714), *Taju Pramanik* v. *Empress*.
(1925) 1925 Cal. 587 (592): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.
(1926) 1926 Cal. 742 (743), *Emperor* v. *Garib Hari*.
(1922) 1922 Lah. 237 (239): 2 Lah. 325, *Farid* v. *Emperor*.
(1923) 1923 Lah. 330 (331), *Lachi Ram* v. *Crown*.
(1923) 1923 Lah. 345 (346), *Jehana* v. *Emperor*.
(1924) 1924 Lah. 481 (482), *Khushi Muhammad* v. *Crown*.
(1924) 1924 Lah. 624 (625), *Neki* v. *Emperor*.
(1932) 1932 Lah. 204 (208, 209), *Ranbir Singh* v. *Emperor*.
(1932) 1932 Mad. W. N. 714 (717), *Annamalai Pillai* v. *Emperor*.
(1933) 1933 Oudh 315 (319): 8 Luck. 518, *Daulat Ram* v. *Emperor*.
(1917) 1917 Pat. 475 (477), *Jinbodham Bhuin* v. *Emperor*.
(1926) 1926 Pat. 279 (283): 5 Pat. 171, *Nilmadhab Chaudury* v. *Emperor*.
(1902-03) 1 Upp. Bur. R. Cr. P. Code 13 (15), *Ma On Nyun* v. *Emperor*.
(1906) 4 Cri. L. Jour. 198 (199, 200): 3 L. B. R. 173, *Thein Maung* v. *Emperor*.
(1906) 4 Cri. L. Jour. 385 (387) (Rang.), *Nga Shwe Sin* v. *Emperor*.
(1932) 1932 Notes 11 (*a*) (11), *Gianchand* v. *Emperor*.
(1932) 1932 Notes 18 (*b*) (18), *Ram Sarup* v. *Emperor*.
(3) (1866) 5 Suth. W. R. (Cr.) 6 (6), *Queen* v. *Kodai Kahar*.
(1888) 1 C. P. L. R. 115 (Cr.) (116), *Empress* v. *Jijoba*.
(4) (1913) 14 Cri. L. Jour. 211 (212): 35 All. 260, *Emperor* v. *Gulabu*.
(1867) 7 Suth. W. R. 41 (41), *Queen* v. *Jhurree*.
(1867) 8 Suth. W. R. 13 (15), *Queen* v. *Dhurum Dutt*.
(1898) 2 Cal. W. N. cxxv (cxxv).
(1900) 4 Cal. W. N. 49 (55), *Bajrangi Lall* v. *Empress*.
(1925) 1925 Cal. 587 (597, 598): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.
(1910) 11 Cri. L. Jour. 694 (695): 37 Cal. 735, *Emperor* v. *Taranath Roy*.
(5) (1926) 1926 All. 246 (247), *Dip Singh* v. *Emperor*.
(1933) 1933 All. 31 (34, 37): 55 All. 91, *Nazir* v. *Emperor*.
(1934) 1934 All. 81 (85): 56 All. 302, *Mohammad Ali* v. *Emperor*.
(1900) 2 Bom. L. R. 761 (764), *Empress* v. *Baswanta*.
(1901) 3 Bom. L. R. 404 (406), *Emperor* v. *Rango Hanmant*.
(1921) 1921 Bom. 70 (71): 45 Bom. 1086, *Dinanath Sunderaji Ravte* v. *Emperor*.
(1867) 8 Suth. W. R. (Cr.) 53 (54), *Queen* v. *Radanath Dosadh*.
(1871) 15 Suth. W. R. (Cr.) 71, Note (72 and 73 Note), *Queen* v. *Nabadwip Chandra Goswami*.
(1884) 10 Cal. 775 (776, 777), *Queen-Empress* v. *Uzee*.
(1905) 2 Cri. L. Jour. 255 (258) (Cal.), *Nazir Jharudar* v. *Emperor*.
(1909) 10 Cri. L. Jour. 125 (130 to 133) (Cal.). *Jogjiban Ghose* v. *Emperor*.
(1920) 1920 Cal. 78 (79). *Emperor* v. *Paramathanath Bagchi*.
(1920) 1920 Cal. 663 (665, 666), *Emperor* v. *Anant Kumar Banerje*.
(1921) 1921 Cal. 458 (459), *Asutosh Dutt* v. *Emperor*.
(1923) 1923 Cal. 458 (459, 460): 50 Cal.

S. 164, Note 14.

the confession of an accused person on a mere suspicion of insanity. Such a statement may be useful to the accused as evidence that he was not in his right mind.[6]

In the case of a confession duly certified by the Magistrate, it may fairly be assumed that he did his best to assure himself that the statements were voluntary and that if he had any suspicion he would not have placed them on the record[7] though it is no conclusive proof.[8]

Where the certificate of the Magistrate states that the confession is not voluntary, it cannot be acted upon and is not curable under S. 533 of the Code.[9]

Rules issued by the Government under this section, for the recording of confessions, are intended for the guidance of Magistrates and have not the effect of law, and the mere omission to comply with them is not sufficient to rule out the confession if there had been no breach of the provisions of this section and

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127. *Emperor* v. *Ganesh Chandra Goldar*.
(1925) 1925 Cal. 587 (591): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.
(1933) 1933 Cal. 747 (748), *Bhabananda Banerjee* v. *Emperor*.
(1867) 1867 Pun. Re. No. 3, p. 6 (8), *Empress* v. *Chuhar Singh*.
(1869) 1869 Pun. Re. No. 9, *Crown* v. *Radha Kishen*.
(1887) 1887 Pun. Re. No. 51, p. 132 (138), *Umar* v. *Empress*.
(1887) 1887 Pun. Re. No. 52, p. 139 (141), *Buta* v. *Empress*.
(1899) 1899 Pun. Re. No. 1, p. 1 (4), *Mohammad Shatti* v. *Empress*.
(1902) 1902 Pun. L. R. 7, p. 24 (29), *Allah Dad* v. *Emperor*.
(1907) 6 Cri. L. Jour. 266 (270, 271) (Lah.), *Khair Din* v. *Crown*.
(1911) 12 Cri. L. Jour. 597 (602): 1911 Pun. Re. No. 14, *Kutab Ali* v. *Emperor*.
(1915) 16 Cri. L. Jour. 815 (816): 1915 Lah. 307, *Khushi* v. *Emperor*.
(1923) 1923 Lah. 429 (430), *Harphul* v. *Crown*.
(1928) 1928 Lah. 724 (726), *Sullah* v. *Crown*.
(1932) 1932 Lah. 73 (77, 78), *Nanakchand* v. *Emperor*.
(1933) 1933 Lah. 388 (391), *Emperor* v. *Sher Singh*.
(1886) 2 Weir 137 (138), In re *Pisari Turaka Madar Sahib*.
(1933) 1933 Mad. W. N. 723 (724, 725), *Mala Peddoradu* v. *Emperor*.
(1911) 12 Cri. L. Jour. 488 (488) (Mad.), *Nagamuthu Goundan* v. *Emperor*.
(1925) 1925 Oudh 1 (5): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(1933) 1933 Oudh 192 (195): 8 Luck. 410, *Emperor* v. *Pancham*.
(1917) 1917 Pat. 475 (477), *Jinbodhan Bhunian* v. *Emperor*.
(1927) 1927 Pat. 429 (432), *Emperor* v. *Garu Gwala*.
(1929) 1929 Pat. 275 (277): 8 Pat. 289, *Kunja Subudhi* v. *Emperor*.
(1886) 1 Bur. 396 (397), *Nga Po Kyaw* v. *Empress*.
(1893-1900) 1893-1900 L. B. R. 7 (8), *Nga Thin Nu* v. *Empress*.
(1893-1900) 1893-1900 L. B. R. 52 (54), *Queen-Empress* v. *Nga Shwe The*.
(1892-1896) 1 U. B. R. 249 (251, 252), *Nga Pasa* v. *Empress*.
(1897-1901) 1 U. B. R. 152 (153), *Nga Shwe Tat* v. *Empress*.

(1916) 17 Cri. L. Jour. 402 (402): 1916 U. B. 1: 2 U. B. R. 113, *Nga Kyaw Zan Hla* v. *Emperor*.
(1911) 12 Cri. L. Jour. 119 (120): 4 S. L. R. 209, *Imperator* v. *Dabud*.
(1929) 1929 Sind 245 (248), *Emperor* v. *Panjal*.
(1935) 1935 All. 882 (883), *Sarju* v. *Emperor*.
(1935) 1935 Mad. 479 (481), *Krishna Iyer*, In re (The same rule will apply to oral confessions also).
(1934) 1934 Lah. 417 (420, 421): 15 Lah. 856, *Hashmat Khan* v. *Emperor* (Unqualified expression "You had better tell the truth" is an inducement).
[See also (1935) 1935 Oudh 416 (420), *Sheo Prasad* v. *Emperor*.
(1871) 8 Bom. H. C. R. 126 (137), *Reg.* v. *Kashinath Dinkar* (If any such ground is alleged Court must enquire into it).
(1893) 1 Bom. L. R. 357 (358), *Empress* v. *Appa*.
1 J. G. 18, In re *Jadoo Khatooa*.
(1864) 1 Suth. W. R. 24 (24), *Queen* v. *Kanteram*.
(1865) 3 Suth. W. R. 6 (7), *Empress* v. *Nagena Onrut*.
(1933) 1933 Cal. 644 (646): 60 Cal. 719, *Bhugabati Charan Patra* v. *Emperor*.]
(6) (1894) 1894 Pun. Re. No. 3 (Cr.) p. 5 (6, 7), *Sohan* v. *Empress*.
[See also (1932) 1932 Mad. W. N. 714 (717), *Annamalai Pillai* v. *Emperor*.]
(7) (1931) 1931 Mad. 42 (43), *Prosecutor* v. *Nagaraju*.
(1932) 1932 Sind 201 (203, 204): 26 S. L. R. 302, *Pharho* v. *Emperor*.
(1922) 1922 Oudh 302 (303): 25 Oudh Cas. 229, *Nar Singh* v. *Emperor*.
(1925) 1925 Lah. 605 (611): 6 Lah. 415, *Pratap Singh* v. *Emperor*.
(1923) 73 Ind. Cas. 152 (154) (Pesh.), *Moti Ram* v. *Emperor* (A presumption arises under S. 80, Evidence Act).
(1934) 1934 Oudh 418 (423), *Sheoratan* v. *Emperor* (Even then the Court should carefully scrutinise the confession and decide whether it is true and voluntary).
(8) (1909) 10 Cri. L. Jour. 125 (129) (Cal.), *Jogjiban Gosh* v. *Emperor*.
(9) (1915) 1915 Bom. 140 (141), *Emperor* v. *Ramadhanpowar*.

if otherwise, there are grounds for believing that the confession was voluntarily made.[10]

15. "Upon questioning the person".—Where a Magistrate is asked to record a confession under this section, he should, before doing so, *question* the person making it with a view to find out whether it is made *voluntarily*.[1]

One of the important methods of finding this out is to question the accused as to his *motive* in making the confession and as to the circumstances under which the question of confession and the willingness of the accused to confess first arose.[2] The rule as to the necessity of questioning as to the motive, is, however, a rule of prudence and not of law.[2-a] No express *form* is prescribed for such questions and the extent to which a Magistrate should question the person making the confession must largely depend on the particular facts of each case. The Court must in each case satisfy itself that the Magistrate honestly believed and took steps to ascertain that the confession was a voluntary one.[3] It is desirable for this purpose that the Magistrate should put various questions to see if the confession is voluntary, but there is nothing in law which lays down that a Magistrate cannot satisfy himself by putting a single question to the accused.[4] The question put must be in pursuance of a real endeavour to find out the object of the confession and must be directed to eliciting facts which will enable the Magistrate to judge of the character of the confession that the accused is about to make. This cannot be done by merely a direction to make the statement voluntarily or by merely repeating some set formulae or asking him whether his confession is voluntary.[5] The Magistrate would be justified in, and ought to, in the ordinary performance of his duties, clear up any matter which is ambiguous on the face of the statement; but his position is merely that of a recording Magistrate; he is in no sense enquiring into the case and therefore he will be wholly unjustified in extracting by means of questions by way of cross-examination facts which the deponent has not spoken

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(10) (1933) 1933 Oudh 299 (302), *Nibar Singh* v. *Emperor*.
(1933) 1933 Oudh 313 (314, 315), *Sahajram* v. *Emperor*.
(1921) 1921 Nag. 39 (40): 17 N. L. R. 113, *Govinda* v. *Emperor*.

Note 15.

(1) (1923) 1923 Pat. 356 (360), *Thibu Bhogta* v. *Emperor*.
(1886) 2 Weir 136 (136), In re *Rayappan*.
(1914) 1914 Oudh 194 (198), *Kandhai* v. *Emperor*.
(1899) 1 Bom. L. R. 357 (358), *Empress* v. *Appa Bin Bapu*.
(1906) 4 Cri. L. Jour. 477 (479): 3 L. B. R. 213, *Shwe Sin* v. *Emperor*.
(2) (1933) 1933 All. 31 (38): 55 All. 91, *Nasir* v. *Emperor*.
(1931) 1931 All. 609 (615), *Patey Singh* v. *Emperor*.
(1917) 1917 Pat. 322 (325), *Ragho Laya* v. *Emperor*.
(1917) 1917 Pat. 475 (477), *Jikbodhan Bhum* v. *Emperor*.
(2-a) (1923) 1923 Pat. 13 (17, 18), *Empress* v. *Dewan Kahar* (Distinguishing 1917 Pat. 475).
(1925) 1925 Cal. 587 (591, 594): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.
(3) (1923) 1923 Pat. 356 (360), *Thibu Bhogta* v. *Emperor*.
(1931) 1931 All. 609 (614, 615), *Patey Singh* v. *Emperor*.
(1927) 1927 Lah. 682 (685), *Majhi* v. *Emperor*.
(1930) 1930 Oudh 449 (454, 455), *Prag* v. *Emperor*.
[See (1932) 1932 Mad. W. N. 714 (717), *Annamalai Pillai* v. *Emperor* (Rule 85 of the Madras Criminal Rules of Practice prescribes the procedure in such cases).
(1927) 1927 Mad. 974 (975): 51 Mad. 167, *Maniara Kuppathan* v. *Emperor*.]
(4) (1923) 1923 Pat. 13 (17, 18), *Emperor* v. *Dewan Kahar*.
(1923) 1923 Pat. 356 (360), *Thibu Bhogta* v. *Emperor*.
(5) (1925) 1925 Cal. 587 (591, 592, 593, 594): 52 Cal. 67, *Emperor* v. *Panchkari Dutt*.
(1892) 5 C. P. L. R. (Cr.) 13 (14, 15), *Empress* v. *Baji*.
(1932) 1932 All. 228 (231): 54 All. 350, *Shambu* v. *Emperor*.
(1917) 1917 Pat. 322 (325), *Ragho Laya* v. *Emperor*.
(1923) 1923 Oudh 39 (41), *Gajadhar* v. *Emperor*.
[See also (1935) 1935 Lah. 230 (244), *Jahangiri Lal* v. *Emperor*.]

S. 164, Notes 15—16.

to before him[5-a] or which tend to incriminate himself.[6] Whether the questions put are such as may properly be put to the accused depends on the nature of the questions and the object of it and the mere fact that an answer was elicited by a question does not make the proceedings improper or the confession inadmissible.[7]

The failure of the Magistrate to question the accused before recording a confession is a defect of substance and cannot be cured by S. 533 of the Code where it prejudicially affects the accused as to his defence on the merits.[8]

It is always advisable to record the questions and answers by means of which a Magistrate satisfies himself that a confession is voluntary so that it may furnish *data* to the Court of Session and the High Court[9]; an omission however, so to record[10] or recording it at the end instead of at the beginning of the confession[11] is not a fatal defect but only an irregularity cured by S. 533 of the Code.

Similarly, where the accused is questioned *after* the confession is recorded, the defect is one of mere form and does not alter the character of the confession.[12]

Where an accused refuses to make a statement, the Magistrate should record that also.[13]

16. Memorandum at the foot of the confession.—When a Magistrate records any *confession*, he is required under the sub-section to make a memorandum, at the foot of such record, as prescribed therein. Such a memorandum need not be appended in the case of a record of a *statement of a witness* under this section.[1]

A confession without the memorandum or with a defective memorandum is inadmissible in evidence[2] unless the defects can be cured under S. 533 of the Code by the examination of the Magistrate who recorded it.[3]

(5-a) (1926) 1926 All. 22 (25), *Hasan Ali* v. *Emperor*.
(1930) 1930 All. 746 (750), *Abdul Jalil Khan* v. *Emperor*.
(1932) 1932 Lah. 180 (182), *Geahna* v. *Emperor*.
(1892) 5 C. P. L. R. (Cr.) 13 (14, 15), *Empress* v. *Baji*.
(1917) 18 Cri. L. Jour. 742 (746): 1917 Oudh 362: 20 Oudh Cas. 136, *Kesheo Singh* v. *Emperor*.
[See also (1930) 1930 Lah. 454 (456), *Pahlwan* v. *Emperor*.]
(6) (1886) 2 Weir 136 (136), In re *Rayappan*.
(7) (1926) 1926 All. 22 (25), *Hasan Ali* v. *Emperor*.
(1902) 1 L. B. R. 340 (342, 343, 344) (F.B.), *San Baw* v. *Crown*.
(1910) 11 Cri. L. Jour. 453 (463, 470): 37 Cal. 467, *Barindra Kumar* v. *Emperor*.
(8) (1933) 1933 Oudh 315 (319): 8 Luck. 518, *Daulat Ram* v. *Emperor*.
(1922) 1922 Lah. 237 (239): 2 Lah. 325, *Farid* v. *Emperor*.
(1932) 1932 Lah. 204 (208, 209), *Rambir Singh* v. *Emperor* (Following 1922 Lah. 237).
(1930) 1930 Oudh 449 (454, 455), *Prag* v. *Emperor*.
(1932) 1932 Notes 18 (*b*) (18), *Ram Sarup* v. *Emperor*.
(1903) Upp. Bur. R. C. P. 13 (15), *Ma On Nyun* v. *Emperor*.
(1906) 4 Cri. L. Jour. 477 (479): 3 L. B. R. 213, *Shwe Sin* v. *Emperor*.
(9) (1932) 1932 All. 228 (231, 232): 54 All. 350, *Shambhu* v. *Emperor*.
(1926) 1926 All. 22 (25), *Hasan Ali* v. *Emperor*.
(1930) 1930 Oudh 449 (454, 455), *Prag* v. *Emperor*.
(10) (1934) 1934 All. 81 (84, 85): 56 All. 302, *Mahamad Ali* v. *Emperor*.
(1901) 25 Bom. 543 (546), *Empress* v. *Narayan*.
(1932) 1932 Lah. 204 (209), *Ranbir Singh* v. *Emperor*.
(1927) 1927 Lah. 285 (286), *Nawab* v. *Emperor*.
(1925) 1925 Lah. 315 (316): 6 Lah. 58, *Kheman* v. *Emperor*.
(11) (1907) 5 Cri. L. Jour. 4 (5) (Bom.), *Emperor* v. *Kadar Ghulam Mahmad*.
(12) (1914) 1914 Cal. 600 (601): 40 Cal. 873, *Pulin Tanti* v. *Emperor*.
(1909) 10 Cri. L. Jour. 325 (337) (Cal.), *Khidiram Bose* v. *Emperor*.
(13) (1933) 1933 All. 31 (37): 51 All. 91, *Nazir* v. *Emperor*.

Note 16.

(1) (1900) 27 Cal. 295 (300), *Queen* v. *Jadub Das*.
(2) (1925) 1925 Lah. 605 (611): 6 Lah. 415, *Partep Singh* v. *Emperor*.
(1935) 36 Cri. L. Jour. 1007 (1011) (Oudh), *Harikrishna* v. *Emperor*.
(3) (1925) 1925 Lah. 605 (611): 6 Lah. 415, *Partap Singh* v. *Emperor*.
(1925) 1925 Lah. 315 (316, 317): 6 Lah.

The section does not require that the memorandum should be written by the Magistrate himself in his own hand. It is enough if it is *signed* by him.[4] But the Magistrate should use his own handwriting for his signature and not a lethographed stamp thereof.[5] S. 164, Notes 16—17.

Once a memorandum is made in accordance with this sub-section, the fact that it is attached to the English translation of the confession and not to the original vernacular confession itself, does not make the confession inadmissible.[6]

17. Confession immediately after Police custody.—Under S. 26 of the Evidence Act a confession made to a *Magistrate* even *while the accused is in the custody* of the Police-officer, is not inadmissible in evidence[1-a] much less can a confession made by an accused person, after he has been in police custody for some time be rejected on that sole ground.[1] It must, however be always viewed with great suspicion.[2] The Magistrate must be careful to ascertain how long such a person has been under influence of the police.[3] In recording a confession of a prisoner fresh from the hands of the police, the Magistrate would exercise a sound discretion, if before recording it, he gives the accused a short time to enable him to think over the question independent of the influence of the police and to decide whether he would make a confession or not.[4] As to the question of the amount of weight to be attached to a confession where the accused had never been out of police custody, would depend on the circumstances of each case. Where there is reason to apprehend that the influence of the police is still continuing on the mind of the accused the confession would have little weight, where on the other hand there is no such apprehension it may have greater weight.[5] Thus in a case where the accused was in the custody of the police for nearly three days without the order of the Magistrate and after he made the confession he was again remanded to police custody and the Magis-

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58, *Kheman* v. *Emperor*.
(1881) 3 All. 338 (339), *Empress* v. *Bhairon Singh*.
[See also (1882) 2 Weir 436 (437), In re *Kamalagadu*.]
(4) (1933) 1933 Bom. 145 (146, 147, 148): 57 Bom. 336 (F.B.), *Thukaram Khandu Koli* v. *Emperor* (Overruling 1932 Bom. 553).
(1933) 1933 Sind 166 (167), *Salu Mangan* v. *Emperor*.
[See also (1873) 20 Suth. W. R. (Cr.) 7 (7).]
(5) (1870) 14 Suth. W. R. (Cr.) 81 (81), *Queen* v. *Dedar Nushyo*.
(6) (1933) 1933 Bom. 145 (147): 57 Bom. 336 (F.B.), *Thukaram Khandu Koli* v. *Emperor*.

Note 17.

(1-a) (1909) 10 Cri. L. Jour. 584 (587, 588) (Lah.), *Bhag Singh* v. *Emperor*.
(1) (1887) 9 All. 528 (566), *Queen* v. *Gobardhan*.
(1895) 22 Cal. 164 (172), *Deputy Legal Remembrancer* v. *Karuna Baistobi*.
(1898) 2 Cal. W. N. clxxx (clxxx), *Empress* v. *Keta*.
(1902) 6 Cal. W. N. 380 (381, 382), *Motijan Bibee* v. *Crown*.
(1903) 7 Cal. W. N. 457 (459), *Amir Khan* v. *Emperor*.
(1907) 6 Cri. L. Jour. 86 (90, 91, 92) (Cal.), *Emperor* v. *Kampu*.
(1919) 1919 Cal. 11 (12), *Mobrak Ali* v. *Emperor*.
(1920) 1920 Cal. 78 (79), *Emperor* v. *Pramatha Nath Begahi*.
(1914) 1914 Lah. 380 (381), *Mt. Fatima* v. *Emperor*.
(1931) 1931 Lah. 408 (414), *Indar Dutt* v. *Emperor*.
(1920) 1920 Pat. 451 (453), *Rusua Teli* v. *Emperor*.
(1927) 1927 Pat. 429 (432), *Emperor* v. *Karu Gwala*.
(2) (1894) Rat. Un. Re. Cr. Cas. 720 (721), *Empress* v. *Mahadu Babaji*.
(1907) 5 Cri. L. Jour. 120 (121), *Mt. Chandan* v. *Emperor*.
(3) (1885) 1885 All. W. N. 59 (62) (F.B.), *Empress* v. *Madar*.
(1901) 25 Bom. 543 (546), *Empress* v. *Narain*.
(4) (1882) 1882 All. W. N. 166 (166), *Empress* v. *Kura*.
(1884) 1884 All. W. N. 84 (84, 85), *Empress* v. *Chattar Singh*.
(1925) 1925 Cal. 587 (594): 52 Cal. 67, *Emperor* v. *Panchkari Datt*.
(1930) 1930 Sind 305 (306), *Dur Mohomad* v. *Emperor*.
(1908) 7 Cri. L. Jour. 166 (167, 168), In re *Maretha Balu Dolatram* (Kathiawar).
(1935) 1935 Lah. 230 (244), *Jahangiri Lal* v. *Emperor*.
[See also (1925) 1925 All. 606 (607), *Fateh Chand* v. *Emperor*.]
(5) (1934) 1934 All. 81 (85): 56 All. 302 (S.B.), *Mohammad Ali* v. *Emperor*.
(1934) 1934 Oudh 151 (153), *Bhagwan*

S. 164, Note 17.

trate did not remove the fear of the police from the prisoner's mind, before he recorded the confession, it was held that the confession, where it was retracted, should be rejected.[6] The same principle applies to statements written and signed by the accused while in the control of the police.[7] But the failure of the Magistrate to question a prisoner as to how long he was in custody[8] or the omission to record the fact that he was not in police custody at the time of making the confession[9] will not invalidate the confession otherwise duly made.

A confession recorded,

(1) in the presence of the Police-officer having the custody of the prisoner,[10] or

(2) after allowing the Police-officer to put questions[11], or

(3) by using a Police-officer as a scribe[12], or

(4) after the perusal of statements alleged to have been made by the accused to the police and recorded by them[13]

could not safely be relied upon.

The presence, of a police man, not investigating the case, but in charge of sub-jail and accompanying the prisoner, will not invalidate the confession recorded in his presence.[14] Where a prisoner in police custody is brought before a Magistrate for the purpose of having his confession recorded he does not cease to be in the custody of the police merely because the Police-officer is not in the room but waits outside the room or in the next room.[15] Though sub-S. (3) deals with confessions only yet the principle would apply to cases of statements by witnesses also. No statement should be recorded under this section unless the person making it is a free agent and voluntarily agrees to have his statement taken down.[16] This section is not intended to enable the police to obtain an incriminating statement from some person and as it were to put a seal on that statement by sending that person in custody to a Magistrate to be examined. A statement so obtained always raises a suspicion that it is not voluntary.[17]

Din v. *Emperor*.

(6) (1933) 1933 Oudh 192 (195): 8 Luck. 410, *Emperor* v. *Pancham*.
(1869) 1869 Pun. Re. No. 21, p. 39 (41), *The Crown* v. *Musammat Pairee*.

(7) (1933) 1933 All. 356 (357, 358): 55 All 426, *Ram Baran Shukla* v. *Emperor*.
(1925) 1925 Cal. 587 (596): 52 Cal. 67, *Emperor* v. *Panchakeri Dutt*.
(1905) 2 Cri. L. Jour. 230 (231): 1905 Pun. Re. No. 20, *Hakiman* v. *Emperor*.

(8) (1923) 1923 Pat. 13 (17), *Emperor* v. *Dewan Kahar*.
(1931) 1931 Lah. 763 (766), *Abdul Ghani* v. *Emperor*.

(9) (1891) Rat. Un. Re. Cr. Cas. 534 (535), In re *Barku Mohan*.

(10) (1924) 1924 Lah. 624 (626), *Naki* v. *Emperor*.
(1934) 1934 Pat. 586 (587), *Barnabas* v. *Emperor*.
(1865) 3 Suth. W. R. 6 (8), *Queen* v. *Nogena Ourut*.
(1920) 1920 Lah. 144 (159), *Indersain* v. *Emperor*.
(1917) 1917 Pat. 475 (477), *Jiuhodhan Bhunian* v. *Emperor*.
[But see (1875) 24 Suth. W. R. (Cr.) 33 (36), *Queen* v. *Mon Mohan Roy*.]

(11) (1898) 2 Cal. W. N. 702 (709, 717), *Empress* v. *Bhairab Chunder Chukerbutty*.
(1920) 1920 Lah. 144 (159), *Indersain* v. *Emperor*.
(1909) 10 Cri. L. Jour. 125 (130 to 133) (Cal.), *Jagjiban Ghose* v. *Emperor*.

(12) (1909) 10 Cri. L. Jour. 325 (336) (Cal.), *Kudi Ram Bose* v. *Emperor*.

(13) (1923) 1923 Pat. 13 (17), *Emperor* v. *Dewan Kahar*.
(1909) 10 Cri. L. Jour. 125 (133, 139) (Cal.), *Jagjiban Ghose* v. *Emperor*.

(14) (1931) 1931 Mad. W. N. 723 (724), *Rayalu Gadu* v. *Emperor*.

(15) (1896) Rat. Un. Re. Cr. C. 855 (856), *Empress* v. *Lakshmaya Bhima*.
(1910) 11 Cri. L. Jour. 247 (248) (Cal.), *Shelku Sohall* v. *Emperor*.
(1931) 1931 Lah. 408 (414), *Inder Dutt* v. *Emperor*.

(16) (1918) 1918 Lah. 171 (175), *Hira Lal* v. *Emperor*.

(17) (1900) 27 Cal. 295 (300), *Empress* v. *Jadub Das*.
(1902) 29 Cal. 483 (487), *Emperor* v. *Nuri Sheikh*.
(1908) 7 Cri. L. Jour. 315 (315, 316) (Cal.), *Kali Singh* v. *Emperor*.

Magistrates, have the power to exclude the police or any other persons from Court, when recording a confession for the purpose of ensuring the voluntary character of the statements. They should, however, not do so when such exclusion will render the statements of witnesses incomplete without their presence.[18] S. 164, Notes 17—18.

18. **Retracted confessions.**—A retracted confession is always open to suspicion and cannot be acted upon unless it is corroborated by credible independent evidence.[1] The rule is however one, more of prudence than of law.[1-a] Each case must be determined on its own circumstances.[2] What the Court has

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(1886) 2 Weir 414 (415), Re *Kuppa Thachan.*

(18) (1932) 1932 Mad. W. N. 625 (628), *Pullamma* v. *Emperor.*

Note 18.

(1) (1896) 18 All. 78 (82, 83), *Empress* v. *Mahabir.*

(1886) 1886 All. W. N. 22 (23), *Empress* v. *Tika Ram.*

(1922) 1922 All. 266 (272), *Mt. Sukhia* v. *Emperor.*

(1932) 1932 All. 228 (232): 54 All. 350, *Shambu* v. *Emperor.*

(1900) 27 Cal. 295 (306, 307), *Empress* v. *Jadub Das.*

(1878) 2 Cal. L. R. 132, In re *Sofiruddin.*

(1910) 11 Cri. L. Jour. 247 (247, 248) (Cal.), *Sheikh Sohali* v. *Emperor.*

(1916) 17 Cri. L. Jour. 453 (453): 1917 All. 421, *Har Prasad* v. *Emperor.*

(1922) 1922 Cal. 107 (113): 49 Cal. 573, *Abdul Salim* v. *Emperor.*

(1930) 1930 Cal. 633 (635): 57 Cal. 488, *Emperor* v. *Kutub Bux.*

(1869) 1869 Pun. Re. No. 9, p. 13 (17), *Empress* v. *Radha Kishen.*

(1915) 16 Cri. L. Jour. 612 (613): 1915 Lah. 215, *Ghanwara* v. *Emperor.*

(1917) 18 Cri. L. Jour. 779 (781): 1917 Lah. 110, *Sher Khan* v. *Emperor.*

(1918) 1918 Lah. 54 (57), *Emperor* v. *Jawat.*

(1928) 1928 Lah. 329 (331), *Pala Singh* v. *Emperor.*

(1932) 1932 Lah. 557 (559), *Shangara Ram* v. *Emperor.*

(1889) 12 Mad. 123 (124), *Empress* v. *Bharmappa.*

(1886) 2 Weir 507 (508), In re *Cholakal Koya.*

(1920) 1920 Mad. 109 (109), *Ramasami Byan* v. *Emperor.*

(1900) 13 C. P. L. R. 107 (109), *Empress* v. *Chutia.*

(1916) 17 Cri. L. Jour. 453 (453): 1917 All. 421, *Har Prasad* v. *Emperor.*

(1920) 1920 Pat. 471 (481, 482), *Raghu Bhumeeji* v. *Emperor.*

(1922) 1922 Pat. 492 (493), *Bihari Adraki* v. *Emperor.*

(1924) 1924 Pat. 347 (352), *Suke Raut* v. *Emperor.*

(1925) 1925 Pat. 191 (192): 3 Pat. 872, *Ramai Ho* v. *Emperor.*

(1898) 1 Oudh Cas. 13, *Bipat* v. *Empress.*

(1895) Rat. 762 (762), *Empress* v. *Ramdin.*

(1893-1900) 1893-1900 Low. Bur. Rul. 70 (71), *Empress* v. *Ramzan Ali.*

(1934) 1934 Lah. 715 (717), *Nahnun* v. *Emperor.*

(1934) 1934 Pat. 586 (587), *Barnabas* v. v. *Emperor.*

(1934) 1934 Sind 172 (175), *Bhoja* v. *Emperor.*

(1935) 1935 Cal. 561 (566): 62 Cal. 488, *Emperor* v. *Bhawani Prosad Bhattacharjee* (Court can look at it though it cannot be given same weight as to an unretracted one).

(1-a) (1899) 23 Bom. 316 (317, 318), *Empress* v. *Gangia.*

(1894) Rat. Un. Cri. C. 719, *Empress* v. *Danji.*

(1929) 1929 Bom. 327 (333), *Emperor* v. *Rama Kariyeppa.*

(1932) 1932 Bom. 553 (556): 56 Bom. 542, *Honsabai Bela Shinde* v. *Emperor.*

(1933) 1933 Bom. 230 (231), *Emperor* v. *Krishna Babaji.*

(1923) 1923 Cal. 217 (219), *Emperor* v. *Biseswar Day.*

(1930) 1930 Cal. 633 (635): 57 Cal. 488, *Emperor* v. *Kutub Bux.*

(1933) 1933 Cal. 747 (750), *Bhabananda Banerjee* v. *Emperor.*

(1903) 1903 Pun. Re. No. 16, p. 42 (43, 44), *Queen* v. *Sejjad Husain.*

(1907) 1907 Pun. W. R. No. 3 Cri. 6 (7), *Mt. Chaudan* v. *Crown.*

(1923) 75 Ind. Cas. 152 (153) (Pesh.), *Moti Ram* v. *Emperor.*

(1926) 27 Cri. L. Jour. 983 (984) (Lah.), *Mohar Singh* v. *Emperor.*

(1914) 1914 Lah. 321 (323): 1914 Pun. Re. No. 30, *Jawan* v. *Emperor.*

(1925) 1925 Lah. 605 (608): 6 Lah. 415, *Partap Singh* v. *Emperor.*

(1898) 21 Mad. 83 (88), *Empress* v. *Raman.*

(1893) 2 Weir 510 (511), *Chinna Chengedu,* In re.

(1929) 1929 Mad. W. N. 791 (792), *Kuttiappa Chetty* v. *Emperor.*

(1930) 1930 M. W. N. 785 (786), *Lekshmayya* v. *Emperor.*

(1929) 1929 Mad. 837 (839), *Kesava Pillai* v. *Emperor.*

(1918) 1918 Nag. 174 (176), *Bhaddu* v. *Emperor.*

(1925) 1925 Oudh 1 (5): 27 Oudh Cas. 40, *Mannalal* v. *Emperor.*

(1927) 1927 Oudh 17 (17, 18), *Raj Bahadur Singh* v. *Emperor.*

(1917) 1917 Pat. 247 (248), *Guja Majhi* v. *Emperor.*

(1929) 1929 Pat. 275 (278): 8 Pat. 289, *Kunja Subudhi* v. *Emperor.*

(1930) 1930 Pat. 289 (291), *Bhagwandas Bhagat* v. *Emperor.*

9 Bur. 23, *Chit Tun.*

(1900-1902) 1 Low. Bur. Rul. 238 (245, 246), *Chit Sun* v. *Crown.*

(1934) 1934 Sind 172 (175), *Bhoja* v. *Emperor.*

(2) (1898) 20 All. 133 (134), *Empress* v. *Malku Lal.*

(1933) 1933 Bom. 230 (231), *Emperor* v. *Krishna Babaji.*

(1923) 1923 Cal. 217 (219), *Emperor* v. *Biseswar Dey.*

(1923) 75 Ind. Cas. 152 (153) (Pesh.), *Moti Ram* v. *Emperor.*

(1926) 27 Cri. L. Jour. 983 (984) (Lah.), *Mohar Singh* v. *Emperor.*

(1925) 1925 Lah. 605 (609): 6 Lah. 415, *Partap Singh* v. *Emperor.*

(1928) 1928 Lah. 676 (677), *Budhoo* v.

S. 164, Note 18.

to see is whether the confession was made voluntarily and if so, whether it is true as tested by the circumstances under which it was made and retracted. A conviction based upon a retracted confession even if uncorroborated, is not illegal if the Court believes that it is voluntary and true[3] and not liable to suspicion that it was due to any undue influence as is referred to in S. 24 of the Evidence Act.[4] It is the duty of the Judge, when a confession is retracted to inquire

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Emperor.
(1931) 1931 Lah. 408 (414), *Indar Dalt* v. *Emperor.*
(1933) 1933 Lah. 388 (391), *Emperor* v. *Sher Singh.*
(1925) 1925 Oudh 1 (5): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor.*
(1931) 1931 Oudh 412 (414), *Nanhey* v. *Emperor.*
(1922) 1922 Pat. 492 (493), *Behari Adraki* v. *Emperor.*
(1926) 1926 Jour. 104 (104), *Mohar Singh* v. *Emperor.*
(3) (1923) 75 Ind. Cas. 152 (154) (Pesh.), *Moti Ram* v. *Crown.*
(1930) 1930 All. 29 (32, 33), *Mt. Khuban* v. *Emperor.*
(1898) Rat. Un. R. Cri. C. 952 (952, 953), In re *Balya Dagdu.*
(1900) 1 Pun. L. R. 19 (23), *Sahib Din* v. *Emperor.*
(1914) 1914 Lah. 321 (323): 1914 Pun. Re. No. 30, *Jawan* v. *Emperor.*
(1927) 1927 Lah. 682 (685), *Majhi* v. *Emperor.*
(1893) 2 Weir 510 (511, 513), In re *Chinna Chengadu.*
(1924) 1924 Mad. 391 (392), *Basireddi Narappa* v. *Emperor.*
(1932) 1932 Mad. 391 (404): 55 Mad. 903, *Syamo Maha Patro* v. *Emperor.*
(1932) 1932 Oudh 115 (118), *Emperor* v. *Ram Sahai.*
(1933) 1933 Oudh 263 (264), *Beni Madho* v. *Emperor.*
(1933) 1933 Oudh 265 (268), *Ghirrao* v. *Emperor.*
(1933) 1933 Oudh 315 (319): 8 Luck. 518, *Daulat Ram* v. *Emperor.*
(1922) 1922 Pat. 492 (493), *Behari Adreki* v. *Emperor.*
(1909) 10 Cri. L. Jour. 200 (201): 2 S. L. R. 34, *Crown* v. *Motan.*
(1933) 1933 Sind 313 (315, 316), *Emperor* v. *Khair Mohomed.*
(1932) 1932 Notes 13 (c) (13), *Bhuwa* v. *Emperor.*
(1932) 1932 Notes 16 (c) (16), *Emperor* v. *Paragi.*
(1895) 19 Bom. 728 (730), *Empress* v. *Charya.*
(1929) 1929 Bom. 327 (329, 333), *Rama Kariappa* v. *Emperor.*
(1866) 6 Suth. W. R. 81 (81), *Queen* v. *Sreemuthy Mongola.*
(1925) 1925 Cal. 587 (589): 52 Cal. 67, *Emperor* v. *Panchkari Dutt.*
(1927) 1927 Lah. 780 (781), *Iqpal Khan* v. *Emperor.*
(1929) 1929 Mad. W. N. 791 (792), *Kuttiappa Chetty* v. *Emperor.*
(1930) 1930 Mad. W. N. 785 (786), *Lakshmayya* v. *Emperor.*
(1927) 1927 Oudh 597 (597): 1 Luck. Cas. 223, *Mahipat Singh* v. *Emperor.*
(1933) 1933 Oudh 299 (302), *Nibar* v. *Emperor.*
(1919) 1919 Pat. 322 (323), *Sheo Prasad Koeri* v. *Emperor.*
(1921) 1921 Pat. 337 (338), *Maksud Ali* v. *Emperor.*
(1921) 1921 Sind 129 (130): 16 S. L. R. 67, *Mahomad* v. *Emperor.*
(1898) 20 All. 133 (134), *Empress* v. *Maiku Lal.*
(1898) 1898 All. W. N. 69 (70), *Empress* v. *Nanna.*
(1907) 5 Cri. L. Jour. 360 (367): 29 All. 434, *Kehri* v. *Emperor.*
(1919) 1919 All. 386 (386), *Emperor* v. *Dhani.*
(1888) Rat. 370 (371), *Empress* v. *Balaji.*
(1869) 12 Suth. W. R. 49 (49), *Queen* v. *Bhuttum Rujwan.*
(1923) 1923 Cal. 217 (219), *Emperor* v. *Biseswar Dey.*
(1930) 1930 Cal. 141 (142), *Emperor* v. *Belai Ghose.*
(1930) 1930 Cal. 633 (635): 57 Cal. 488, *Emperor* v. *Kutub Bux.*
(1915) 16 Cri. L. Jour. 815 (816): 1915 Lah. 307, *Khushi* v. *Emperor.*
(1933) 1933 Lah. 388 (391), *Emperor* v. *Sher Singh.*
(1930) 1930 Oudh 353 (355), *Hazari* v. *Emperor.*
(1930) 1930 Oudh 412 (413, 414), *Wajid* v. *Emperor.*
(1931) 1931 Oudh 412 (414), *Nanhey* v. *Emperor.*
(1932) 1932 Oudh 321 (323), *Musahab Ali* v. *Emperor.*
(1933) 1933 Oudh 432 (435), *Itwari* v. *Emperor.*
(1923) 1923 Pat. 13 (16), *Emperor* v. *Dewan Kahar.*
(1929) 1929 Pat. 212 (213): 8 Pat. 262, *Sheo Narain* v. *Emperor.*
(1930) 1930 Pat. 545 (547): 9 Pat. 592, *Baikaripati* v. *Emperor.*
(1902) 1 L. B. R. 238 (245, 246), *Chit Tun* v. *Crown.*
(1926) 1926 Rang. 127 (127): 4 Rang. 45, *Nga Po Kank* v. *Emperor.*
(1931) 1931 Notes 9 (d) (9), *Durga* v. *Emperor.*
(1935) 1935 Oudh 354 (357), *Mathura* v. *Emperor* (Retracted confession—It can be taken with other evidence against that accused though it has no value against co-accused).
(1934) 1934 Oudh 418 (422), *Sheoratan* v. *Emperor.*
(1934) 1934 Oudh 388 (392), *Imamuddin* v. *Emperor.*
(1893-1900) 1893-1900 L. B. R. 70 (72), *Empress* v. *Ramzan Ali.*
(1917) 1917 Pat. 247 (248), *Guja Majhi* v. v. *Emperor.*
(1935) 36 Cri. L. Jour. 1037 (1039) (Sind), *Khimji Khetsi* v. *Emperor.*
[See also (1909) 11 Bom. L. R. 219, *Vira.*
(1920) 1920 Lah. 512 (513), *Daulat Ram* v. *Emperor.*
(1930) 1930 Lah. 88 (88, 89), *Rahman* v. *Emperor.*]
(4) (1934) 1934 Lah. 89 (90), *Martin* v. *Emperor.*
(1890) 1890 All. W. N. 173 (174), *Empress* v. *Binda.*
(1925) 1925 All. 627 (630), *Raggha* v. *Emperor.*
(1874) 11 Bom. H. C. 137 (138), *Reg.* v. *Bulvant Pendharkar.*
(1901) 25 Bom. 168 (171), *Empress* v. *Baswanta.*
(1881) Rat. Un. Re. Cri. Cas. 153 (157), *Empress* v. *Chintaman.*

and ascertain before acting upon it whether the confession was not the result of such undue influence[5] and at such an inquiry it is desirable that the jury, are out of Court.[6]

A confession made by an accused person before a Magistrate but retracted at once, when it was being read over to him[7] or while the certificate was being written[8] does not amount to a confession at all.

19. Confession of co-accused.—S. 30 of the Evidence Act provides as follows:—"Where more persons than one are being jointly tried for the same offence, and a confession made by one of such persons affecting himself and some others of such persons is proved, the Court *may take into consideration* such confession as against such other person as well as against the person who makes such confession".

As to the evidentiary value of such confession, *see* the undermentioned cases.[1]

(1889) Rat. Un. Re. Cri. Cas. 463 (464), *Empress* v. *Sangappa.*
(1895) Rat. Un. Re. Cri. Cas. 756 (760, 761), *Empress* v. *Mathur Kuber.*
(1902) 4 Bom. L. R. 785 (787, 788), *Emperor* v. *Phillip Juze Fernand.*
(1902) 4 Bom. L. R. 789 (792, 793), *Emperor* v. *Punya.*
(1909) 10 Cri. L. Jour. 65 (66) (Bom.), *Emperor* v. *Kesari Dayal Kanji.*
(1914) 1914 Bom. 305 (305): 38 Bom. 156, *Gangapa Kardepa* v. *Emperor.*
(1875) 24 Suth. W. R. 80 (81), *Queen* v. *Nityo Gopal Dass Byragee.*
(1898) 2 Cal. W. N. 637 (638, 639), *Empress* v. *Indra Chander Pal.*
(1933) 1933 Mad. W. N. 723 (724), *Mala Peddavadu* v. *Emperor.*
[See also (1922) 1922 Cal. 409 (410): 49 Cal. 600, *Emperor* v. *Sadhu Charan Das.*
(1896) Rat. Un. Re. Cri. Cas. 842 (843), *Empress* v. *Ganu Bin Mathaji.*
(1902) 4 Bom. L. R. 425 (426), *Emperor* v. *Nagenda Kone Bhimappa.*
(1925) 1925 Bom. 529 (530): 49 Bom. 642, *Emperor* v. *Anandrao Gangaram Phanse.*]
(5) (1885) 1885 All. W. N. 59 (61) (F. B.), *Empress* v. *Madar.*
(1885) 1885 All. W. N. 221 (224), *Empress* v. *Ramnand.*
(1933) 1933 All. 31 (38): 55 All. 91, *Nasir* v. *Emperor.*
(1871) 8 Bom. H. C. Cri. 126 (136), *Reg.* v. *Kashinath Dinkar.*
(1881) Rat. 173 (173), *Empress* v. *Rampuri.*
(1886) Rat. Un. Re. Cri. Cas. 242 (243), *Empress* v. *Bhagi.*
(1886) Rat. Un. Re. Cri. Cas. 245 (248, 249), *Empress* v. *Rupya.*
(1886) Rat. Un. Re. Cri. Cas. 254 (256, 257), *Empress* v. *Revubhai.*
(1891) Rat. Un. Re. Cri. Cas. 534 (535), In re *Borku.*
(1894) Rat. Un. Re. Cri. Cas. 730 (731, 732), *Empress* v. *Balappa.*
(1901) 3 Bom. L. R. 441 (444), *Emperor* v. *Durgaya.*
(1906) 4 Cri. L. Jour. 332 (333, 334) (Bom.), *Emperor* v. *Begi Vedu.*
(1921) 1921 Bom. 70 (70): 45 Bom. 1086, *Dinanath Sundraji Ravle* v. *Emperor.*
(1876) 25 Suth. W. R. 25 (26), *Queen* v. *Wuzir Mundul.*
(1900) 27 Cal. 295 (300), *Empress* v. *Jadub Das.*
(1900) 4 Cal. W. N. 49 (55), *Bajrangi Lall* v. *Empress.*
(1903) 7 Cal. W. N. 345 (349, 350), *Emperor* v. *Bhutnath*
(1909) 10 Cri. L. Jour. 125 (129) (Cal.), *Jogiban Ghose* v. *Emperor.*
(1929) 1929 Cal. 726 (728), *Khiro Mondal* v. *Emperor.*
(1933) 1933 Cal. 835 (837), *Kalicharan Haldar* v. *Emperor.*
(1909) 10 Cri. L. Jour. 584 (588) (Lah.), *Bhag Singh* v. *Emperor.*
(1924) 1924 Lah. 624 (626), *Neki* v. *Emperor.*
(1925) 1925 Lah. 605 (608), *Partap Singh* v. *Emperor.*
(1910) 11 Cri. L. Jour. 716 (716): 33 Mad. 413, *Prosecutor* v. *Sarabu Chinnayya.*
(1930) 1930 Oudh 449 (451): 6 Luck. 335, *Pray* v. *Emperor.*
(1888) 1 Bur. 423 (424), *Padan Byu.*
9 Burma 23, *Chit Tun.*
[See also (1865) 4 Suth. W. R. 1 (1), *Queen* v. *Gunesh Koormee.*
(1873) 10 Beng. L. R. 332 (338), *Empress* v. *Soobjan.*
(1918) 1918 Cal. 72 (72), *Emperor* v. *Kabili Katomi.*
(1896) 19 Mad. 482 (482), *Empress* v. *Raru Nayar.*
(1893-1900) 1893-1900 L. B. R. 145 (146), *Nga Shwe Kin* v. *Empress.*
(1932) 1932 Sind 64 (66): 26 S. L. R. 191, *Emperor* v. *Attur Singh.*]
(6) (1933) 1933 Cal. 835 (839) (S. B.), *Kalicharan Haldar* v. *Emperor.*
(7) (1872) 9 Bom. H. C. 344 (345), *Reg.* v. *Garbad Becher.*
(8) (1930) 1930 Lah. 257 (258): 11 Lah. 106, *Arjan Singh* v. *Emperor.*

Note 19.

(1) *Statement of accused is evidence against him only and is not corroborative evidence.*
(1870) 2 N.-W.P. 336 (336, 337), *Queen* v. *Hurgobind.*
(1881) 1881 All. W. N. 18 (18), *Empress* v. *Budhu.*
(1913) 14 Cri. L. Jour. 112 (113) (All.), *Debi Dayal* v. *King-Emperor.*
(1874) 11 Bom. H. C. A. C. 196 (198), *Reg.* v. *Malapa Bin Kapana.*
(1866) 6 Suth. W. R. 84 (84), *Kally Churan.*
(1867) 8 Suth. W. R. 35 (36), *Bussiruddi.*
(1870) 13 Suth. W. R. 14 (14), *Durbarro Dass.*
(1910) 11 Cri. L. Jour. 710 (713): 38 Cal. 169, *Emperor* v. *Abani Bhusan.*
(1921) 60 Ind. Cas. 786 (789) (Lah.), *Ganga Ram* v. *Crown.*

S. 164, Note 19.

(1935) 1935 Lah. 230 (238), *Jahangiri Lal* v. *Emperor.*
(1934) 1934 Lah. 873 (874): 15 Lah. 491, *Kanshi Ram* v. *Emperor* (Approver's evidence cannot be said to be sufficiently corroborated by retracted confession of co-accused).
(1867) 1867 Pun. Re. No. 38, p. 70 (71), *Crown* v. *Mt. Ruheemee.*
(1870) 13 Suth. W. R. 14 (14), *Queen* v. *Durbaroo Dass Sirdar.*

Conviction not safe solely on retracted confession without corroboration.

(1870) 2 N.-W.P. 479 (480), *Queen* v. *Hursookh.*
(1929) 1929 Oudh 167 (170, 171), *Sheo Ratan* v. *Emperor.*
(1930) 1930 Oudh 353 (356), *Hazari* v. *Emperor.*
(1930) 1930 Oudh 412 (413, 414), *Wajid* v. *Emperor.*
(1932) 1932 Oudh 321 (323), *Musaheb Ali* v. *Emperor.*
(1933) 1933 Oudh 263 (264), *Beni Madho* v. *Emperor.*
(1918) 1918 Pat. 279 (280), *Upendra Nath* v. *Emperor.*
(1921) 1921 Pat. 337 (338), *Maksud Ali* v. *Emperor.*
7 Bur. 333, *Nga Aung.*
(1872-1892) 1872-1892 Low. Bur. R. 388 (388, 389), *Nga Po Mya* v. *Empress.*
(1926) 1926 Rang. 127 (127): 4 Rang. 45, *Nga Po Kauk* v. *Emperor.*
(1933) 1933 Rang. 73 (74), *Nga Lu Min* v. *Emperor.*
(1933) 1933 Rang. 320 (321), *Nga Po Hlaing* v. *Emperor.*
(1934) 1934 Rang. 30 (32), *Nga Pyaung* v. *Emperor.*
(1935) 36 Cri. L. Jour. 1086 (1087) (All.), *Shyam Lal* v. *Emperor.*
(1934) 1934 Lah. 718 (720), *Kuldipchand* v. *Emperor* (Confession made 14 days after arrest and retracted before trial Magistrate—Co-accused cannot be convicted on it).

Confession must be relied upon as a whole.

(1883) 1883 A. W. N. 148 (148), *Empress* v. *Moharman Singh.*
(1930) 1930 All. 192 (192), *Durjan* v. *Emperor.*
(1891) 15 Bom. 452 (459), *Empress* v. *Dadaana.*
(1935) 36 Cri. L. Jour. 966 (967) (Lah.), *Sher Gul* v. *Emperor.*
(1867) 7 Suth. W. R. 39 (39), *Queen* v. *Greedhary Manjee.*

Confession may be considered against co-accused under S. 30, Evidence Act.

(1915) 1915 All. 221 (224): 37 All. 247, *Emperor* v. *Dip Narain.*
(1918) 1918 All. 160 (165), *Surendranath Mukerjee* v. *Emperor.*
(1922) 1922 All. 24 (25), *Ramjit* v. *Emperor.*
(1924) 1924 All. 511 (512), *Lakhan* v. *Emperor.*
(1926) 1926 All. 318 (320), *Shankar* v. *Emperor.*
(1930) 1930 All. 29 (32), *Mt. Khuban* v. *Emperor.*
(1874) 11 Bom. H. C. 278 (280), *Reg.* v. *Govind Bali.*
(1878) 3 Bom. 12 (16), *Empress* v. *Rama Birapa.*
(1882) 6 Bom. 288 (292), *Empress* v. *Daji Narsu.*
(1884) 8 Bom. 223 (226), *Empress* v. *Nur Mahomed.*
(1874) Rat. Un. Re. Cr. Cas. 84 (84, 85), *Empress* v. *Sadoo.*
(1886) Rat. Un. Re. Cr. Cas. 311 (311, 312), *Empress* v. *Bayaji.*
(1890) Rat. Un. Re. Cr. Cas. 510 (511), *Empress* v. *Tanga.*
(1909) 10 Cri. L. Jour. 369 (370, 371) (Bom.), *Santa Bandu* v. *Emperor.*
(1874) 21 Suth. W. R. Cr. 69 (70), *Empress* v. *Sadhu Mundul.*
(1875) 23 Suth. W. R. Cr. 24 (24, 25), *Empress* v. *Naga.*
(1875) 24 Suth. W. R. Cr. 42 (43), *Empress* v. *Chunder Bhuttacharjee.*
(1879) 4 Cal. 483 (491), *Empress* v. *Ashootosh Chuckerbutty.*
(1909) 10 Cri. L. Jour. 484 (485) (Cal.), *Sukdev Tewari* v. *Emperor.*
(1882) 1882 Pun. Re. No. 32, p. 39 (40), *Thakur Singh* v. *Empress.*
(1932) 1932 Lah. 73 (79), *Nanak Chand* v. *Emperor.*
(1884) 2 Weir 742 (743), In re *Alagappan Bali.*
(1929) 1929 M. W. N. 698 (705), *Abboi Naidu* v. *Emperor.*
(1896) 9 C. P. L. R. Cr. 37 (37, 38), *Empress* v. *Karim Bux Musalman.*
(1922) 1922 Nag. 146 (154), *Sapru* v. *Emperor.*
(1924) 1924 Nag. 27 (29), *Mt. Radhe* v. *Emperor.*
(1926) 1926 Nag. 117 (118, 119): 21 N. L. R. 88, *Shoocharan* v. *Emperor.*
(1928) 1928 Nag. 213 (215), *Nacha* v. *Emperor.*
(1930) 1930 Nag. 242 (252, 253): 26 N. L. R. 229, *Gobarya* v. *Emperor.*
(1933) 1933 Nag. 249 (251), *Makund Hira Korku* v. *Emperor.*
(1910) 11 Cri. L. Jour. 554 (555): 13 Oudh Cas. 243, *Hiralal* v. *Emperor.*
(1919) 1919 Oudh 233 (235), *Jasode* v. *Emperor.*
(1927) 1927 Oudh 369 (383): 2 Luck. 631, *Ram Prasad* v. *Emperor.*
(1927) 1927 Pat. 257 (258, 259), *Devendra Bhattacharya* v. *Emperor.*
(1929) 1929 Pat. 212 (213): 8 Pat. 262, *Sheo Narain Singh* v. *Emperor.*
(1930) 1930 Pat. 385 (386), *Khatu Jama Khan* v. *Emperor.*
(1931) 1931 Rang. 235 (242): 9 Rang. 404, *Aung Hla* v. *Emperor.*
(1921) 1921 Sind 57 (58): 16 S. L. R. 187, *Pane M. Vaz* v. *Emperor.*

No joint trial for same offence—S. 30 does not apply.

(1881) 1881 All. W. N. 164 (164), *Empress* v. *Jita Singh.*
(1899) 1899 All. W. N. 63 (63), *Empress* v. *Hiralal.*
(1880) 5 Bom. 63 (65), *Empress* v. *Bala Patel.*
(1895) 19 Bom. 195 (197, 198), *Empress* v. *Pahuji.*
(1889) Rat. Un. Re. Cr. Cas. 450 (451), *Empress* v. *Mallappa.*
(1874) 21 Suth. W. R. Cr. 48 (49), *Empress* v. *Khukree Ooram.*
(1874) 21 Suth. W. R. Cr. 53 (53), *Empress* v. *Bunwaree Lall.*
(1874) 21 Suth. W. R. 65 (66), *Sheikh Buxoo.*
(1895) 22 Cal. 164 (173), *Deputy Legal Remembrancer* v. *Karuna Baistob.*
(1911) 12 Cri. L. Jour. 479 (479): 38 Cal. 446, *Emperor* v. *Keramat Sirdar.*
(1919) 1919 Cal. 69 (69), *Amirulla* v. *Emperor.*
(1921) 1921 Cal. 557 (557), *Nafizuddin Khan* v. *Emperor.*
(1885) 1885 Pun. Re. 31, p. 69 (70), *Musa* v. *Empress.*
(1885) 1885 Pun. Re. No. 39, p. 84 (85), *Teja* v. *Empress.*
(1886) 1886 Pun. Re. No. 9, Cr. p. 17 (17), *Maya Singh* v. *Empress.*

(1901) 1901 Pun. Re. No. 29, p. 89 (90), *Hassan Khan* v. *Emperor*.
(1911) 12 Cri. L. Jour. 267 (268): 1911 Pun. Re. No. 9, *Emperor* v. *Umda*.
(1921) 1921 Mad. 490 (491), *Manika Padayachi*, In re.
(1893-1900) 1893-1900 L. B. R. 642 (643), *Pat Tha U* v. *Empress*.
(1913) 14 Cri. L. Jour. 376 (376): 1912 U. B. R. 4th Qr. 158, *Nga Po Tok* v. *Emperor*.
(1874) 11 Bom. H. C. R. 146 (148), *Reg.* v. *Kalu Patil* (A person who pleads guilty and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners who pleaded not guilty).
(1894) 1894 All. W. N. 11 (11), *Queen-Empress* v. *Kallua* (But it is not necessary that the confession should have been made in the presence of the person against whom it is sought to be used).
(1935) 1935 Lah. 35 (36), *Nawab* v. *Emperor*.

Offence and its abetment are different offences.

(1873) 19 Suth. W. R. Cr. 57 (58), *Empress* v. *Jaffir Ali*.
(1874) 1874 Pun. Re. No. 8, Cr., p. 12 (12, 13, 14), *Nur Ahmed* v. *Crown*.
(1884) 7 Mad. 579 (580), *Badi* v. *Empress*.

Confession should justify conviction of confessor before it is considered against co-accused.

(1879) 2 All. 444 (446), *Empress* v. *Ganraj*.
(1880) 2 All. 646 (648, 649), *Empress* v. *Mulu*.
(1881) 1881 All. W. N. 20 (20), In re *Kapur Singh*.
(1881) 1881 All. W. N. 135 (136), *Empress* v. *Kalwa*.
(1885) 1885 All. W. N. 303 (303), *Empress* v. *Kadir Baksh*.
(1932) 1932 All. 228 (231): 54 All. 350, ***Shambhu* v. *Emperor***.
(1873) 10 Bom. H. C. 497 (499, 500), *Reg.* v. *Amrita Govinda*.
(1881) Rat. Un. Re. Cr. Cas. 153 (153), *Empress* v. *Bala*.
(1889) Rat. Un. Re. Cr. C. 436 (439), *Empress* v. *Jhina Vali*.
(1899) 1 Bom. L. R. 428 (431), *Empress* v. *Dayanu bin Tatya*.
2 J. G. 37, *Khetter Mohun Dutt*.
(1873) 19 Suth. W. R. 16 (20), *Mohesh Biswas*.
(1873) 19 Suth. W. R. 67 (67), *Belat Ali*.
(1876) 25 Suth. W. R. Cr. 43 (43), *Empress* v. *Baijoochoudhury*.
(1913) 14 Cri. L. Jour. 586 (588) (Cal.), *Kusir Baband Shabebar Ma* v. *Emperor*.
(1920) 1920 Cal. 300 (301): 46 Cal. 710, *Sital Singh* v. *Emperor*.
(1929) 1929 Cal. 14 (16), *Gour Chandra Das* v. *Emperor*.
(1880) 1880 Pun. Re. No. 29 Cr., p. 67 (69, 70, 71), *Banna* v. *Empress*.
(1925) 1925 Lah. 435 (435): 6 Lah. 176, *Fakhar Uddin* v. *Crown*.
(1907) 6 Cri. L. Jour. 141 (143, 144) (Lah.), *Prabhu* v. *Emperor*.
(1921) 60 Ind. Cas. 660 (661) (Lah.), *Chuni Lal* v. *Emperor*.
(1922) 1922 Lah. 119 (121), *Hayat* v. *Emperor*.
(1923) 1923 Lah. 293 (293), *Main Khan* v. *Emperor*.
(1925) 1925 Lah. 532 (532), *Maulu* v. *Emperor*.
(1925) 1925 Nag. 78 (79), *Sheroo* v. *Emperor*.
(1926) 1926 Nag. 119 (122), *Raghunath* v. *Emperor*.
(1926) 1926 Nag. 229 (232), *Diwan Dhimar* v. *Emperor*.
S. C. Oudh 153, *Empress* v. *Dubar*.
(1901) 4 Oudh Cas. 69 (70), *Khanjan* v. *Empress*.
(1903) 6 Oudh Cas. 204 (208, 209), *Sri Krishen* v. *Emperor*.
(1925) 1925 Oudh 295 (297), *Sheo Ambar* v. *Emperor*.
(1924) 1924 Pat. 347 (351), *Suka Raut* v. *Emperor* (Confession of co-accused need not completely implicate himself. Only a substantial implication is sufficient).
(1926) 1926 Pat. 440 (443), *Bigna Kumar* v. *Emperor*.
(1893-1900) 1893-1900 L. B. R. 7 (7), *Aung Hla* v. *Empress*.
(1901) 1 L. B. R. 133 (136), *Aung Thein* v. *Crown*.
(1935) 36 Cri. L. Jour. 1037 (1042) (Sind), *Khimji Khetri* v. *Emperor*.
(1934) 1934 Cal. 724 (725), *Jogendra Nath Banerjee* v. *Emperor*.
(1935) 1935 Lah. 35 (36), *Nawab* v. *Emperor*.
(1934) 1934 Oudh 418 (421), *Sheoratan* v. *Emperor*.

Confession to be admissible against co-accused need not be in latter's presence.

(1896) 19 Mad. 482 (482, 483), *Empress* v. *Raru Nayar*.

Conviction of one accused solely on the confession of co-accused is unsafe without corroboration. 2

(1878) 1 All. 664 (665), *Empress* v. *Bhawani*.
(1878) 1 All. 675 (675), *Empress* v. *Ram Chan*.
(1895) 17 All. 524 (526), *Empress* v. *Pirbhu*.
(1900) 22 All. 445 (447), *Empress* v. *Nirmal Das*.
(1881) 1881 All. W. N. 164 (164), *Empress* v. *Baldeo*.
(1885) 1885 All. W. N. 320 (320), *Empress* v. *Piria*.
(1904) 1 Cri. L. Jour. 211 (214, 215) (All.), *Abdul Karim* v. *Emperor*.
(1907) 5 Cri. L. Jour. 360 (367): 29 All. 434, *Kehri* v. *Emperor* (Conviction not illegal though not desirable).
(1926) 1926 All. 377 (378): 48 All. 409, *Kalwa* v. *Emperor*.
(1926) 1926 All. 603 (604), *Dungar* v. *Emperor*.
(1929) 1929 All. 928 (929), *Man Singh* v. *Emperor*.
(1933) 1933 All. 31 (36): 55 All. 91, *Nazir* v. *Emperor*.
(1882) 6 Bom. 124 (125), *Empress* v. *Lakshman Bala*.
(1886) 10 Bom. 231 (233), *Empress* v. *Dosa Jiva*.
(1886) 10 Bom. 319 (326), *Empress* v. *Krishna Bhat*.
(1891) 15 Bom. 66 (67), *Empress* v. *Khandia bin Pandu*.
(1902) 26 Bom. 193 (197), *Emperor* v. *Malhar*.
(1876) Rat. Un. Re. Cr. Cas. 108 (108), *Reg.* v. *Wasapa*.
(1889) Rat. Un. Re. Cr. Cas. 456 (456), *Empress* v. *Ganapabhat*.
(1889) Rat. Un. Re. Cr. C. 468 (469), *Empress* v. *Nana Raju*.
(1895) Rat. Un. Re. Cr. Cas. 771 (771, 772), *Empress* v. *Sahadu*.
(1904) 6 Bom. L. R. 443 (451), *Emperor* v. *Hanmant*.
(1914) 1914 Bom. 305 (310): 38 Bom. 156, *Gangapa Kardepa* v. *Emperor*.

S. 164, Note 19.

(1919) 1919 Bom. 164 (166, 172): 43 Bom. 739, *Emperor* v. *Sabitkhan Bhadur Khan.*
(1929) 1929 Bom. 327 (330), *Rama Kariyappa Pichi* v. *Emperor.*
1 J. G. 77, In re *Ram Mulla.*
(1873) 20 Suth. W. R. 1 (3), *Queen* v. *Koonja Leth.*
(1884) 10 Cal. 970 (974, 975), *Empress* v. *Bepin Biswas.*
(1901) 28 Cal. 689 (691), *Nazim* v. *Emperor.*
(1898) 2 Cal. W. N. 749 (750), *Manki Tewari* v. *Amir Hossein.*
(1901) 5 Cal. W. N. 294 (296), *Nilkunja Behari Roy* v. *Empress.*
(1901) 5 Cal. W. N. 670 (671), *Nazim* v. *Emperor.*
(1906) 3 Cri. L. Jour. 452 (455): 33 Cal. 649, *Denandan Pershad* v. *Emperor.*
(1910) 11 Cri. L. Jour. 453 (466): 37 Cal. 467, *Barinda* v. *Emperor.*
(1911) 12 Cri. L. Jour. 286 (293): 38 Cal. 559, *Emperor* v. *Noni Gopal.*
(1913) 14 Cri. L. Jour. 577 (583): 40 Ind. App. 193: 36 Mad. 501 (P.C.), *Vithinatha Pillai* v. *Emperor.*
(1915) 16 Cri. L. Jour. 321 (321): 1915 Cal. 731: 42 Cal. 789, *Emperor* v. *Babar Ali.*
(1924) 1924 Cal. 1031 (1032): 52 Cal. 112, *Umadasi* v. *Emperor.*
(1926) 1926 Cal. 374 (375), *Ibrahim*, In re.
(1880) 1880 Pun. Re. No. 20 Cr., p. 36 (36), *Amir Shah* v. *Empress.*
(1888) 1888 Pun. Re. No. 39, p. 100 (101), *Empress* v. *Bagga Singh.*
(1908) 7 Cri. L. Jour. 227 (229), *Chet Singh* v. *Emperor.*
(1909) 10 Cri. L. Jour. 584 (589) (Lah.), *Bhag Singh* v. *Emperor.*
(1911) 12 Cri. L. Jour. 276 (277): 1911 Pun. Re. No. 5, *Ataya* v. *Emperor.*
(1911) 12 Cri. L. Jour. 605 (606): 1911 Pun. Re. No. 15, *Kanhaya* v. *Emperor.*
(1915) 16 Cri. L. Jour. 157 (158): 1915 Lah. 116, *Mahomed* v. *Emperor.*
(1915) 16 Cri. L. Jour. 469 (471): 1915 Lah. 467, *Nur Muhammad* v. *Emperor.*
(1916) 17 Cri. L. Jour. 156 (157): 1916 Lah. 297, *Nikka* v. *Emperor.*
(1916) 17 Cri. L. Jour. 226 (228): 1916 Lah. 216: 1916 Pun. Re. No. 26, *Karam Singh* v. *Emperor.*
(1914) 1914 Lah. 321 (323): 1914 Pun. Re. No. 30, *Jawan* v. *Emperor.*
(1920) 1920 Lah. 15 (16), *Kehr Singh* v. *Emperor.*
(1922) 1922 Lah. 1 (23): 3 Lah. 144, *Mahant Narain Das* v. *Emperor.*
(1925) 1925 Lah. 605 (608): 6 Lah. 415, *Partap Singh* v. *Emperor.*
(1927) 1927 Lah. 765 (768), *Sher Muhammad* v. *Emperor.*
(1929) 1929 Lah. 338 (340), *Karam Din* v. *Emperor.*
(1929) 1929 Lah. 597 (599), *Mt. Miran* v. *Crown.*
(1930) 1930 Lah. 257 (258): 11 Lah. 106, *Arjan Singh* v. *Emperor.*
(1931) 1931 Lah. 196 (198), *Mt. Aimna* v. *Emperor.*
(1931) 1931 Lah. 408 (414), *Indar Dutt* v. *Emperor.*
(1932) 1932 Lah. 180 (181), *Gehna* v. *Emperor.*
(1932) 1932 Lah. 298 (300), *Surjan Singh* v. *Emperor.*
(1933) 1933 Lah. 956 (958), *Allah Baksh* v. *Emperor.*
(1873) 7 Mad. H. App. xv (xv).
(1876) 1 Mad. 163 (164), *Reg.* v. *Ambigara.*
(1883) 2 Weir 741 (742), *Kaliyappa Goundan*, In re.
(1909) 9 Cri. L. Jour. 308 (309) (Mad.), *Kuppan* v. *Emperor.*
(1924) 1924 Mad. 805 (807), *Lilaram Ganganmull.* In re.
(1929) 1929 Mad. 285 (285), *Govinda Naidu* v. *Emperor.*
(1931) 1931 Mad. 177 (178): 54 Mad. 75, *Periyaswami Moopan* v. *Emperor.*
(1896) 9 C. P. L. R. Cri. 35 (35), *Empress* v. *Govinde.*
(1908) 8 Cri. L. Jour. 393 (394, 395): 11 Oudh Cas. 328, *Raghbir Alias Biru* v. *Emperor.*
(1911) 12 Cri. L. Jour. 465 (466) (Rang.), *Nga Po Kya* v. *Emperor.*
(1933) 1933 Rang. 134 (136), *Mi Hein* v. *Emperor.*
(1926) 1926 Jour. 107 (4) (107), *Teja Singh* v. *Emperor.*
(1879) 4 Cal. 483 (490, 491, 495), *Empress* v. *Ashootosh Chuckerbutty.*
(1934) 1934 Pat. 586 (587), *Barnabas* v. *Emperor.*
[See also (1896) Rat. 748 (750), *Queen* v. *Menga Budhia.*]
[But see (1884) 1884 All. W. N. 38 (38), *Empress* v. *Sundara.*]

Uncorroborated testimony of approver—Value of.

(1873) 5 N.-W.P. 217 (219), *Empress* v. *Herdewa.*
(1911) 12 Cri. L. Jour. 537 (538) (Oudh), *Makbull Ahmad* v. *Emperor.*
(1910) 11 Cri. L. Jour. 364 (366) (Lah.), *Walia* v. *Emperor.*
(1911) 12 Cri. L. Jour. 5 (5) (Lah.), *Hira* v. *Crown.*
(1909) 9 Cri. L. Jour. 404 (405): 33 Mad. 46, In re *Giddigadu.*
(1924) 1924 Oudh 65 (68, 69), *Mahadeo* v. *Emperor.*
(1913) 14 Cri. L. Jour. 179 (180, 181) (Rang.), *Nga Tun* v. *Emperor.*
(1917) 18 Cri. L. Jour. 774 (775): 1918 U. Bur. 34: 3 Upp. Bur. R. 3, *Nga San Nyein* v. *Emperor.*
(1933) 1933 Rang. 57 (58): 11 Rang. 4, *Nga Nyein* v. *Emperor.*
(1897) 2 Cal. W. N. 55 (56), *Jogendra Nath* v. *Sangap Garo.*
(1915) 1915 Cal. 73 (74), *Munessar Ahir* v. *Emperor.*
(1910) 11 Cri. L. Jour. 560 (564): 38 Cal. 96, *Emperor* v. *Chaturbhuj Sahu* (A spy stands in a different position from an accomplice and his evidence—It is not necessary to be corroborated).

Nature of corroboration required.

(1929) 1929 Mad. 498 (499), *Uggappa Pujari* v. *Emperor.*
(1881) 1881 All. W. N. 18 (18), *Empress* v. *Budhu.*

Proof of confession—What is.

(1923) 1923 All. 322 (323, 324, 325): 45 All. 323, *Mahadeo Prasad* v. *Emperor.*
(1931) 1931 Mad. 820 (821): 54 Mad. 788, In re *Marudamuthu Padayachi* (S. 30, Evidence Act must be strictly construed. "Proved" means proved before prosecution case ends).

Miscellaneous.

(1873) 5 N.-W.P. 213, *Empress* v. *Baku Khan.*
(1885) 7 All. 646 (648, 649), *Empress* v. *Jagrup* (Confession must be construed as meaning the same in S. 30 as in Ss. 24, 25 and 26).

165. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under S. 94 has been or might be issued will not or would not produce such document or thing according to the directions of summons or order, or when such document or

Search by Police-officer.

165.* (1) *Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his*

Search by Police-officer.

S. 165.

***(CODE OF 1882—S. 165.)**

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under S. 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Search by Police-officer.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

(1894) 1894 All. W. N. 11 (11), *Empress* v. *Kallua*.
(1877) 2 Bom. 61 (64), *Imperatrix* v. *Pitamber Jina* (Confession made to Police-officer).
(1900) 1900 Pun. Re. Cri. 11, p. 25 (26), *Piara Singh* v. *Empress*.
(1908) 7 Cri. L. Jour. 358 (358) (Mad.), In re *Acchabba Beori*.
(1925) 1925 Oudh 1 (6): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(1917) 1917 L. B. 5 (7), *Pan Gang* v. *Emperor*.
(1910) 11 Cri. L. Jour. 71 (76): 12 Oudh Cas. 418, *Bubba* v. *Emperor*.
(1910) 11 Cri. L. Jour. 701 (701) (Mad.), *Sivasami Pillai* v. *Emperor*.
(1933) 1933 Lah. 167 (167), *Kala Singh* v. *Emperor* (Statement of accused made at the Police-station against the co-accused is inadmissible).
(1873) 2 Weir 740 (740) *H. C. Proceedings No.* 175 (The confession is merely to be an element in the consideration of the evidence).

S. 165. thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) *A police-officer proceeding under sub-section* (1) *shall, if practicable, conduct the search in person;*

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may *after recording in writing his reasons for so doing* require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, *specifying the place to be searched and, so far as possible, the thing for which search is to be made*; and such subordinate officer may thereupon search for such thing in such place.

(CODE OF 1872—S. 379.)

379. Whenever an Officer-in-charge of a Police-station, or a Police-officer making an investigation, considers that the production of anything is necessary to the conduct of an investigation into any offence which he is authorized to investigate, he may search or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

Search by officer in charge of Police-station.

In such case, the Officer-in-charge of the Police-station or Police-officer making investigation shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the Officer-in-charge of the Police-station, or

(4) The provisions of this Code as to search-warrants *and the general provisions as to searches contained in Section* 102 *and Section* 103 shall, so far as may be, apply to a search made under this section. S. 165.

(5) *Copies of any record made under sub-section* (1) *or sub-section* (3) *shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:*

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

SYNOPSIS.

		Note No.
I.	LEGISLATIVE CHANGES	1
II.	SCOPE AND APPLICABILITY OF THE SECTION ..	2
III.	"POLICE-OFFICER MAKING AN INVESTIGATION" ..	3
IV.	"ANY OFFENCE WHICH HE IS AUTHORISED TO INVESTIGATE"	4
V.	"ANYTHING NECESSARY FOR THE PURPOSE OF INVESTIGATION"	5

Police-officer making investigation, may require any officer subordinate to him to make the search; and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

The provisions of Ss. 382 to 385 (both inclusive), relating to search-warrants, shall be applicable to a search made under this section by or under the direction of an Officer-in-charge of a Police-station, or by a Police-officer making an investigation.

(CODE OF 1861—S. 142.)

Issue of search-warrants by Officer-in-charge of Police station.

142. Whenever an Officer-in-charge of a Police-station shall consider that the production of anything is essential to the conduct of an enquiry into any offence which he is authorised to investigate, it shall be lawful for him to search or cause a search to be made for the same, in any house or place within the limits of such station. In such case, the Officer-in-charge of the Police-station shall, if practicable, conduct the search for such thing in person. If unable to conduct the search in person, and there is no other person competent to make the search present at the time, it shall be lawful for the Officer-in-charge of the Police-station to require any officer subordinate to him to make the search, and he shall deliver to such officer an order in writing, specifying the property for which search is to be made and the house or place to be searched, and it shall thereupon be lawful for such Subordinate-officer to search for such property in such house or place. The provisions of Ss. 122, 123, 124, and 125 of this Act relating to search warrants, shall be applicable to a search made by or under the direction of an Officer-in-charge of a Police-station under this section.

S. 165, Note 1.

	Note No.
VI. "IN ANY PLACE WITHIN THE LIMITS OF THE POLICE STATION OF WHICH HE IS IN CHARGE".	6
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Other Topics.

Deputation of a subordinate Police-officer. See Note 17.

General search. See Note 10, Pts. 1 and 3.

Search to be in the presence of witnesses. See Note 12, Pt. 1, S. 103 Note 8.

1. Legislative Changes.—

Changes introduced in the Code of 1872—

There was no material difference between the provisions of S. 142 of the Code of 1861 and S. 379 of the Code of 1872 corresponding to the provisions of this section.

Changes made in the Code of 1882—

(1) The words "any document or thing" were substituted for the word "anything".

(2) The words "and there is reason to believe . . . to be in the possession of any person" were added after the words "he is authorised to investigate".

Changes introduced in the Code of 1898—

There was no change made in the Code of 1898.

Changes introduced in 1923—

(1) Sub-S. (1) was practically recast, the chief changes being the provision for a record of the grounds of belief for making a search and for specification of the thing to be searched.

(2) In sub-S. (3), the words "after recording in writing his reasons for so doing" were added.

(3) In sub-S. (4), after the words "search warrants" the words "and the general provisions as to searches contained in Ss. 102 and 103" were added.

(4) Sub-S. (5) was newly added.

2. Scope and applicability of the section.—Sections 96, 98, 99-A and 100 *ante*, deal with searches under a warrant from a Magistrate and S. 105, *ante* deals with a search by the Magistrate himself. This section deals with searches made by an officer in charge of a Police-station or a Police-officer *without any warrant* from a Magistrate. Only a Police-officer can make a search under this section. A Magistrate cannot do so, but can only act under S. 105, *ante*.[1]

See also S. 153, *ante*, for power of the police to search for and inspect weights and measures. As to search by the police under Special or Local Laws, *see* Note 14 to S. 96, *ante* and the following cases.[2]

3. "Police-Officer making an investigation".—A police constable deputed by his superior to make an inquiry is "a Police-officer making an investigation" and as such is authorised to conduct a search under this section.[1]

4. "Any offence which he is authorised to investigate".—Before the section can be brought into operation, there must have been an *offence* committed which the Police-officer is *authorised to investigate*.[1] A Police-officer, therefore cannot make a search under this section in a *non-cognizable* case, as he cannot investigate into such an offence without an order from a Magistrate.[2] Nor can he make a search for stolen property where he has no information at all of the theft of the same.[3]

5. "Anything necessary for the purpose of investigation".—The section permits a search for *anything* necessary for the purposes of an investigation into any offence.[1] It obviously includes a search for some document or for some tangible object such as may be summoned to be produced by a Court under S. 94, *supra*.[2] The word "*thing*" would not include the inspection of any place inside a house or the configuration of a wall for the purpose of investigation and an entry into a house for that purpose is not contemplated by this section.[3]

6. "In any place within the limits of the Police-station of which he is in charge".—A Police-officer has no power to make a search under this section

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Section 165—Note 2.

(1) (1909) 2 Ind. Cas. 436 (438): 36 Cal. 433, *Clarke* v. *Brojendra Kishore Roy* (Overruled by 13 Cri. L. Jour. 693 on another point).

(2) *Arms Act, XI of* 1878.
(1903) 4 Pun. L. R. 481 (482), *Sharof Khan.*
(1925) 1925 All. 434 (434, 435): 47 All. 575, *Emperor* v. *Kutru.*
Madras Salt Act, IV of 1889.
(1896) 19 Mad. 310 (314), *Empress* v. *Kallan and others.*
(1896) 19 Mad. 349 (350), *Empress* v. *Pukot Kotu.*
Bombay Prevention of Gambling Act.
(1913) 14 Cri. L. Jour. 204: 37 Bom. 402, *Emperor* v. *Jaffur Mahomed.*
Burma Gambling Act.
(1903-04) 2 L. B. R. 43, *Emperor* v. *Maung Cho.*

Note 3.

(1) (1880) 1880 Pun. Re. No. 24, p. 41 (41) (Cr.), *Ali* v. *Empress.*

Note 4.

(1) (1903) 27 Bom. 590 (595), *Narasimha Sankar* v. *Imam Valad Mahamad.*
[See also (1925) 1925 Cal. 831 (833): 52 Cal. 499, *Dargahi* v. *Emperor.*
(1933) 1933 Sind 325 (326), *Emperor* v. *Mahomed Usman* (The police having no right to file a charge-sheet in a case under the Abkari Act, search under this section cannot be made).]

(2) (1897) 24 Cal. 691 (696), *Buhabal Shah* v. *Taraknath.*

(3) (1923) 1923 Cal. 108 (110), *Emperor* v. *Hari Das.*

Note 5.

(1) (1926) 1926 All. 147 (150), *Emperor* v. *Param Sukh.*
(1932) 1932 Lah. 581 (581, 582), *General Relief Association, Lahore* v. *Emperor* (Seizure of books for a suspected case under S. 294-A, Penal Code).

(2) (1928) 1928 All. 185 (186), *Jagannath* v. *Emperor.*

(3) (1928) 1928 All. 185 (186), *Jagannath* v. *Emperor.*

S 165, Notes 6—10.

beyond the local limits of his own jurisdiction.[1] Where a search has to be made outside such local limits, he has to proceed as provided for by S. 166, *infra*.

7. **"Any place," if includes the house of the accused.**—Reading this section with Ss. 94 and 96, *ante*, it will be clear that "any place" will include the house of an accused person also.[1] A search, therefore, under this section can be made of the house of an accused person.[2]

8. **"After recording in writing the grounds of his belief".**—Under the section as it stood before the amendment of 1923, a search for anything necessary for an investigation could be made only when there was a reasonable belief that a person to whom a summons or order could be issued, under S. 94, would not produce the thing[1] or when such 'thing' is not known to be in the possession of any person. Under the present section a Police-officer, may make a search when he has *reasonable grounds for believing* that anything necessary for the purposes of investigation may be found in any place within the limits of the Police-station of which he is in charge and that in his opinion it cannot be otherwise obtained.[2] He is bound first to record in writing the grounds of his belief that the search was necessary; he will be acting illegally if he does not so record.[3] The recording can, however, be done at any place or at any time prior to the actual search.[4]

9. **"Search".**—*See* Notes 10 to 15, *infra*.

10. **Nature of search.**—Even the section as it stood before the amendment of 1923, authorised a search only for "any document or thing", (*i.e.*,) a specific document or thing which might be the subject-matter of a summons or order under S. 94 or that might be necessary for the conduct of an investigation into an offence. It did not authorise a *general search* on the chance that something might be found,[1] that is, a search not in respect of specified documents or things, but a roving inquiry for the purpose of discovering documents or things which might involve persons in criminal liability.[2]

Note 6.

(1) (1923) 1923 All. 433 (433), *Pitam Lal* v. *Emperor*.
(1919) 1919 Mad. 353 (356, 357), *Krishna Iyer* v. *Emperor*.
(1914) 1914 Sind 160 (162): 8 Sind L. R. 1, *Mirshah Nawaz Khan* v. *Emperor*.

Note 7.

(1) See Note 9 to S. 94 and Note 6 to S. 96, *ante*.
(2) (1914) 1914 Cal. 256 (257, 258, 259): 41 Cal. 261, *Bisser Misser* v. *Emperor* (12 Cri. L. Jour. 8, not followed).
(1912) 13 Cri. L. Jour. 764 (765) (Cal.), *Pran Khang* v. *Emperor* (12 Cri. L. Jour. 8, not followed).
(1927) 1927 Cal. 93 (95), *Paresh Chandra Sen Gupta* v. *Jogendra Nath Roy* (12 Cri. L. Jour. 8, dissented from).

Note 8.

(1) (1919) 1919 All. 207 (207, 208), *Bhim Singh* v. *Emperor*.
(2) (1928) 1928 All. 185 (186), *Jagannath* v. *Emperor*.
[See also (1873) 19 Suth. W. R. 7 (8), *Queen* v. *Bolaki Lall*.]
(3) (1926) 1926 All. 147 (150, 151), *Emperor* v. *Param Sukh*.
(1928) 1928 All. 185 (186), *Jagannath* v. *Emperor*.
(1933) 1933 Oudh 305 (307), *Sohan Lal* v. *Emperor*.
(1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor*.
[See also (1933) 1933 Sind 174 (175, 176): 27 S. L. R. 209, *Emperor* v. *Bhope* (Case under Opium Act, I of 1878).
(1932) 1932 Oudh 249 (250), *Ujagar Singh* v. *Emperor* (Case under U. P. Excise Act, 1910).]
(4) (1933) 1933 Sind 240 (243), *Asandas* v. *Khamchand*.

Note 10.

(1) (1911) 12 Cri. L. Jour. 8 (9): 38 Cal. 304, *Baj Rangi Gope* v. *Emperor*.
(1912) 13 Cri. L. Jour. 764 (765) (Cal.), *Prakhang* v. *Emperor*.
(1915) 1915 All. 430 (431): 38 All. 14, *Emperor* v. *Brikhbhan Singh*.
(1919) 1919 Mad. 751 (751, 752), *Divakar Singh* v. *Ramamurthi Naidu*.
(1914) 1914 Cal. 256 (257, 258, 259): 41 Cal. 261, *Bissar Misser* v. *Emperor*.
[See also (1908) 8 Cal. L. Jour. 75, *Brajendra Kishore Roy* v. *Clarke* (Overruled by 13 Cri. L. Jour. 693 on another point).]
(2) (1927) 1927 Cal. 93 (94, 95), *Paresh Chan-*

S. 165, Notes 10—14.

Since the amended S. 96, *supra*, permitted a *general search*, it was found necessary to amend this section so as to authorise a search only for *specified* things in a *specified* place. The words "and specifying in such writing —to be made" make this clear. So under the amended section also, the section does not authorise a search for stolen property or for property *generally*, but only a search for *specified* stolen articles,[3] or anything necessary for the purposes of an investigation.[4]

11. Who can conduct the search.—The search under this section may be conducted by the officer in charge of a Police-station or a *Police-officer* making an investigation into an offence. Where such a Police-officer is unable to conduct the search in person, he can by an order in writing and after recording his reasons, depute any officer subordinate to him to make the search—sub-S. (3).

Under S. 551, *infra*, Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers throughout the local area to which they are appointed and therefore any superior Police-officer, for example, a Circle Inspector of Police, is competent to conduct the search under this section.[1]

12. Conduct of search—Sub-S. (4).—Sub-S. (4) makes the provisions of this Code as to search warrants, *i.e.*, Ss. 96, 98, 99-A, 100 and 101 and the general provisions as to searches contained in Ss. 102 and 103 applicable to searches under this section. So a Police-officer is bound in making a search under this section, to call upon two or more respectable witnesses as provided in S. 103 to attend and witness the search.[1]

The provisions of this sub-section are not however imperative as the sections referred to therein are made applicable only *so far as may be*. The mere fact therefore that the police took two independent witnesses and did not call upon two witnesses from the locality[2] or the failure to call witnesses[3] does not make the search illegal.

See further Notes to Ss. 102 and 103, *supra*.

13. Inspection of things seized in search.—Where a document or other thing is seized under this section and sent to the Magistrate under S. 170, the prosecutor would have an opportunity of inspection in the very nature of things.[1]

See further Note 19 to S. 96, *ante*.

14. Resistance to illegal search.—The provisions contained in sub-Ss. (1), (3) and (5), of this section are so strict that a search in contraven-

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dra Sen Gupta v. *Jogendranath Roy.*
(3) (1927) 1927 Cal. 93 (94), *Paresh Chandra Sen Gupta* v. *Jogendranath Roy.*
(4) (1933) 1933 Oudh 305 (307), *Sohan Lal* v. *Emperor.*
(1928) 1928 All. 185 (186), *Jagannath* v. *Emperor.*

Note 11.

(1) (1927) 1927 All. 516 (516), *Shiam Lal* v. *Emperor.*

Note 12.

(1) (1919) 1919 All. 41 (42), *Nirmal Singh* v. *Emperor.*
(1926) 1926 All. 147 (150, 151), *Emperor* v. *Param Sukh.*
(1933) 1933 Sind 220 (222), *Baloch Pirwali* v. *Emperor.*
[See (1935) 36 Cri. L. Jour. 551 (552) (All.), *Ramchandra* v. *Emperor* (Person having suffered conviction for forgery and robbery taken by Sub-Inspector as a search witness—Whether he is a suitable search witness).]
(2) (1927) 1927 All. 516 (517), *Shiam Lal* v. *Emperor.*
(3) (1912) 13 Cri. L. Jour. 763 (764) (Mad.), *Sri Sri Nadaduru Rajaguru Satagopala Charlu* v. *Satrughna Behara.*

Note 13.

(1) (1887) 15 Cal. 109 (142), *Mahomed Jackariah* v. *Ahmed.*

S. 165, Notes 14—16.

tion of those provisions will be illegal and resistance to such search will not be an offence, either under Ss. 353 or 332 of the Penal Code.[1]

See also, Note 27 to S. 96, *ante*.

15. Damages for illegal search.—A Police-officer before ordering the search of a man's house should take care to see that there are reasonable and sufficient grounds for his proceedings. Otherwise he will be liable to be called upon to justify his act in a suit brought against him, and may have to pay damages.[1] So also a Police-officer is liable who makes a search under this section in a non-cognizable case, and without an order from the Magistrate.[2] If, however, the search by a Police-officer is a *bona fide* one, he is not liable for damages.[3]

Where a Police-officer not having jurisdiction over the place searched helps in a search conducted by another Police-officer who is authorised to conduct the search, he is not liable in damages as one making an illegal search.[4]

16. "In person"—Sub-S. (2).—Sub-S. (2) provides that a Police-officer proceeding under sub-S. (1), shall conduct the search *in person*. This means that the officer should be present on the spot and exercise a general supervision over the search in contradistinction to the cases where he is unable to go to the spot and deputes a subordinate by a written order to conduct the search in his place. It does not lay down that he should conduct himself the search, *e.g.*, ransack the boxes, examine the roof, dig up the floor or otherwise seek the property.[1]

Where two houses have to be searched simultaneously and the Sub-Inspector searches one house and orders his constable to search the other, the procedure is not illegal.[2]

Note 14.

(1) (1915) 1915 All. 442 (442, 443), *Madho Sonar* v. *Emperor* (Search outside the jurisdiction).
(1923) 1923 All. 433 (433), *Pitam Lall* v. *Emperor* (Do.).
(1919) 1919 Mad. 353 (357), *Krishna Iyyer* v. *Emperor* (Do.).
(1914) 1914 Sind 160 (163): 8 S. L. R. 1, *Mir Shah Nawaz Khan* v. *Emperor* (Do.).
(1928) 1928 All. 185 (186), *Jagannath* v. *Emperor* (Non-recording of grounds of belief).
(1932) 1932 Pat. 66 (68): 10 Pat. 821, *Gopi Mahto* v. *Emperor* (Do.).
(1933) 1933 Sind 174 (175, 176): 27 S. L. R. 209, *Emperor* v. *Bhopo* (Do.).
(1875) 7 N.-W.P. 209 (211), *Queen* v. *Narain* (No order in writing delivered to a subordinate Police-officer).
(1915) 1915 All. 442 (442, 443), *Madho Sonar* v. *Emperor* (Do.).
(1907) 6 Cri. L. Jour. 105 (106) (Mad.), *Venkattappa Naidu* v. *Emperor* (Do.).
[But see (1892) 1892 A. W. N. 1 (2), *Empress* v. *Nand Kishore* (No order in writing under this Code).
(1915) 1915 All. 430 (431, 432): 38 All. 14, *Emperor* v. *Brickbhan Singh* (Order not specifying the thing or things to be searched for).
(1907) 6 Cri. L. Jour. 439 (439) (Cal.), *Idumandal* v. *Emperor* (Do.).
(1932) 1932 Pat. 66 (68, 69, 70): 10 Pat. 821, *Gopi Mahto* v. *Emperor* (Non-sending of record to Magistrate).]

Note 15.

(1) (1873) 19 Suth. W. R. Cr. 7 (8), *Queen* v. *Bolaki Lal*.
(2) (1897) 24 Cal. 691 (696), *Bahabai Shah* v. *Taraknath*.
(3) (1919) 1919 Mad. 751 (752), *Divakar Singh* v. *Ramamurthy*.
(1933) 1933 Sind 240 (242, 243), *Asandas* v. *Khanchand*.
(4) (1919) 1919 Mad. 226 (228): 42 Mad. 446, *Asan* v. *Masilamani*.

Note 16.

(1) (1912) 13 Cri. L. Jour. 763 (764) (Mad.), *Sri Sri Nadaguru Rajaguru Satagopala Charlu* v. *Satrughna Behari* (Dissenting from 6 Cri. L. Jour. 105).
(1919) 1919 Mad. 226 (228): 42 Mad. 446, *Asan* v. *Masilamani*.
(1927) 1927 All. 516 (516, 517), *Shiam Lal* v. *Emperor*.
[See also (1910) 11 Cri. L. Jour. 727 (728) (Mad.), In re *Parasurama Asari*.]
[But see (1907) 6 Cri. L. Jour. 105 (106) (Mad.), In re *Venkatappa Naidu* (Where it was held that a Sub-Inspector who sat outside and ordered the Constable to search, was not conducting the search in person. It is submitted this is not a correct view. Dissented from in 13 Cri. L. Jour. 763).]
(2) (1932) 1932 Oudh 249 (250), *Ujagar Singh* v. *Emperor*.

S. 165, Notes 17—18.

17. "An order in writing"—Sub-S. (3).—Where the Police-officer cannot himself go to the spot for the search, he can under this sub-section depute a subordinate officer to do the search, by an order in writing specifying the place to be searched and the thing for which the search is to be made[1] and after recording his reasons for so doing.

A subordinate Police-officer, though he is not empowered without an order in writing to search for property, can however enter a house without any warrant or order the search of a person who is charged with a cognizable offence.[2]

As to the effect of the non-compliance with these provisions, *see* Note **14**, *ante*.

18. "Copies of records"—Sub-S. (5).—The new provisions in this sub-section are intended as an additional safeguard to protect individuals against general or roving searches. It is therefore made essential that a Police-officer conducting a search should send forthwith to the nearest Magistrate copies of the records that he has prepared before the search.[1]

An order by a Magistrate in contravention of this sub-section refusing or passing an order tantamount to the refusal of copies of records made under sub-section (1) or sub-section (3) to the owner or occupier of the place searched, is illegal and will be set aside.[2]

S. 166.

When officer in charge of police-station may require another to issue search-warrant.

166*. (1) An officer in charge of a police-station *or a police-officer not being below the rank of Sub-Inspector making an investigation* may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

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*(CODE OF 1882—S. 166.)

166. An Officer-in-charge of a Police-station may require an Officer-in-charge of another Police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

When Officer-in-charge of Police-station may require another to issue search warrant.

Such officer, on being so required, shall proceed according to the provisions of S. 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Note 17.

(1) (1875) 7 N.-W.P. 209 (211), *Queen* v. *Narain.*
(1915) 1915 All. 442 (442, 443), *Madho Sonar* v. *Emperor.*
(1914) 1914 Sind 160 (162): 8 S. L. R. 1, *Mir Shah Nawaz Khan* v. *Crown.*
(1915) 1915 All. 430 (431): 38 All. 14, *Emperor* v. *Brickbhan Singh.*
(1907) 6 Cri. L. Jour. 439 (439) (Cal.), *Idu Mandal* v. *Crown.*
(2) (1870) 7 Bom. H. C. R. 50 (52), *Reg.* v. *Vyankatrav Shrinivas.*

Note 18.

(1) (1926) 1926 Cal. 663 (663, 664), *Lalmea* v. *Emperor.*
(2) (1928) 1928 All. 402 (402), *Churamani Chaturvedi* v. *Emperor.*

S. 166.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) *Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section* (1) *might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of S.* 165, *as if such place were within the limits of his own station.*

(4) *Any officer conducting a search under sub-section* (3) *shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under S.* 103, *and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in S.* 165, *sub-sections* (1) *and* (3).

(5) *The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section* (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(CODE OF 1872—S. 380.)

When officer of Police-station may require another to issue search warrant.

380. An Officer-in-charge of a Police-station may require an Officer-in-charge of another Police-station, whether subordinate to the same Magistrate as himself or to a Magistrate of another district, to cause a search to be made in any house or place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of S. 379; and shall forward the thing found, if any, to the officer at whose request the search was made.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
SUB-S. (4)—FAILURE TO SEND COPIES OF RECORDS TO THE MAGISTRATE	3

1. Legislative Changes.—

Difference between the Code of 1861 *and that of* 1872—

A provision corresponding to the second paragraph of this section was newly added in 1872.

Difference between the Codes of 1872, 1882 *and* 1898—

There was no material difference between the corresponding sections of the Codes of 1872, 1882 and 1898.

Amendments in 1923—

(1) The words "or a Police-officer not being below the rank of a Sub-Inspector making an investigation" have been newly added in sub-section (1).

(2) Sub-Ss. (3), (4) and (5) are new.

2. Scope of the section.—S. 165, *ante* deals with the powers of a Police-officer in charge of a Police-station to make a search *within the limits of his station.* This section deals with his powers to have a search made within the limits of a station *outside his own.* For this purpose he may require the officer in charge of that station to cause a search to be made and such officer shall cause it to be made in the manner provided for in S. 165.

Before the amendment of 1923 an officer in charge of one station, could under no circumstances *himself* proceed to make a search within the limits of another station.[1] Sub-S. (3) now provides that in the circumstances specified therein, he might do so. If he does so he should send a notice of the search and a search list to the officer in charge of the station within the limits of which the search was made, and also send copies of the records prepared under S. 165, sub-Ss. (1) and (3) to the nearest Magistrate empowered to take cognizance of the offence.

(CODE OF 1861—S. 143.)

When one officer of a Police-station may require another to issue a search warrant.

An Officer-in-charge of a Police-station may require an Officer-in-charge of another Police-station, whether subordinate to the same Magistrate as himself or to a Magistrate of another district to cause a search to be made in any house or place in any case in which he might cause such search to be made within the limits of his own station.

Section 166—Note 2.

(1) (1915) 1915 All. 442 (443), *Madhosonar* v. *Emperor* (Search after intimation to the officer in charge of another station is illegal).
(1914) 1914 Sind 160 (162): 8 Sind L. R. 1, *Mirshah Nawaz Khan* v. *Crown.*
(1923) 1923 All. 433 (433): 45 All. 388, *Pitam Lal* v. *Emperor.*
(1919) 1919 Mad. 353 (357), *Krishna Iyyer* v. *Emperor.*

S. 166, Note 3

3. **Sub-S. (4)—Failure to send copies of records to the Magistrate.**—Sub-S. (4) is new and is obviously intended as an additional safeguard to protect individuals against general or roving searches. The omission to comply with the provisions of this clause will render a conviction for resistance to the search, liable to be set aside.[1]

S. 167.

Procedure when investigation cannot be completed in twenty-four hours.

167. (1) Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by S. 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (*if any*) to such Magistrate.

167*. (1) Whenever *any person is arrested and detained in custody, and it appears that the* investigation * * * cannot be completed within the period of twenty-four hours fixed by S. 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police-station *or the police-officer making the investigation if he is not below the rank of Sub-Inspector* shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused * * to such Magistrate.

*(CODE OF 1882—S. 167.)

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by S. 61, and there are grounds for believing that the accusation is well-founded, the Officer-in-charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

Procedure when investigation cannot be completed in twenty-four hours.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding

Note 3.

(1) (1926) 1926 Cal. 663 (664), ***Lal Mea*** v. ***Emperor.***

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: S. 167.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Local Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

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fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

(CODE OF 1872—S. 124, Paras. 2, 3 and 4.)

Accused not to be detained by police more than twenty-four hours without special authority.

124. If the investigation has not been completed within the twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the Officer-in-charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the district or of a division of a district, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

S. 167, Note 1.

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF THE SECTION	1
DIFFERENCE BETWEEN THIS SECTION AND S. 344 ..	2
"OR THE POLICE-OFFICER MAKING THE INVESTIGATION IF HE IS NOT BELOW THE RANK OF A SUB-INSPECTOR".	3
"SHALL FORTHWITH FORWARD THE ACCUSED"' ..	4
"WITH COPIES OF ENTRIES IN THE DIARY"	5
"TO ANY MAGISTRATE HAVING JURISDICTION OR NOT" ..	6
"FIFTEEN DAYS IN THE WHOLE"	7
REASONS TO BE RECORDED	8
EFFECT OF DETENTION IN CONTRAVENTION OF THIS SECTION	9
NATURE OF PROCEEDINGS UNDER THIS SECTION ..	10
APPLICABILITY OF THIS SECTION TO SECURITY PROCEEDINGS	11
IF APPROVERS CAN BE DETAINED IN POLICE CUSTODY UNDER THIS SECTION	12
ADMISSIBILITY OF STATEMENTS REDUCED TO WRITING DURING POLICE INVESTIGATION	13

Other Topics.

Detention and Remand. See S. 344, Note 17.

Further detention how obtained. See Note 5, Pt. 1.

Grounds of detention. See Note 8, Pts. 4-12.

Reasons for and necessity of detention should be given. See Note 8.

1. Scope and object of the section.—

See Note 16 to S. 344, *infra*.

The provisions of this section are to be read as supplementary to those contained in S. 61, *supra*.[1] The object of these provisions of law is to see that persons arrested by the police are brought before a Magistrate with the least possible delay,[2] in order to enable the latter to judge if such person has to be further kept in police custody, and also to enable such person to make any

(CODE OF 1861—S. 152.)

152. No Police-officer shall, without the special order of a Magistrate, detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable: such period in no case to exceed twenty-four hours. If the enquiry has not been completed within twenty-four hours, the Officer-in-charge of the Police-station shall, nevertheless, forward the accused to the Magistrate with a short despatch stating the offence for which the accused has been arrested, if there are grounds for believing that the accusation is well founded.

Accused not to be detained by the police beyond 24 hours without special authority.

Section 167—Note 1.

(1) (1931) 1931 Lah. 353 (355): 12 Lah. 604, *Kundan Lal* v. *Emperor*.

(2) (1888) 11 Mad. 98 (101), In re *Ponnuswami*.

(1924) 1924 Cal. 476 (478): 51 Cal. 402, *Nagendranath Chakrabarthi* v. *Emperor*.

(1883) 6 Mad. 63 (66), *Manikam Mudali*.

representation he may wish to make in the matter.[3] By these provisions it is intended to prevent the possible abuse by the police of their powers in trying to make discoveries of crime by means of duress, terror and wrongful confinement.[4] This section provides that *in certain cases* detention in police custody of the arrested person may be permitted so that the police may complete the investigation and decide whether to proceed under S. 169 or S. 170.[5] S. 167, Notes 1—6.

S. 344, *infra*, gives to Magistrates analogous powers of remand.

2. **Difference between this section and S. 344.**—*See* Note 17 to S. 344, *infra*.

3. "**Or the Police-officer making the investigation if he is not below the rank of a Sub-Inspector**".—These words have been newly added by the Amending Act of 1923. Before the amendment, only the officer in charge of a Police-station could send the arrested person before a Magistrate for remand under this section. This section applies only when the *police are investigating* the case; a Magistrate who makes an investigation under S. 202 cannot under this section keep the accused person in custody.[1] An officer attached to the Criminal Investigation or Intelligence Department working under the orders of his superior cannot be taken to be an investigating officer; he is asked to do only particular acts, *e.g.*, to make a search.[2] As to who can apply for remand under the Local Police Codes *see* the undermentioned cases.[3]

4. "**Shall forthwith forward the accused**".—The word "accused" in this section and in Ss. 169, 170 and 173 denotes the supposed offender who has not yet come under the cognizance of any official but the police and who in Chapter V is called "person arrested".[1]

It does not rest in the discretion of the Police-officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances, can he be retained for more than 24 hours without the special leave of the Magistrate under this section. Any longer detention is absolutely unlawful.[2] The accused should actually be *sent* before the Magistrate; the police cannot have the accused in their custody and merely write for and obtain the special leave under this section for such detention.[3]

5. "**With copies of entries in the diary**".—It is imperative that the Police-officer should send along with the accused a copy of the entries in the diary which he is bound to keep under S. 172, *infra*. The entries in the diary afford to the Magistrate the information upon which he can decide whether or not he should authorise the detention of the accused person in custody or upon which he can form an opinion as to whether or not further detention is necessary.[1]

6. "**To any Magistrate having jurisdiction or not**".—If the police

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(3) (1931) 1931 Lah. 99 (100): 12 Lah. 435, *Balkrishna* v. *Emperor*.
(1932) 1932 Oudh 11 (17), *Jai Singh* v. *Emperor*.
(4) (1886) Rat. 254 (272, 273), *Empress* v. *Revubai*.
(5) (1926) 1926 Bom. 551 (554): 50 Bom. 741, In re *Llewelyn Evens*.

Note 3.

(1) (1930) 1930 All. 259 (260): 52 All. 457, *Anand Behari Lal* v. *Emperor*.
(2) (1912) 13 Cri. L. Jour. 305 (350): 35 Mad. 247, *Emperor* v. *Nilakanta*.
(3) (1912) 13 Cri. L. Jour. 65 (106) (Cal.), *Peary Mohan* v. *Weston*.

Note 4.

(1) (1892) 16 Bom. 661 (668), *Empress* v. *Mona Puna*.
(2) (1867) 7 Suth. W. R. 3 (6), *Empress* v. *Behary Singh*.
(1880) 6 Cal. L. R. 289 (293), *Krishno Monee* v. *Emperor*.
(3) (1912) 13 Cri. L. Jour. 65 (106) (Cal.), *Peary Mohan Das* v. *Weston*.
(1867) 1867 Pun. Re. No. 39, p. 72 (76), *Crown* v. *Shera*.

Note 5.

(1) (1897) 19 All. 390 (404) (F. B.), *Empress* v. *Mannu*.
(1882) 6 Mad. 69 (70), In re *Ponnuswami*.

S. 167, Notes 6—8.

consider that detention of an accused in their custody, is necessary, they must take the accused to the *nearest* Magistrate *whether he has or has not jurisdiction*, to try the case.[1] This latitude is merely to provide for cases in which it might not be possible to approach the Magistrate having jurisdiction owing to distance or similar difficulties.[2] In the absence of such difficulties it is desirable that the Magistrate of the *illaqa* should be approached and the practice of obtaining an order of detention from any Magistrate at the choice of the police is open to objection.[3]

A Deputy Commissioner of Police, Calcutta, who is a Justice of the Peace, cannot order the detention of the arrested person in police custody.[4]

7. **"Fifteen days in the whole".**—The longest period for which an accused can be ordered to be detained in police custody by one or more such orders is only 15 days.[1] It was so held under the 1861 Code[2] where the time limit was not fixed; and also under the Code of 1882[3] where the words " in the whole" were absent.

Where even within the 15 days time allowed under this section, the investigation is not complete, the police may release the accused under S. 169, or may send him to the Magistrate having jurisdiction to try the case or hold an inquiry with a report under S. 173, and then the Magistrate may remand the accused under S. 344.[4] But such remand will not be to police custody. A detention under this section to the police custody for more than 15 days is illegal.[5]

8. **Reasons to be recorded.**—Sub-S. (3) requires that when the Magistrate authorises detention in police custody, he should record his reasons for so doing. The object of this provision is to see that the Magistrate takes the trouble to study the police diaries and to ascertain the actual conditions under which such detention is asked for.[1] The law is jealous of the liberty of the subject and does not allow detention unless there is a legal sanction for it.[2] So in every case where a detention in police custody is ordered under this section the Magistrate should state his reasons clearly.[3] He should satisfy himself (*a*) that the accusation is well-founded,[4] and (*b*) *that the presence of the accused is necessary* while the police investigation is being held,[5] as for example, where

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Note 6.

(1) (1911) 12 Cri. L. Jour. 15 (17) (All.), *Ram Sanehi* v. *Emperor.*
(1922) 1922 Mad. 215 (216): 45 Mad. 14, Re *Kochunni.*
(2) (1931) 1931 Lah. 99 (101): 12 Lah. 435, *Balakrishna* v. *Emperor.*
(3) (1931) 1931 Lah. 99 (101): 12 Lah. 435, *Balakrishna* v. *Emperor.*
(4) (1926) 1926 Cal. 1121 (1130) (F. B.), *Suleman* v. *Emperor* (Overruling 1926 Jour. 190).

Note 7.

(1) (1887) 11 Mad. 98 (101, 102), *Empress* v. *Engadu.*
(1902) 1902 Pun. Re. No. 24, p. 64, *Hargalal* v. *Emperor.*
(2) (1868-69) 5 Bom. H. C. (Cr.) 31 (32), *Surkya.*
(3) (1897) 23 Bom. 32 (34), In re *Krishnaji P. Jogle Kar.*
(4) (1924) 1924 Cal. 614 (616), *Bholanath Das* v. *Emperor.*
(1931) 1931 Lah. 99 (101): 12 Lah. 435, *Bal Krishna* v. *Crown.*
(5) (1931) 1931 All. 617 (619, 620): 53 All. 729, *Emperor* v. *Sooba.*

Note 8.

(1) (1900) 2 Bom. L. R. 1092 (1093), *Empress* v. *Majesty.*
(1931) 1931 Lah. 99 (101): 12 Lah. 435, *Balkrishna* v. *Emperor.*
(2) (1931) 1931 Lah. 476 (478): 12 Lah. 635, *Khairati Ram* In re.
(3) (1931) 1931 Lah. 200 (200), *Dhruv Deo* v. *Emperor.*
(1899) 23 Bom. 32 (34), In re *Krishnaji Pandurang.*
(1912) 13 Cri. L. Jour. 65 (106) (Cal.), *Peary Mohan* v. *Weston.*
(1873) 20 Suth. W. R. 23 (30), *Abdul Kadir Khan* v. *The Magistrate, Purneah.*
(1866) 6 Suth. W. R. (Cr.) 88 (89), *Empress* v. *Suprosunno.*
(1931) 1931 Lah. 476 (478): 12 Lah. 635, In re *Khairati Ram.*
(1914) 1914 All. 466 (467): 36 All. 262, *Rameshwar* v. *Emperor.*
(1884) 6 All. 129 (132), *Ashraf Ali.*
(4) (1886) Rat. 245 (250), *Empress* v. *Rupya.*
(5) (1907) 11 Cal. W. N. 554 (557), *Emperor* v. *Kampu Keki.*
(1925) 1925 Bom. 387 (389): 49 Bom. 623, *Emperor* v. *Ponde.*
(1931) 1931 Lah. 200 (200), *Dhruv Dev* v. *Emperor.*

S. 167, Notes 8—10.

some property has to be recovered or produced by the accused.[6] The mere fact that the police state that the presence of the accused is necessary to finish the investigation, is not sufficient to order detention.[7] To order a detention of the accused in order to get from him a confessional statement or that he may be forced to give a clue to stolen property is most objectionable.[8] Similarly it is improper to order detention in police custody on a mere expectation that time will show his guilt[9] or for the reason that the accused promised to tell the truth[10] or for verifying a confession recorded under S. 164[11] or for the reason that though repeatedly asked the accused will not give any clue to the property.[12]

It is improper for a Magistrate to authorise detention in police custody without recording special reasons.[13] But the mere omission to record reasons where it appears that the Magistrate has made the order after due consideration, does not make such detention illegal[14] nor will such detention be illegal within the meaning of S. 491, *infra*.[15] Magistrates ordering detention should always be careful to ascertain how long the persons have been in police custody and influence.[16] Where there are good reasons for remand under this section, a Magistrate should invariably limit the term of detention as much as possible to what may be necessary for the object in view.[17]

9. **Effect of detention in contravention of this section.**—Where a Police-officer detains a person for a period more than that fixed in S. 61, the detention is illegal[1] and the officer is liable to punishment under S. 29 of the Police Act (Act V of 1861).[2] It is not necessary to prove that the Police-officer detained the accused with any guilty konwledge.[3] If the detention is for the purpose of wrongfully obtaining a confession or some property from the accused, the Police-officer may render himself liable to be punished under Ss. 347 and 348 of the Penal Code.[4]

10. **Nature of proceedings under this section.**—A Magistrate ordering a detention under this section acts in his *judicial* and not executive capacity.[1] An application by the police for an order of detention under this section is a proceeding within the meaning of S. 340 (1), *infra*, and the accused is entitled to be represented by counsel in such proceeding.[2] The police should not refuse

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(6) (1901) 25 Bom. 543 (548), *Empress* v. *Narayan.*
(7) (1902-03) 7 Cal. W. N. 457 (459), *Amir Khan* v. *Emperor.*
(8) (1886) 2 Weir 414 (415).
(1871) 3 N.-W.P.H.C.R. 275 (280), *Queen* v. *Raghunath Persad.*
(9) (1872) 1872 Pun. Re. No. 17, p. 21 (Cr.), *Khuda Baksh* v. *Crown.*
(10) (1932) 1932 Oudh 11 (17), *Jay Singh* v. *Emperor.*
(11) (1902-03) 7 Cal. W. N. 220 (224), *Emperor* v. *Radhe Halwai.*
(12) (1871) 3 N.-W.P. 275 (280), *Rugonath Pershad.*
(13) (1893) 21 Cal. 642 (661), *Empress* v. *Sagal Samba.*
(1933) 1933 Oudh 315 (319): 8 Luck. 518, *Daulat Ram* v. *Emperor.*
(14) (1932) 1932 Lah. 13 (14): 12 Lah. 211, *Amolak Ram* v. *Emperor.*
(15) (1930) 1930 Lah. 945 (945): 12 Lah. 16, *Sundar Singh* v. *Emperor.*
(16) (1885) 1885 All. W. N. 59 (60) (F. B.), *Empress* v. *Madar.*
(17) (1907) 11 Cal. W. N. 554 (557), *Emperor* v. *Kampu Kuki.*

Note 9.

(1) (1919) 1919 All. 160 (161): 41 All. 483, *Maiku* v. *Emperor.*
(2) (1864) 1 Suth. W. R. Cr. 5 (5), *Indroba Thaba.*
(1870) 1870 Pun. Re. No. (Cr.) 36, *Sewaram* v. *Crown.*
(1885) 1885 All. W. N. 59, *Empress* v. *Madar.*
(3) (1873) 19 Suth. W. R. 36 (36), *Basooram Dass.*
(4) (1886) Rat. 254 (272, 273), *Empress* v. *Revubhai.*

Note 10.

(1) (1930) 1930 Lah. 945 (946): 12 Lah. 16, *Sundar Singh* v. *Emperor.*
(2) (1926) 1926 Bom. 551 (554): 50 Bom. 741, *Llewelyn Evans*, In re.
(1931) 1931 Lah. 99 (100): 12 Lah. 435, *Balakrishna* v. *Emperor.*

S. 167, Notes 10--13.

to allow the legal advisers of the accused to interview or refuse to allow the relatives of the accused to supply him food and clothing.[3]

11. Applicability of this section to security proceedings.—Before the amendment of this section in 1923, it was held that the section applied only where the investigations were held "under this chapter" and did not therefore apply to proceedings under Chapter VIII (Security proceedings).[1] The words "under this chapter" have now been omitted.

12. If approvers can be detained in police custody under this section. —An approver cannot be detained in police custody under this section. He can be kept only in magisterial custody.[1]

13. Admissibility of statements reduced to writing during police investigation.—The statements recorded during investigation are inadmissible in evidence.[1] The accused is not entitled to a copy of the report to the Magistrate under S. 167 as it is an extract from the police diary and protected by S. 172.[2]

S. 168.

168.* When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Report of investigation by subordinate police-officer.

***(CODE OF 1882—S. 168.)**

Report of investigation by subordinate Police-officer.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the Officer-in-charge of the Police-station.

(CODE OF 1872—S. 123.)

123. * * * * * *

Investigation by Police.

When any subordinate Police-officer has made any investigation under this chapter, he shall, if so required by the Officer-in-charge of the Police-station, submit a report of such investigation to him; or he may do so without such requisition; and the Officer-in-charge of the Police-station shall then proceed as if he had made the investigation himself.

(CODE OF 1861—S. 151.)

151. * * * * *

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(3) (1932) 1932 Lah. 13 (14): 12 Lah. 211, *Amolak Ram* v. *Emperor*.
(1930) 1930 Lah. 945 (946, 947): 12 Lah. 16, *Sundar Singh* v. *Emperor*.

Note 11.

(1) (1903) 5 Bom. L. R. 27 (28), *Emperor* v. *Basya*.
(1904) 1 Cri. L. Jour. 775 (778): 32 Cal. 80, *Raghunandan Prasad* v. *Emperor*.
(1914) 1914 All. 466 (466): 36 All. 262, *Rameshwar* v. *Emperor*.
(1917) 18 Cri. L. Jour. 403 (404): 1918 Mad. 1186: 39 Mad. 928, In re *Subbaraya*.
(1914) 15 Cri. L. Jour. 696 (696): 1915 All. 413, *Emperor* v. *Ganesh*.
(1921) 1921 All. 278 (279): 43 All. 186, *Rahu* v. *Emperor*.

Note 12.

(1) (1931) 1931 Lah. 480 (480), *Emperor* v. *Rambir Singh*.
(1931) 1931 Lah. 476 (479-480): 12 Lah. 635, In re *Khairati Ram*.

Note 13.

(1) (1912) 13 Cri. L. Jour. 244 (245) (Mad.), *Vellaya Rowther* v. *Emperor*.
(2) (1897) 20 Mad. 189 (203, 204) (F. B.), *Empress* v. *Arumugam*.

SYNOPSIS.

	Note No.
OBJECT OF THE SECTION	1
WHETHER THE REPORT MADE UNDER THIS SECTION IS A PUBLIC DOCUMENT	2

S. 168, Notes 1—2.

1. Object of the section.—This section contemplates that the officer in charge of the Police-station should assume direct responsibility for sending up cases to the Magistrate under S. 170, *infra*. *See* the Report of the (Select Committee).

2. Whether the report made under this section is a public document.—*See* Notes to S. 157.

169.* If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Release of accused when evidence deficient.

S. 169.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station *or to the police-officer making the investigation* that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Release of accused when evidence deficient.

When any Subordinate Police-officer has made any enquiry under this chapter, he may be required by the Officer-in-charge of the Police-station to submit a report of such enquiry to him, or may do so without such instructions, and the Officer-in-charge of the Police-station shall then proceed as if he had made the enquiry himself.

Enquiry by the Police.

***(CODE OF 1882—S. 169.)**

169. If, upon an investigation under this chapter, it appears to the Officer-in-charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magis-

Release of accused when evidence deficient.

S. 169, Notes 1—3.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
INSUFFICIENCY OF EVIDENCE	3
SURETY BOND TO APPEAR BEFORE A MAGISTRATE ..	4
RE-ARREST OF THE PERSON RELEASED UNDER THIS SECTION	5
POWER OF POLICE-OFFICER TO ALLOW WITHDRAWAL OF COMPLAINT	6

1. Legislative changes.—The words "or, to the officer making the investigation" are newly added by the Amending Act of 1923.

2. Scope of the section.—Ss. 169, 170 and 173 should be read together, S. 169 relates to cases in which it is found that there is no sufficient evidence for forwarding the accused to a Magistrate, and consequently no person is sent up for trial. S. 170 applies to cases in which upon investigation the accused is sent up for trial. S. 173 contains general directions relating to both.[1]

This section is applicable while the case is still under investigation of the police. It cannot be employed after the accused has appeared before the Magistrate.[2] The reason is that the accused having surrendered himself to the Court, it is for the Court to decide whether to release him or not.

3. Insufficiency of evidence.—Where after the completion of investigation it is found that there is no sufficient evidence or reasonable ground of suspicion to justify the sending up of the accused, the accused must be released.[1]

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trate, such officer shall, if such person is in custody, release him on his executing a bond with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a Police-report, and to try the accused, or commit him for trial.

(CODE OF 1872—S. 125.)

Procedure of police in case of deficient evidence.

125. If it appears to the Officer-in-charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of police mentioned in S. 117, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

(CODE OF 1861—S. 153.)

Police how to proceed in cases of deficient evidence.

153. If it shall appear to the Officer-in-charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate.

Section 169—Note 2.

(1) (1908) 7 Cri. L. Jour. 414 (415): 4 L. B. R. 137, *Hakim Ally* v. *Emperor.*

(2) (1933) 1933 All. 582 (585), *Rahat Husain* v. *Emperor.*

Note 3.

(1) (1914) 1914 All. 413 (413), *Emperor* v. *Ganesh.*

When an investigating officer reports to a Magistrate that there is no sufficient evidence against an accused, the Magistrate cannot order his further detention to enable the police to institute proceedings under S. 110, *supra*.[2] S. 169, Notes 3—6.

4. Surety bond to appear before a Magistrate.—The section authorises the taking of a bond with or without sureties for the appearance of the accused before a *Magistrate* empowered to act on a police report. Therefore, a bond taken under this section for the appearance of an accused before the police is *ab initio* void.[1] Moreover, a Police-officer cannot take a third party's bond for the appearance of the accused without taking a bond from the accused himself for his appearance, because there cannot be a surety without a principal.[2]

5. Re-arrest of the person released under this section.—The admission to bail under this section is only a provisional arrangement. The Magistrate to whom the report is sent under S. 173 may either discharge the bond or order the re-arrest of the accused. If the Magistrate believes that there is a *prima facie* case of a non-cognizable offence, the police should re-arrest the accused and forward him in custody to the Magistrate.[1]

It has been held in the undermentioned case[2] that where a person is apprehended along with others and is released by the police under this section, it is unfair to launch a prosecution against such person based upon facts disclosed in the evidence which he gives against the accused.

6. Power of Police-officer to allow withdrawal of complaint.—Permission to withdraw a complaint is a judicial act, the exercise of which is vested in Magistrates under Ss. 248 and 345, *infra*, and the police have no authority to entertain an application for withdrawal under this or any other section[1]

170.* (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magis- S. 170.

Case to be sent to Magistrate when evidence is sufficient.

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*(CODE OF 1882—S. 170.)

170. If, upon an investigation under this chapter, it appears to the Officer-in-charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused, or commit him for trial; or, if the offence is bailable, and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

Case to be sent to Magistrate when evidence is sufficient.

(1921) 1921 All. 278 (280): 43 All. 186, *Rahu* v. *Emperor*.
(2) (1914) 1914 All. 413 (413), *Rex* v. *Ganesh*.
(1921) 1921 All. 278 (280): 43 All. 186, *Rahu* v. *Rex*.

Note 4.

(1) (1925) 1925 Lah. 152, *Hamid Ali* v. *Emperor*.

(2) (1928) 1928 Lah. 318 (319), *Wadhawa* v. *Emperor*.

Note 5.

(1) (1877) Rat. Un. Cr. C. 121.
(2) (1933) 1933 All. 399 (401), *Chunnilal* v. *Emperor*.

Note 6.

(1) (1875) Rat. 91 (91), *Anonymous*.

S. 170. trate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be

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When the Officer in charge of a Police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any), and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it and shall then send to the Magistrate the original with its report.

(CODE OF 1872—S. 123, Para. 1, S. 127 Para. 1, S. 128, Para. 2, S. 130, Paras. 1-4.)

Investigation by Police.

123. If the person arrested appears, from the information obtained, to have committed the offence charged, and the offence is not bailable, the Officer-in-charge-of the Police-station shall forward him under custody to the Magistrate having jurisdiction, and shall bind over the complainants if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons. S. 170.

(4) The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

Repealed by the Criminal Procedure Code Amendment Act II of 1926.

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127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police-officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

Report of Police-officer.

128. * * * * *

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.

Admission to bail.

130. Every complainant and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police-officer making the investigation, shall execute a recognizance in the Form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

Complainants and witnesses to execute recognizances to appear.

If the Court of the Magistrate of the District, or of a Magistrate of a division of a District, be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he had been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The Officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to the Magistrate having jurisdiction.

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(CODE OF 1861—Ss. 151, 155, 156 and 158.)

151. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the Officer-in-charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction in res-

Enquiry by the Police.

S. 170. (5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF THE SECTION	2
ACCUSED MUST BE FORWARDED TO MAGISTRATE HAVING JURISDICTION	3
POWERS AND DUTIES OF THE POLICE UNDER THIS SECTION	4
ACCUSED—MEANING OF	5
BOND BY WITNESSES	6

Other Topics.

Accused when to be sent to Magistrate. See Note 2, Pt. 1.
All the evidence to be sent. See Note 4, Pt. 4-*b*.
Appearance of—Security for complainant. See Note 6, Pts. 1-2.
Charge-sheet—Copy of. See S. 173.
Power of Investigating-officer—Whether can be controlled by Police Superintendent. See Note 4, Pt. 3.
Recognizance should specify the day of appearance. See Note 6, Pt. 3.
Whose witnesses should be bound over. See Note 6, Pt. 1.

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pect of the offence, and shall bind over the prosecutor and witnesses to appear on a fixed day before such Magistrate.

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155. The enquiry shall be completed without unnecessary delay, and as soon as it is completed, the Police-officer making the enquiry shall forward to the Magistrate a report in such form as shall be prescribed by the Local Government setting forth the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused person, and shall also transmit any weapon or article which it may be necessary to produce before the Magistrate.

Report of Police-officer of what to consist.

* * * * *

156. But a person accused of any other offence shall be admitted to bail, if sufficient bail be tendered for appearance before the Magistrate having jurisdiction in respect of the offence.

Bail.

158. Every prosecutor and witness, whose attendance before the Magistrate may be deemed necessary by the Police-officer making the enquiry, shall execute a recognizance in the Form (E) given in the Appendix, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day, which shall be the day whereon the accused person is to appear, if he shall have been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate if he is to be forwarded in custody. The officer in whose presence the recognizance is executed, shall forward it with his report to the Magistrate, and shall deliver to the prosecutor and witnesses a duplicate of the despatch.

Prosecutors and witnesses to execute recognizances to appear before the Magistrate.

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S. 170, Notes 1—4.

1. Legislative changes.—

Difference between the Codes of 1861 *and* 1872—

The words corresponding to sub-S. 3 were not found in the Code of 1861, but were inserted in the Code of 1872.

Difference between the Codes of 1872 *and* 1882—

The provision that the Police-officer shall take security from the accused and release him on bail where the offence is bailable and the accused is able to give security was first introduced in 1882.

Difference between the Codes of 1882 *and* 1898—

There is no change between the Codes of 1882 and 1898.

Amendment in 1926—Sub-S. (4) has been repealed by Act II of 1926.

2. Scope and applicability of the section.—This section enables an officer in charge of a Police-station, if there is sufficient evidence or reasonable ground to justify the sending up of the accused, to forward him under custody to a Magistrate empowered to take the cognizance of the offence upon a police report. It is not necessary that the investigation should have been *completed* at that time nor is it necessary to send a final report under S. 173 at the same time.[1]

For a fuller discussion, *see* Note 16 to S. 344, *infra*.

The procedure prescribed under this section applies also to investigations conducted in a non-cognizable case under the orders of a Magistrate.[2] It also applies to arrests made under Ss. 37 and 41 of the Excise Act (Act XII of 1896)[3] and to reports in respect of investigations conducted by the police under the Madras Salt Act.[4]

3. Accused must be forwarded to Magistrate having jurisdiction.—An accused can, under this section, be forwarded only to a Magistrate empowered to take cognizance of the offence, upon a police report, and to try or commit him for trial. It is irregular to send the accused and the witnesses before another Magistrate who is not so empowered.[1] As to reports under what sections of the Code is contemplated by the words "police-report", *see* S. 190, *infra*.

The power of Police-officers to take bail is regulated by the Code of Criminal Procedure. Hence it was held that a Magistrate cannot authorise a Police constable to admit to bail persons sent up to him by Police patels under the provisions of Bombay Act VIII of 1867 for offences for which bail may be allowed by the Code of Criminal Procedure.[2]

4. Powers and duties of the Police under this section.—It is for the officer in charge of a Police-station to decide whether there is sufficient evidence

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Section 170—Note 2.

(1) (1931) 1931 All. 617 (619): 53 All. 729, *Emperor* v. *Sooba*.
(2) (1931) 1931 All. 263 (264): 53 All. 407, *Raghubar Dayal Misra* v. *Emperor*.
(1913) 14 Cri. L. Jour. 218 (218) (All.), *Sarferaz Khan* v. *Emperor*.
(1898) Rat. Un. Re. Cr. C. 951 (951), *Empress* v. *Hira Shankar Uday Shankar*.
(3) (1903) 1903 Pun. Re. No. 9, p. 26, *Mohan Das* v. *Emperor*.
(4) (1931) 1931 Mad. 769 (769, 770), *Maddi Sudar Sanam* v. *Emperor*.

Note 3.

(1) (1902) 29 Cal. 483 (487), *Emperor* v. *Preonath Chowdhry*.
(2) (1869) Rat. Un. Cr. C. 26 (26).

S. 170, Notes 4—6.

or not to justify the forwarding of the accused.[1] The power cannot be exercised by a subordinate officer and proceedings instituted by him will be void under S. 530, Cl. (*p*)[2]. Nor can the power be controlled by the Superintendent of Police, especially after it has been exercised.[3]

When however he considers that there is such evidence he is bound under the imperative provisions of this section to forward the accused in custody or, if the offence is bailable, to take bail for his appearance before the Magistrate.[4] He cannot, for instance, discharge the accused nor entertain an application to withdraw the complaint inasmuch as the power to permit such withdrawal is a judicial act which must be done by a Magistrate.[4-a]

He is bound to send all persons acquainted with the facts of the case as witnesses at the trial and cannot omit to do so on the ground that some of the witnesses are relations of the accused.[4-b]

It is not the duty of the officer to intimate to the accused the offence with which he is charged. But he is bound to intimate to him whether the warrant is bailable or not.[5]

5. **Accused—Meaning of.**—The word "accused" as used in this chapter relating to investigations, means a person against whom there has been an accusation and as used in the chapters relating to inquiries and trials, means, a person over whom the Magistrate or Court is exercising jurisdiction.[1]

6. **Bond by witnesses.**—This section requires that when the accused person is forwarded to the Magistrate or released on security, for his appearance, the officer in charge of the Police-station *shall require* the complainant and witnesses to execute a bond for their appearance before the Magistrate. To send up an accused without such bonds being taken is illegal.[1] The stage when the bond from a witness or complainant is to be taken comes in only when the accused is arrested and is either forwarded under custody or is released on security. Otherwise the bond is not one furnished under this section.[2]

The bond taken under this section from a witness or complainant should specify the particular day on which he has to appear before the Magistrate.[3] Such date must be the date on which the accused is expected to appear before the Magistrate or if a security for his appearance has been taken, the date of his appearance.[4]

For form of bond by a witness or complainant, *see* Form 26, Schedule IV.

Note 4.

(1) (1931) 1931 Lah. 99 (101): 12 Lah. 435, *Bal Krishna* v. *Emperor.*
(2) (1918) 1918 Cal. 50 (51), *Jalaluddin Peshawari* v. *Emperor.*
(3) (1917) 18 Cri. L. Jour. 886 (887): 1918 Cal. 485, *Umesh Chandra Roy* v. *Satis Chandra Roy.*
(4) (1920) 1920 Nag. 255 (257, 259, 260, 261): 16 Nag. L. R. 9, *Govinda* v. *Emperor.*
(4-a) (1875) Rat. 91 (91).
(4-b) (1933) 1933 All. 582 (586), *Rahat Husain* v. *Emperor.*
(1866) 5 Suth. W. R. 6 (6), *Queen* v. *Kodai.*
(5) (1931) 1931 All. 263 (265): 53 All. 407, *Raghubar Dayal Misra* v. *Emperor.*

Note 5.

(1) (1920) 1920 Nag. 255 (257, 259): 16 Nag. L. R. 9, *Govinda* v. *Emperor.*

Note 6.

(1) (1869) 11 Suth. W. R. 47 (47, 48), *Empress* v. *Pooran Jolaha.*
(2) (1893-1900) Low. Bur. R. 478 (479), *Empress* v. *Kyo Shin.*
(3) (1866) 6 Suth. W. R. 52 (52), *Empress* v. *Bheem Manjee.*
(1869) 11 Suth. W. R. 47 (47), *Empress* v. *Pooran Jolaha.*
(4) (1893-1900) Low. Bur. R. 478 (479), *Empress* v. *Kyo Shein.*

S. 171.

Complainants and witnesses not to be required to accompany police-officer.

Complainants and witnesses not to be subjected to restraint.

171.* No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in S. 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

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*(CODE OF 1882—S. 171.)

Complainants and witnesses not to be required to accompany Police-officer.

Complainants and witnesses not to be subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer,

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond;

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in S. 170, the Officer-in-charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

(CODE OF 1872—Ss. 130, Para. 5, 131.)

Complainants and witnesses to execute recognizances to appear.

130. * * *

No Police-officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

Complainants and witnesses not to be subjected to restraint.

131. A Police-officer shall not subject any complainant or witness to restraint or unnecesary inconvenience, nor require him to give any security for his appearance, other than his own recognizance.

Recusant complainant or witnesses may be forwarded in custody.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in S. 130, the Officer-in-charge of a Police-Station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing is completed.

(CODE OF 1861—Ss. 158, 159.)

158. * * *

Prosecutors and witnesses to execute recognizances to appear before the Magistrate.

The prosecutor or witnesses, unaccompanied by any Police-officer shall be required to deliver in person such duplicate to the Magistrate.

S. 171, Notes 1—2.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2

Other Topics.

Detention of witness illegal. See Note 2, Pt. 2. Evidence of person in custody. See Note 2, Pt. 3.

1. Legislative changes.—

(i) *Difference between the Codes of* 1861 *and* 1872—

There is no material difference between these two Codes.

(ii) *Difference between the Codes of* 1872 *and* 1882—

The words "No Police-officer shall.....accompany a complainant or witness" were omitted and the words "No complainant or witness—shall be required to accompany a Police-officer" were substituted in the Code of 1882.

(iii) *Difference between the Codes of* 1882 *and* 1898—

There is no difference between these two Codes.

2. Scope of the section.—This section declares that no complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer or shall be subjected to any unnecessary restraint or inconvenience except in cases where such complainant or witness refuses to attend or execute a bond as required in S. 170, *supra*, in which case the Police-officer may forward him in custody to the Magistrate.[1] If a Police-officer detains any witness against his will, his act is illegal and he may become liable to punishment under the Penal Code.[2]

Statements obtained from a witness subjected to such restraint cannot be regarded as voluntary.[3]

Prosecutors and witnesses not to be subjected to restraint.

Recusant prosecutor or witness may be forwarded in custody.

159. A Police-officer shall not subject any prosecutor or witness to restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any prosecutor or witness shall refuse to attend, or to execute the recognizance directed in the last preceding section, it shall be competent to the Officer-in-charge of a Police-station to forward such prosecutor or witness under custody to the Magistrate, who may detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the hearing before the Magistrate.

Section 171—Note 2.

(1) (1900) 4 Cal. W. N. 49 (54), *Bajrangi Lall* v. *Emperor.*
(1892-1896) 1 U. B. R. 221 (225), *Maung Taung Hla* v. *Empress.*

(2) (1892-1896) 1 U. B. R. 221 (225), *Maung Tung Hla* v. *Emperor.*

(3) (1900) 4 Cal. W. N. 49 (54), *Bajrangi Lall* v. *Emperor.*

S. 172.

172.* (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, S. 161 or S. 145, as the case may be, shall apply.

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*(CODE OF 1882—S. 172.)

172. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, S. 161 or S. 145, as the case may be, shall apply.

(CODE OF 1872—S. 126.)

126. A Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained by his investigation.

Daily record of proceedings.

Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them

S. 172, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND OBJECT OF THE SECTION	2
"DAY BY DAY"	2-A
CONTENTS OF DIARY	3
ADMISSIBILITY OF DIARY IN EVIDENCE	4
INSPECTION BY ACCUSED	5
USE OF THE DIARY	6
REFRESHING MEMORY	7
"MAY SEND FOR THE POLICE DIARIES"	8

Other Topics.

Accused cannot have copies. See Note 5, Pt. 10.

Accused's right to see the diary when lost. See Note 5, Pt. 8.

Application of S. 145, Evidence Act. See Note 6, Pt. 7.

Court cannot compel the Police-officer to refresh memory with reference to his diary. See Note 7, Pts. 5-8.

Court cannot make a standing order for production of. See Note 8, Pt. 1.

Diary—A public document. See Note 5, Pt. 2.

Diary can be used against the Police-officer. See Note 4, Pt. 11.

Diary cannot be read to the jury. See Note 4, Pt. 3.

Diary—Extent of the use of. See Note 5, Pts. 7 & 8 and Note 6.

Diary not substantive evidence. See Note 4, Pts. 1 & 2.

Diary of Calcutta Police-officers. See Note 2, Pts. 6 & 7.

Diary to be kept properly. See Note 2, Pt. 2.

Making an investigation under this chapter. See Note 2, Pt. 5.

Statement of witnesses examined whether to be entered in the diary. See S. 162.

Use of the diary by the court. See Note 6, Pts. 1-5.

Who can use the diary to refresh memory. See Note 7, Pts. 1 & 2.

1. Legislative changes.—S. 154 of the Code of 1861 directed the transmission of the daily diary to the Superintendent of Police, and in the absence of such officer, to the District Magistrate. The District Magistrate alone was authorised to send for the diary, no other Court or officer was so authorised. The corresponding section of the Code of 1872 which is substantially identical with that of 1882, and of this Code, omitted the direction as to

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for the purpose of contradicting such Police-officer, the provisions of the law relating to documents used for such purposes shall apply to them.

(CODE OF 1861—S. 154.)

Daily record of proceedings.

154. A Police-officer making an enquiry under this chapter, shall day by day enter his proceedings in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a statement of the circumstances elicited by his enquiry and shall forward day by day a copy of such diary to the District Superintendent of Police, who shall without delay bring to the notice of the Magistrate of the District any part of such diary which he shall consider it to be important that such Magistrate shall know. The Magistrate of the District shall be entitled to call for and inspect such diary. In cases where there is no District Superintendent of Police, the Police-officer shall forward day by day a copy of the diary to the Magistrate of the District. Such diary shall not be evidence of the facts stated therein, except against the Police-officer who made it.

departmental submission and empowered any Court to send for the police diary of a case under enquiry or trial in such Court, the diaries to be used not as evidence in the case, but to aid the Court in such enquiry or trial. In the Code of 1861, it had merely been enacted that the diary should not be evidence of the facts stated therein except against the Police-officer who made it.[1]

S. 172, Notes 1—2.

2. Scope and object of the section.—The object of the section in providing for the maintenance, by the Police-officer, of a diary of his proceedings has been stated by Edge, C. J., in *Queen-Empress* v. *Mannu*,[1] as follows:—

"The early stages of investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the police, and until the honesty, the capacity, the discretion and judgment of the police can be thoroughly trusted it is necessary, for the protection of the public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading, which was obtained from day to day by the Police-officer who was investigating the case and what were the lines of investigation upon which such Police-officer acted."

It is therefore essential that the diary should be kept strictly in accordance with the Code especially as it is frequently of use in difficult cases in enabling the Court to judge of the weight to be attached to the evidence.[2]

The section applies to Police-officers making investigations *under this chapter*. These will include investigation into cognizable cases under S. 156 and even into non-cognizable cases under the orders of a Magistrate under S. 155, sub-S. (2). In either case, the Police-officer is charged with the duty of maintaining a diary.[3] The omission to maintain it deprives the Court of a very valuable aid which such diaries can give if legitimately used.[4]

The section does not apply to personal diaries maintained by a Police-officer *not conducting any investigation*.[5] Nor does the section apply to a *departmental enquiry*.[5-a] The section applies to *all* Police-officers making an investigation.[5-b]

A diary prepared by the police under S. 47-A of the Calcutta Suburban Police Act, III of 1888 does not fall under either S. 172 or S. 162, Cr. P. Code, and is not privileged.[6] It has been held also that these two sections do not apply to the Calcutta Police and that there is nothing in the Calcutta Police

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Section 172—Note 1.

(1) (1894) 1894 Pun. Re. No. 17, p. 59, *Kallu* v. *Emperor*.

Note 2.

(1) (1897) 19 All. 390 (397) (F. B.), *Emperor* v. *Mannu*.

[See also (1912) 13 Cri. L. Jour. 65 (90), *Peary Mohan Das* v. *Weston*.

(1934) 1934 Cal. 458 (459), *Debendra Chandra Sarkar* v. *Emperor* (Object of provisions is to guard against a true case being spoilt by an unscrupulous investigating Police-officer—Reference to S. 162 in this case seems to be a mistake).]

(2) (1867) 1867 P. R. No. 39, p. 76, *Crown* v. *Shera*.

(3) (1899) 27 Cal. 144 (151), *Empress* v. *Deodhar*.

(4) (1918) 1918 Lah. 171 (175): 1918 P. R. 16, *Hira Lal* v. *Emperor*.

(5) (1925) 1925 Cal. 959 (960), *Kalia* v. *Emperor*.

(5-a) (1935) 1935 Sind 13 (14) (F. B.), *Mohamad Rahim* v. *Emperor*.

(5-b) (1935) 1935 Lah. 230 (243), *Jahangiri Lal* v. *Emperor*.

(6) (1924) 1924 Cal. 542 (542), *Suresh Chandra Ghose* v. *Emperor*.

S. 172, Notes 2—4.

Act, IV of 1861, relating to any confidential diary which cannot be reached by any party in a crimial case.[7]

As to use of *panchnamas* prepared in the course of an investigation, *see* the undermentioned case.[8]

2-A. "Day by Day."—Police-officers are required to enter proceedings in a diary from *day to day*.[1] Where there is a delay in making the entry, the circumstance is calculated to throw suspicion on the diary.[2]

3. Contents of Diary.—The diary should set forth the proceedings day by day of investigating officer and must record *inter alia* the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and circumstances ascertained through his investigation.[1] The section does not contain an exhaustive list of the matters which may, with propriety, be entered. There is much which may tend to the furtherance of the objects for which a diary has been instituted which would not fall within the language of the section, but which may, with great advantage, be entered, and when so entered, would be privileged.[2]

As to whether statements of witnesses may be recorded in the diary and the effect of such record, *see* Notes to S. 162, *ante*.

4. Admissibility of diary in evidence.—Entries in the diary prepared under this section are only notes of *secondary evidence* of witnesses who can be examined in the first instance, and whose evidence, if necessary, should be taken in open Court in the presence of the accused.[1] They cannot therefore be used either as substantive or as corroborative evidence in the case,[2] or read to the jury.[3] Nor can the Court look into them and take the facts and statements written therein as materials which would help it to come to a finding on the evidence in the case.[4] The reason is that to test the evidence by means of the

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(7) (1929) 1929 Cal. 257 (257), *Panchanam Mukerjee* v. *Emperor*.
(1928) 1928 Lah. 257 (258): 9 Lah. 389, *Hazara Singh* v. *Emperor*.
(8) (1933) 1933 Sind. 220 (222), *Baloch Pirwali* v. *Emperor*.

Note 2-A.

(1) (1935) 1935 Lah. 230 (243), *Jahangiri Lal* v. *Emperor*.
(2) (1935) 1935 Nag. 69 (75), *Local Government* v. *Mt. Guji*.

Note 3.

(1) (1897) 20 Mad. 189 (204), *Emperor* v. *Arumugam*.
(2) (1897) 19 All. 390 (414) (F.B.), *Emperor* v. *Mannu*.

Note 4.

(1) (1900) 1900 A. W. N. 130 (131), *Empress* v. *Maheshri*.
(2) (1893) 3 All. W. N. 145 (146), *Gayadin*.
(1882) 10 Cal. L. R. 54 (55), In re *Abdul Guffoor*.
(1910) 11 Cri. L. Jour. 612 (613), *Emperor* v. *Chandan Singh*.
(1899) 21 All. 159 (161), *Emperor* v. *Zahir Hussain* (Cannot be used as corroborative evidence).
(1931) 1931 Pat. 96 (97), *Sakal Ahir* v. *Palakdhan* (Do.).
(1914) 15 Cri. L. Jour. 256 (256): 1915 Mad. 11, In re *Kuttiali Kutti Marakar* (Do.).
(1882) 2 Weir 143 (143), In re *Neravati Nandaiya*.
(1866) 6 Suth. W. R. Cr. L. 3 (3), Re *Aurjoon*.
(1866) 6 Suth. W. R. 52 (52), *Madan*.
(1861) 13 Suth. W. R. Cr. 22 (22), *Empress* v. *Thakoor Chand*.
(1915) 1915 All. 144 (145), *Abdul Khaliq* v. *Emperor*.
(1933) 1933 P. C. 124 (132), *Dwarkanath Varma* v. *Emperor*.
(3) (1900) 27 Cal. 295 (305), *Emperor* v. *Jadub Das*.
(1868) 8 Suth. W. R. Cr. 68 (69), *Empress* v. *Hurdut Surmi*.
(4) (1908) 7 Cri. L. Jour. 3 (4), *Muhammad Usman* v. *Emperor*.
(1894) 1894 All. W. N. 155 (156), *Empress* v. *Nand Lal*.
(1894) 16 All. 207 (208), *Emperor* v. *Nasir Uddin*.
(1906) 3 Cri. L. Jour. 408 (408), *Syed Abdul Rahim* v. *Ralhu Rerwar*.
(1912) 13 Cri. L. Jour. 905 (909), *Jhakir* v. *Emperor*.
(1911) 15 Cal. W. N. 47 (47) (N), *Mohini Mohan Debanath* v. *Emperor*.
(1865) 2 Suth. W. R. Cr. L. 13 (13), Re *Gyanu*.
(1865) 3 Suth. W. R. Cr. L. 24 (24),
(1926) 1926 Lah. 54 (59), *Mohammad* v. *Emperor*.
(1924) 1924 Lah. 720 (722), *Kundan Singh* v. *Emperor*.
(1906) 4 Cri. L. Jour. 176 (176), *Hamada* v. *Emperor*.
(1930) 1930 Lah. 484 (485), *Basant Singh* v. *Emperor*.

diaries is to use them as evidence.[5] Thus, to believe the evidence of a prosecution witness because a perusal of the diary shows that he was examined at the earliest possible opportunity and he made the statement to the police, is an improper use of the diary.[6] Conversely, to reject the story of the defence on the ground that it is nowhere mentioned in the diary is also an improper use thereof.[7] What the Court can do is to discover out of the diary any matter that is important and then by calling for the necessary witnesses or documents, to have that matter properly proved in evidence.[8] Consent cannot legalise the use of diaries as evidence.[9] But when a diary was referred to by a Magistrate as corroborative evidence, but there was legal evidence to help him to come to the same finding, the High Court declined to interfere.[10] **S. 172, Notes 4—5.**

The prohibition extends only against using entries in the diary as evidence against *third persons*. There is no objection to such entries being used against the Police-officer himself, *e.g.*, in a case against him under S. 211 of the Penal Code. But in such a case where only portions of the diary were placed in evidence the Police-officer was held entitled to place any other portions which explained those which were admitted.[11] A Police-officer charged with an offence cannot, however, use as evidence in his favour any entries made by him in a special diary; this is not because of the prohibition contained in S. 172, but because a person cannot make evidence for himself so as to take advantage of it.[12]

It has been held that a police diary could be referred to by the prosecution, not to substantiate the offence against the accused, but to see whether a witness has turned hostile.[13]

S. 91 of the Evidence Act does not apply to entries in special diaries; and oral evidence is admissible to prove statements made to the police, by witnesses who heard them made.[14] Whether the record of a statement be proved and used under S. 162 or used under S. 172, Cl. (2), without being proved, it is necessary for the Court to be astute and avoid using it otherwise than as provided by law.[15]

5. Inspection by accused.—This section provides that neither the accused nor his agent is entitled to see the diary merely because it is referred

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(1880) 2 Weir 142 (143).
(1918) 1918 Pat. 98 (98), *Godhan* v. *Emperor*.
(1893) 7 C. P. L. R. 22 (23), *Subhani*.
(5) (1867) 8 Suth. W. R. 35 (36), *Bussiruddi*.
(1928) 1928 Lah. 820 (823), *Emperor* v. *Ram Rang*.
(1922) 23 Cri. L. Jour. 251 (255), *Sundar Singh* v. *Emperor*.
(6) (1926) 1926 Lah. 363 (364), *Fazal* v. *Emperor*.
(7) (1926) 1926 Lah. 485 (486), *Dini* v. *Emperor*.
(1883) All. W. N. 37 (37), *Empress* v. *Chunni*.
(1927) 1927 Oudh 64 (65), *Rajaram* v. *Emperor*.
(8) (1906) 3 Cri. L. Jour. 408 (408), *Syed Abdul Rahim* v. *Sadhu Kherwar*.
(1933) 1933 Pat. 440 (441), *Deo Lal Mahton* v. *Emperor*.
(9) (1925) 1925 Oudh 1 (8): 27 Oudh Cas. 40, *Manna Lal* v. *Emperor*.
(10) (1917) 1917 P. C. 25 (26, 30): 44 Cal. 876: 13 N. L. R. 100, *Dal Singh* v. *Emperor*.
(1914) 15 Cri. L. Jour. 256 (256): 1915 Mad. 11, In re *Kuttiali Kutte Marakar*.
(1921) 1921 Pat. 331 (332), *Achhaibat Singh* v. *Emperor*.
(1925) 1925 Pat. 165 (166), *Ganga Singh* v. *Ranbhagan Singh*.
(1870) 13 Suth. W. R. 22 (22), *Empress* v. *Thakoor Chand Surma*.
(11) (1867) 8 Suth. W. R. Cr. 87 (90), *Empress* v. *Nobo Kisto Ghose*.
(12) (1884) 6 All. 42 (44), *Empress* v. *Gavri Shankar*.
(13) (1918) 1918 Pat. 459 (460), *Ram Charitra Singh* v. *Emperor*.
(14) (1918) 1918 L. B. 138 (138), *Noor Mahomed* v. *Emperor*.
(15) (1933) 1933 Pat. 589 (595), *Emperor* v. *Najibuddin*.

S. 172, Notes 5—6.

to by the Court.[1] The police diary is no doubt a public record but it is specially protected from inspection by either the accused or his agent.[2] It is the *Court* and not the accused person or his agent that can use the special diary for the purpose of contradicting the Police-officer who made it.[3] The *Court* cannot delegate this power to the counsel for the defence.[4] The accused's right to see the police diary will arise only in the two cases mentioned in the section, *viz.*, if the diary is used by the Police-officer to refresh his memory or by the Court to contradict the Police-officer.[5] If the diary is used by the Police-officer to refresh his memory, the provisions of S. 161 of the Evidence Act will apply and the adverse party must be shown the entry and he may cross-examine the witness on it.[6] But the defence is entitled to an inspection of only *that portion* of the diary from which the witness refreshed his memory and not the entire diary;[7] and it has been held that if the accused does not exercise his right as soon as the witness refreshes his memory he does not continue to retain it during the whole of the subsequent examination of the witness.[8]

Copies of the diary cannot, as a matter of course, be granted to the accused.[9] On the happening of one or other of the events entitling the accused to inspection the sole right conceded to him by the legislature is the limited right of *inspection* and not to have *copies*.[10]

It has been held that as the right of the accused to inspect the diary can arise only in the two cases mentioned in the section, the accused cannot be prejudiced if no diary is maintained; because where there is no diary, there can be no occasion for the Court or the Police-officer to use the diary.[11] This view, however, seems to lose sight of the advantage that the accused may often derive by an inspection of the diary by the Court, an advantage which will be lost if a diary is not maintained.

The protection afforded to police diaries by this section is a limited one and only prohibits a person from calling for the police diaries of the investigation which preceded the enquiry and trial of the case in which he is accused. In any other enquiry or trial, Civil or Criminal, the diaries should be liable to be inspected as well as called for by the party who desires their inspection.[12]

6. Use of the diary.—The diary cannot be used for anything other than to assist the presiding Judge in the inquiry or trial.[1] What the law lays

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Note 5.

(1) (1906) 4 Cri. L. Jour. 79 (82): 33 Cal. 1023, *Dadan Gazi* v. *Emperor*.
(1893-1900) Low. Bur. R. 42 (43), *Empress* v. *Maung Ba U*.
(2) (1897) 20 Mad. 189 (205), *Empress* v. *Arumugam*.
(3) (1897) 19 All. 390 (394), *Empress* v. *Mannu*.
(4) (1933) 1933 Lah. 498 (500), *Emperor* v. *Dharam Vir*.
(5) (1882) 8 Cal. 154 (157), *Emperor* v. *Kali Charan*.
(1914) 15 Cri. L. Jour. 256 (256): 1915 Mad. 11, In re *Cuttiali Kutti*.
(1925) 1925 Pat. 339 (340), *Rabindranath* v. *Emperor*.
(1930) 1930 Pat. 195 (197): 9 Pat. 31, *Banolochan Lal* v. *Emperor*.
(6) (1906) 4 Cri. L. Jour. 79 (82): 33 Cal. 1023, *Dadan Gazi* v. *Emperor*.
(7) (1897) 19 All. 390 (394) (F.B.), *Empress* v. *Mannu*.
(1882) 8 Cal. 739 (744), In re *Jhuboo Mahton*.
(1922) 1922 Pat. 562 (562): 2 Pat. 74, *Lachmi Singh* v. *Emperor*.
(8) (1882) 8 Cal. 739 (744), In re *Jhuboo Mahton*.
(9) (1894) 16 All. 207 (208), *Empress* v. *Nasiruddin*.
(10) (1897) 19 All. 390 (406) (F.B.), *Empress* v. *Mannu*.
(11) (1931) 1931 Pat. 150 (151), *Hafiz Muhammed Sani* v. *Emperor*.
(12) (1897) 1897 P. R. No. 17, p. 62, *Kallu* v. *Emperor*.
[See (1933) 1933 Cal. 184 (184), *Golam Rahman Khan* v. *Emperor* (Application by accused for order under S. 208 for production of certain police diaries—*Held*, application should be granted unless Magistrate deems it unnecessary to do so).]

Note 6.

(1) (1928) 1928 All. 25 (28), *Karam Singh*.
(1926) 1926 Pat. 20 (23), *Badri Choudhry* v. *Emperor*.

down is that any Criminal Court may send for the police diary of a case under inquiry and may use such diary, not as evidence in the case, but to aid it in such enquiry or trial. One obvious means of using it is for the suggestion of questions to witnesses before the Court when the Court considers there is reasonable ground for so doing.[2] The diary might be used to suggest means for further elucidating points that need clearing up, but only for elucidating them by legal evidence.[3] It is the duty of the Judge to bring on record by evidence any material facts that may come to his knowledge and it is for that purpose he can and should use the diary.[4] S. 172, Notes 6—7.

The provisions of S. 172 empower the Court to use the diary not only for the purpose of enabling the Police-officer who wrote it to refresh his memory or for the purpose of contradicting him, but also for the purpose of tracing the investigation through its various stages. It may use the diary as containing indications of sources and lines of enquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice.[5]

The object of sub-S. (2) is not to enable the Court to direct the Police-officer who is giving evidence to refresh his memory from the notes made by him in the course of his investigation or to question him as to contradictions.[6]

If used for the latter purpose, the provisions of Ss. 145 and 161 of the Evidence Act shall apply.[7]

The accused are not entitled to see the diaries of the police, but when the Police-officer in giving evidence does not remember whether he had entered his proceedings of a particular day in his diary, the propriety of the Judge's sending for the diary is obvious.[8]

The Judge could refer to the diary even after the verdict of the Jury or Assessors, because the verdict does not end the trial.[9]

The power given to the Court under S. 172 should be sparingly exercised.[10]

As to the power of the Court to refer to the *statements of witnesses* to the police recorded in the police diary when such statement has not been proved or the accused has not asked for copies, *see* S. 162, Note 15, *ante*.

7. **Refreshing memory.**—The diary can be used only for the purpose of refreshing the memory of the Police-officer who prepared it[1] or for the purpose

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(2) (1917) 1917 P. C. 25 (29): 44 Cal. 876: 13 N. L. R. 100, *Dal Singh* v. *Emperor*.
(1906) 4 Cri. L. Jour. 79 (82): 33 Cal. 1023, *Dadan Gazi* v. *Emperor*.
(1894) 1894 A. W. N. 155 (156), *Empress* v. *Nanda Lal*.
(1900) 27 Cal. 295 (305), *Emperor* v. *Jadab Das*.
(1927) 1927 Oudh 64 (65), *Raja Ram* v. *Emperor*.
(3) (1925) 1925 Pat. 165 (166), *Ganga Singh* v. *Rambhajan*.
(1926) 1926 Lah. 54 (59), *Mohammad* v. *Emperor*.
(4) (1928) 1928 All. 25 (28), *Karam Singh* v. *Emperor*.
(5) (1897) 19 All. 390 (395) (F.B.), *Empress* v. *Mannu*.
(1930) 1930 Lah. 318 (320): 10 Lah. 794, *Devi Das* v. *Emperor*.
(6) (1926) 1926 Lah. 54 (59), *Mohammad* v. *Emperor*.
(1897) 19 All. 390 (394) (F.B.), *Emperor* v. *Mannu*.
(7) (1906) 4 Cri. L. Jour. 79 (82): 33 Cal. 1023, *Dadan Gazi* v. *Emperor*.
(1926) 1926 Lah. 54 (59), *Mohammad* v. *Emperor*.
[See (1934) 1934 Cal. 458 (459), *Debendra Chandra Sarkar* v. *Emperor* (Reference to S. 162 in judgment seems to be a mistake).]
(8) (1886) Rat. 254 (256), *Empress* v. *Revubhai*.
(9) (1929) 1929 Cal. 57 (58): 56 Cal. 150, *Rebati Mohan Chakravarthy* v. *Emperor*.
(10) (1929) 1929 Mad. W. N. 587 (591), *Kumaraswami Asari* v. *Emperor*.
Note 7.
(1) (1865) 4 Suth. W. R. Cr. L. 6 (6).

S. 172, Notes 7—8.

of contradicting him. Persons other than Police-officers cannot use it for the purpose of refreshing their memory.[2]

The accused cannot insist on the Police-officer's referring to his diary to refresh his memory, such use of the diary being at the discretion of the witness and the Judge.[3] But it was held in proceedings under S. 110, that though it may be within the right of the Police-officers not to refer to a diary, the accused was nevertheless entitled to the benefit of the witness's refusal to disclose the source of their information.[4]

It has been held in the undermentioned case[5] that a Court cannot compel the Police-officer to refresh his memory. The High Courts of Allahabad[6] and Patna,[7] have, on the other hand, held that it can do so.

A Judge is however not *bound* to compel a witness to refresh his memory, it being wholly within the Court's *discretion* to do so or not.[8]

As to whether a Police-officer can refresh his memory by referring to the *statements of witnesses* examined under S. 161 and written in the diary, *see* Notes to S. 162, *ante*.

8. May send for the Police diaries.—The Court can only make an order for the production in the *particular* case of the police diary or diaries. It has no power to issue a general order that in every case before it police diaries shall be produced. The order for the production of the diaries must be made in and confined to each particular case.[1] Police diaries not being evidence in the case, a Court is not empowered to draw any presumption for or against the prisoner from the non-production thereof.[2]

S. 173.

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-

Report of police-officer.

173.* (1) *Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-*

Report of police officer.

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*(CODE OF 1882—S. 173.)

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the Officer-in-charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the

Report of Police-officer.

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(2) (1897) 19 All. 390 (394) (F.B.), *Empress* v. *Mannu*.
(3) (1882) 8 Cal. 154 (156-157), *Kali Charan Chunari*.
(1932) 1932 Lah. 103 (112), *Mohinder Singh* v. *Emperor*.
(4) (1925) 1925 Pat. 131 (132), *Deodhari Panday* v. *Emperor*.
(5) (1926) 1926 Jour. 150 (3) (150), *Shaikh Dilawar* v. *Emperor*.
(6) (1921) 1921 All. 86 (86), *Harkhu* v. *Emperor*.
(7) (1924) 1924 Pat. 829 (830), *Mohiuddin Khan* v. *Emperor*.
(8) (1882) 8 Cal. 739 (745), In re *Jhubbo Mahton*.

Note 8.

(1) (1897) 19 All. 390 (415) (F.B.), *Empress* v. *Manna*.
(1894 1894 All. W. N. 181 (181), *Empress* v. *Mohan*.
(2) (1894) 1894 All. W. N. 181 (181), *Empress* v. *Mohan*.

station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

station shall—

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under S. 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(2) Where a superior officer of police has been appointed under S. 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears

(3) Whenever it appears

S. 173.

from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) *A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:*

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

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parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under S. 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the Officer-in-charge of the Police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(CODE OF 1872—Ss. 125, 127.)

Procedure of police in case of deficient evidence.

125. If it appears to the Officer-in-charge of the Police-station that there is no sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of police mentioned in S. 117, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Report of Police-officer.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police-officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who

S. 173, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
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"EVERY INVESTIGATION UNDER THIS CHAPTER" ..	3
"AS SOON AS IT IS COMPLETED"	4
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Police report should contain nature of information. See Note 7, Pts. 2-3.

Relevancy of police-report. See Note 8.

1. Legislative changes.—There has been no material change in the corresponding section of the Codes of 1861, 1872, 1882 and 1898.

appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police-officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police-officer shall state the fact and the cause of his detention.

(CODE OF 1861—Ss. 153, 155.)

153. If it shall appear to the Officer-in-charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate.

Police how to proceed in cases of deficient evidence.

155. The enquiry shall be completed without unnecessary delay, and as soon as it is completed, the Police-officer making the enquiry shall forward to the Magistrate a report in such form as shall be prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused person, and shall also transmit any weapon or article which it may be necessary to produce before the Magistrate. The Police-officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance. If the accused person be detained in custody, he shall state the fact and the cause of his detention.

Report of Police-officer of what to consist.

S. 173, Notes 1—5.

Changes by the amending Act of 1923—

(1) the words "if arrested" in clause (*a*) of sub-S. 1 were substituted for the word "person."

(2) Clause (*b*) of sub-S. (1) was newly added.

(3) Sub-S. (4) was newly added.

2. Scope and object of the section.—S. 157, *ante*, provides for a police report as to information received about an offence, but *before* it is investigated. This section provides for a final report *after completion* of the investigation and showing the results of such investigation.[1] Till the final report under this section is made the investigation must be deemed to be *pending* and an informant cannot be prosecuted under S. 211 of the Penal Code.[2]

The final report under this section is to be sent in the form prescribed by the Local Government. In the various provinces the Local Governments have prescribed the various forms in which the final report is to be sent. Where the accused is sent up for trial the form of the report in some provinces is called the *charge sheet*. The report sent when the accused is not sent up is called the "final report" or "referred charge sheet."[3]

3. "Every investigation under this chapter."—The words "every investigation under this chapter" will include investigation started on information under S. 154, as well as investigation into a non-cognizable case under orders of the Court under S. 155, sub-S. (2).[1]

Every such investigation should, on its completion be followed by a final report under this section. Where the police after investigation into a non-cognizable case under S. 155, sub-S. (2) filed a *complaint* instead of making a report under this section it was held that the procedure was irregular though not a material irregularity vitiating the trial.[2]

4. "As soon as it is completed."—It is incumbent upon the investigating officer to complete his investigation without unnecessary delay[1-a] and submit the report under this section as soon as the investigation is over. There is no justification whatever for an investigating officer to delay his final report under this section till the proceedings under S. 202, *infra*, before the Magistrate terminate.[1]

5. "The Officer in charge of the Police-station shall".....—When an officer in charge of a Police station has completed the investigation, he

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Section 173—Note 2.

(1) (1899) 1899 All. W. N. 87 (89), *Kandhaiya Lal*.
(1907-08) 4 Low. Bur. R. 137 (137), *Hakim Ally* v. *Emperor*.
(1904) 1 Cri. L. Jour. 539 (540): 1904 U.B.R. 1st Qr. Cr. P.C. 4, *Lachman Chetty* v. *Emperor* (Section applies to final report and does not apply to report under S. 159).
(2) (1915) 1915 Bom. 80 (80), *Emperor* v. *Appa Ragho Bhogle*.
(1910) 11 Cri. L. Jour. 199 (200): 3 S. L. R. 189, *Emperor* v. *Topan Chatomal*.
(3) (1932) 1932 Pat. 72 (76), *Raghunath Puri* v. *Emperor*.
(1897) 20 Mad. 189 (194, 198, 205), *Empress* v. *Arumugam*.
(1932) 1932 Mad. 673 (675), *Venkatasubba* v. *Anjanayalu*.

Note 3.

(1) (1913) 14 Cri. L. Jour. 218 (219) (All.), *Sarferaz Khan* v. *Emperor*.
(1915) 1915 Bom. 80 (80), *Emperor* v. *Appa Ragho Bhogle*.
(2) (1929) 1929 Mad. 115 (117), *Ponnuswami Udayar* v. *Emperor*.

Note 4.

(1-a) (1900) 2 Bom. L. R. 1092 (1094), *Queen* v. *Majesty* (If there is delay in the investigation by the Police, it is the duty of the committing Magistrate and failing him, of the Sessions Judge, to inquire fully into the circumstances of the delay and to consider its bearing on the prosecution story).
(1932) 1932 Lah. 345 (347): 13 Lah. 573, *Emperor* v. *Barwick* (It is not proper to abandon an investigation and resume it after some days).
(1) (1933) 1933 All. 582 (585), *Rahat Husain* v. *Emperor* (Delay of about three and a half months).

should send the final report to the Magistrate. If a superior Police-officer has been appointed under S. 158, *infra*, the report should be submitted to the Magistrate through the superior officer. (Sub-S. 2). Cl. (*b*) of sub-S. (1) now provides that the informant who started the investigation should also be informed of the result of the investigation. **S 173, Notes 5—6.**

The duty of the Police-officer is to "investigate" and find the real culprit and bring him to justice; he ought not to try to get a confession from the alleged offender. In *Queen Empress* v. *Bahu Lal*,[1] Straight, C. J., observed, "instead of *working up to* the confession, the police *work down from it*, with the result that we frequently find ourselves compelled to reverse convictions simply because, beyond the confession there is no tangible evidence of guilt."

The Police-officer should not adjudicate on the guilt or innocence of the alleged offenders and especially in cases of rioting it is not the duty of the Police-officer to decide as to which of the parties was in the wrong.[2]

It has been held in the undermentioned case[3] that the *railway police* can also submit a report to the Magistrate under this section.

See also Note 4 to S. 170.

6. Report, to whom to be sent.—The final report under this section should be sent to the Magistrate *who is empowered to take cognisance of the offence on a police report* as provided in S. 190, Cl. 1 (*b*) .[1] On receipt of such report the Magistrate should deal with it under the provisions of S. 204, *infra*. He cannot, however, direct a *further investigation* and call for a *fresh report*.[2] There is a difference of opinion as to whether he can direct the police to prefer a charge sheet against the accused. The High Court of Madras[3] holds that he cannot do so. The police must be allowed to form their own opinion of a case when submitting their report and a Magistrate cannot ask them to change their opinion merely because he does not agree with them. The High Court of Patna,[4] and the Chief Court of Lower Burmah,[5] have on the other hand held that the Magistrate can make such a direction. According to the Patna High Court, such a direction is equivalent to saying "I give you a warrant to arrest the accused send them up either in custody or on bail according to the nature of the offence."

The power to order further proceedings (if any) under this section can apply only to the offence to which the *report* relates. The Magistrate has no power under the section to order proceedings against the *informant*.[5-a] As to the power of a Magistrate who has *accepted* a report by the police that the case

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Note 5.

(1) (1884) 6 All. 506 (542, 543), *Empress* v. *Babu Lal*.
[See also (1933) 1933 All. 31 (37, 38), *Emperor* v. *Nazir*.]
(2) (1912) 13 Cri. L. Jour. 737 (738): 1912 Pun. Re. 2, *Emperor* v. *Chanda Singh*.
(3) (1928) 1928 Bom. 162 (164): 52 Bom. 238, *Shivbhat Manjunath Bhut* v. *Emperor*.

Note 6.

(1) (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Shukadeva Sahay* v. *Hamid Miyan*.
(2) (1932) 1932 Lah. 611 (612), *Emperor* v. *Ali*.
(1932) 1932 Mad. 673 (673), *Venkatasubba Rao* v. *Anjanayulu*.
(3) (1932) 1932 Mad. 673 (673), *Venkatasubba Rao* v. *Anjanayulu*.
(4) (1932) 1932 Pat. 72 (77), *Raghunath Puri* v. *Emperor*.
(1933) 1933 Pat. 242 (244): 12 Pat. 234, *Uma Singh* v. *Emperor* (Dissenting from 1928 Pat. 585 (586).
(5) (1907) 7 Cri. L. Jour. 414 (415): 7 Low. Bur. R. 137, *Hakim Ally* v. *Emperor*.
(5-a) (1904) 1 Cri. L. Jour. 539 (540): 1904 U. B. R. 1st Qr. Cr. P. C. 4, *Lachman Chetty* v. *Emperor*.

S. 173, Notes 6—8.

is false, to direct the police to charge sheet the accused subsequently, *see* the undermentioned case.[5-b]

When there is no police report against a particular person the Magistrate, unless he is empowered under S. 190, Cl. 1 (*c*) cannot issue a warrant against that person for being tried before him.[6]

7. **What the report should contain.**—A report under this section includes both a "charge sheet" and a "referred charge sheet", *i.e.*, both a report charging a person with an offence, and a report stating the case to be false.[1]

As has been seen already in Note 1, *supra*, the report should be sent in the form prescribed by the Local Government. It should contain the names of the parties, the nature of the information received, the names of persons who appear to be acquainted with the facts of the case and whether the accused persons have been forwarded in custody or have been released on bail.[2] Where instead of giving the nature of the information and the facts constituting the offence, merely the sections of the Penal Code were mentioned it was held that the provisions of this section were not complied with.[3] It is not however, necessary to give the abstract of the evidence taken by the police during their investigation.[4]

It is not every communication from the police that will be a report under this section; the section contemplates a report after an investigation of a case.[5]

8. **How the report can be used.**—The report of the Police-officer is not *per se* legal evidence of the facts stated therein,[1] though it can be used to suggest means of further elucidating points which needs clearing up.[2] It is improper and illegal for a Magistrate to draw material for a conviction from the report of the investigating officer when he has not been examined as a witness.[3] *Vide* Ss. 162 and 172, *supra*, as to how the statements before the police can be used.

(5-b) (1907) 6 Cri. L. Jour. 34 (36) (Cal.), *Mokamiji Das* v. *Emperor* (When there are no materials to do so, Magistrate should not order charge sheeting).

(6) (1911) 12 Cri. L. Jour. 92 (93): 5 Sind L. R. 1, *Ahmed Khan* v. *Emperor*.

Note 7.

(1) (1932) 1932 Mad. 673 (674), *Venkata-Subba Rao* v. *Anjanayulu*.

(2) (1897) 20 Mad. 189 (205), *Empress* v. *Arumugam*.

(3) (1930) 1930 Bom. 372 (373), *Shivalingappa Bhagappa*, In re.

(1924) 1924 Sind 71 (72): 17 S. L. R. 150 (F.B.), *Mehrab* v. *Crown*.

(1910) 11 Cri. L. Jour. 145 (146): 37 Cal. 49, *E. O. Lee* v. *H. L. Adhikary*.

(4) (1930) 1930 Mad. 191 (191), *Balasundaram*, In re.

(5) (1871) 8 Bom. H. C. Cr. 113 (115), *Reg.* v. *Jafar Ali*.

(1912) 13 Cri. L. Jour. 752 (753): 6 S. L. R. 82, *Imperator* v. *Khushaldas*.

Note 8.

(1) (1915) 1915 All. 177 (177), ***Zorawar* v. *Emperor***.

(1869) Rat. 23 (23), *Reg.* v. *Sundar*.

(1866) 5 Suth. W. R. 2 (2), *Empress* v. *Alum*.

(1866) 5 Suth. W. R. 57 (57), *Sreemunto* v. *Ramchand*.

(1866) 6 Suth. W. R. 52 (52), *Madun Dass*.

(1866) 7 Suth. W. R. 31 (31), *Bissennath*.

(1868) 10 Suth. W. R. 55 (55), In re *Rajendro Kishore*.

(1866) 6 Suth. W. R. Cr. L. 3 (3), Re *Aurjoon*.

(1869) 12 Suth. W. R. 60 (62), *Behary Patak* v. *Mahomed Hyat*.

(1871) 15 Suth. W. R. 42 (43), *Obhoy Chowdhry* v. *Brae*.

(1872) 18 Suth. W. R. 64 (65), *Shamasunkur* v. *Ranee*.

(1878) 3 Cal. 754 (755), *Sufferuddin* v. *Ibrahim*.

(1871) 16 Suth. W. R. 17 (17), *Bhudressory* v. *Goburdhun*.

(1867) 8 Suth. W. R. Cr. 35 (36), *Empress* v. *Bussiruddi*.

(1900) 1900 Pun. L. R., p. 71 (73), *Kalandar* v. *Empress*.

(2) (1925) 1925 Pat. 165 (167), *Ganga Singh* v. *Rambhajam*.

(3) (1927) 1927 Pat. 37 (38), *Jai Singh* v. *Emperor*.

S. 173, Notes 8—10.

The police report can be used by the Magistrate "as credible information" under S. 5 of the Gambling Act (III of 1867) for issuing a warrant of arrest.[4] It can be used as the basis for issuing a search warrant.[5]

When the police sent a report to the Magistrate under this section that an information as to an alleged theft was groundless it was held that merely on this report and without a formal complaint the informant cannot be prosecuted under S. 182 of the Penal Code.[6]

8-A. Right of accused to copy of report.—Under the new sub-S. (4) an accused person is entitled, on application, to a copy of any report forwarded under this section, before the commencement of the inquiry or trial. This subsection renders the undermentioned cases[1] no longer good law.

9. Penalty for submitting an incorrect or false report.——A Police-officer who either negligently or improperly files an incorrect or false report can be proceeded against under S. 29 of the Police Act (V of 1861).[1] He is also liable to punishment under S. 218 of the Penal Code. But he cannot be prosecuted under S. 211 of the Penal Code for making a coloured or false report, since it could not be said that he "instituted any criminal proceedings" against any person.[2] *See also* the undermentioned cases.[3]

10. Review by Sessions Judge.—An order of the Magistrate directing a case reported to him by the Police under this section to be struck off, is not a judicial order dismissing a complaint and cannot be revised by the Sessions Judge under S. 437, *infra*.[1]

S. 174.

Police to inquire and report on suicide, etc.

174.* (1) The officer in charge of a police-station, or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

***(CODE OF 1882—S. 174.)**

Police to inquire and report on suicide etc.

174. Every Officer-in-charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

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(4) (1913) 14 Cri. L. Jour. 293 (294): 9 Nag. L. R. 68, *Sheikh Moli* v. *Emperor*.
(5) (1897) 1897 Cr. Rg. 40, *Hari Lal Jagjivan*.
(6) (1902) 6 Oudh Cas. 1 (5), *Mokham Singh*.

Note 8-A.

(1) (1896) 19 Mad. 14 (16), *Empress* v. *Venkataratnam*.
(1897) 20 Mad. 189 (F.B.), *Arumugam*.
(1896) Rat. 874, *Empress* v. *Shidlingappa*.

Note 9.

(1) (1871) 15 Suth. W. R. Cr. 17 (17), In re *Baroda Kant Mookhopadhya*.
(2) (1899-00) 4 Cal. W. N. 347 (348), *Thakur Tewari* v. *Empress*.
(3) (1921) 1921 Bom. 115 (118), *Anverkhan Mahomad Khan* v. *Emperor* (*Per* Pratt, J.,—Intention to screen particular offender not necessary for application of S. 218, I. P. C.—Fawcett, J., dubitante).
(1935) 1935 Cal. 552 (554), *Secretary of State* v. *Promatha Nath Ganguli* (Bengal Police Regulation—Vol. 3, R. 88 (*b*)—"Criminal proceeding" meaning of—Investigation into crime not going beyond Police enquiry—No action taken on final report—There is no criminal proceeding).

Note 10.

(1) (1890) Rat. Un. Re. Cr. Cas. 521 (522), *Empress* v. *Kamru*.

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(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District

(5) The following Magistrates are empowered to hold inquests, namely, any District

Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Magistrate, *Sub-divisional Magistrate or Magistrate of the first class* and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate. S. 174.

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shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason, the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

(CODE OF 1872—S. 133.)

133. The Officer-in-charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner, or by what weapon or instrument, such mark appears to have been inflicted.

Police to enquire and report on unnatural and sudden deaths.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein and shall be forthwith forwarded to the Magistrate of the District, or to the Magistrate of the division of a District.

When there is any doubt regarding the cause of death, the Police-officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other Medical Officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the head of the village may also in like manner make the investigation and report to the nearest Magistrate duly authorized.

S. 174, Note 1.

SYNOPSIS.

	Note No.
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1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872—

(1) Under S. 161 of the Code of 1861 the intimation and inquest report had to be sent to the *nearest* Magistrate. Under the Code of 1872 the intimation had to be sent to the Magistrate duly authorised and the inquest report to the Magistrate of the District or to the Magistrate of the Division of the District.

(2) Under the Code of 1861 it was the *duty* of the Head of the village to make the enquiry "and report under this section while under the 1872 Code" the head of the village "in the Presidencies of

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(CODE OF 1861—S. 161.)

161. It shall be the duty of the Officer-in-charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, immediately to give intimation to the nearest Magistrate, and to proceed to the place where the body of such deceased person is, and there in the presence of two or more respectable inhabitants of the neighbourhood, to make enquiry, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted. The report shall be signed by such Police-officer and other persons or by so many of them as shall concur therein, and shall be forthwith forwarded to the Magistrate. When there may be any doubt regarding the cause of death, such Police-officer shall forward the body with a view to its being examined by the Civil Surgeon, if the state of the weather and distance will admit of its being so forwarded without risk of putrefaction on the road. In the Presidencies of Madras and Bombay, it shall be the duty of the head of the village in like manner to make the enquiry and report as aforesaid.

Police to make immediate enquiry and report on unnatural and sudden deaths.

Madras and Bombay'' *may also* in like manner make the investigation and report. S. 174, Notes 1—4.

Changes introduced in 1882—

(1) The words ''or some other Police-officer specially empowered by the Local Government in that behalf'' were added after the words ''in charge of a Police-station'' in Cl. (1).

(2) For the words ''sudden or unnatural death of a person'' in Cl. (1) the words ''that a person—

(*a*) has committed suicide;

(*b*) has been killed by another or by an animal or by machinery; or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence'' were substituted.

(3) Cl. 5 enumerating the class of Magistrates authorised to hold inquests was newly added.

Changes introduced in 1923—

The words ''or Magistrate of the first class'' were added after the words ''Sub-Divisional Magistrate'' in Cl. (5).

2. Some other officer specially empowered.—For notifications specially empowering various officers under this section, *see* the references below.[1]

Act VIII of 1867 of Bombay relating to Police Patels remains unaffected except where the Code contains a specific provision to the contrary. Under S. 11 of that Act a police patel in Bombay is to hold an inquest forthwith and report to the nearest Magistrate,[2] and send the corpse for medical examination especially where murder is suspected.[3]

A police constable in Bombay cannot hold the inquest as a police patel. He has to proceed under this section.[4]

3. ''Shall proceed to the place where the body of such deceased person is''.—This section is inapplicable where the dead body is not available, *e.g.*, where it has been burnt or disposed of long ago. It is intended to be applied to cases in which an inquest is necessary.[1]

4. In the presence of two or more respectable inhabitants.—Under S. 175, *infra*, the Police-officer proceeding under this section is empowered to summon persons for the purpose of this investigation. For consequences of non-compliance with such summons, *see* S. 174, Penal Code. Failure to examine

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Section 174—Note 2.

(1) *Bengal.*—See Bengal Rules and Orders.
Bombay.—See Bombay Gazette, 1909, Part 1, page 1135.
Madras.—See Madras Rules and Orders.
(1933) 1933 All. 939 (939), *Sheo Din* v. *Emperor* (Rr. 34 and 35 of Rules under S. 75 of U. P. Village Panchayat Act, VI of 1920).
(2) (1894) 19 Bom. 612 (613), *Ragho Mahadu Bhombad.*
(1895) Rat. 740 (744), *Empress* v. *Vasta.*
(3) (1895) Rat. Un. Re. Cr. Cas. 792 (792), *Empress* v. *Sahu.*
(4) (1895) Rat. Un. Re. Cr. Cas. 771 (772), *Empress* v. *Sahadu Lakshman.*

Note 3.

(1) (1909) 9 Cri. L. Jour. 105 (106): 1909 Pun. Re. No. 27, *Gul Hassan Shah.*

S. 174, Notes 4—9.

at the trial persons who have witnessed the inquest proceedings may be a ground for criticising the prosecution evidence in a case.[1]

5. **"Draw up a report".**—The report under this section should contain the statements of the persons examined by the police. There is nothing in the Code which prevents statements made at the inquest being recorded in full. On the other hand such statements will be of great use to test the value of the evidence in Court.[1] Cl. (1) directs only Police-officers to draw up and forward the report. A Magistrate holding an inquest under Cl. (5) is not bound to report to any one else. But in case he sends a report it cannot be treated as a finding in a judicial proceeding and is not open to revision by the High Court.[2]

An inquest report is not a statement made by any person within the meaning of S. 180 of the Penal Code and a refusal by a person examined at the inquest to sign it is not an offence.[3]

The village headman acting under Cl. (4) has only the powers of a Police-officer specified herein.[4]

6. **Form of inquest reports.**—*See* the references mentioned below.[1]

The law does not require a statement to be entered in the form as to who killed the deceased person.[2]

7. **Inquest report—Admissibility of.**—The report does not prove itself[1] and is not admissible in evidence.[2] As to grant of copies of statements made to the police in the course of investigation, *see* S. 162 and the undermentioned cases.[3]

8. **When there is any doubt, etc.—Sub-Cl. (3).**—It is only when there is a doubt as to the cause of death or where it is considered otherwise expedient to do so, that the body is to be forwarded for *post-mortem* examination. Failure to carry out the directions laid down under this section by a Police-officer knowing that he would thereby be saving some one from legal punishment is an offence under S. 217 or S. 218 of the Penal Code.[1]

9. **"Forward the body".**—The body should be forwarded to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the Local Government with a view to its being examined. It is essential in a trial for murder that proof should be adduced of the fact that the same body

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Note 4.

(1) (1909) 10 Cri. L. Jour. 321 (323), *Muzammal* v. *Emperor.*

Note 5.

(1) (1911) 12 Cri. L. Jour. 124 (125), (Mad.), *Pachudayan* v. *Emperor.*
(2) (1878) 3 Cal. 742 (752), In re *Troy Lokha Nath Biswas.*
(3) (1896) Rat. Un. Re. Cr. Cas. 843 (843, 844), *Empress* v. *Bayaji Laxman.*
(1910) 11 Cri. L. Jour. 500 (500) (Mad.), In re *Andi.*
(4) (1910) 11 Cri. L. Jour. 500 (Mad.), *Andi* v. *Emperor.*

Note 6.

(1) S. 4 (2) of the Coroners (Madras) Act 1889 (V of 1889) as amended by the Repealing Amending Act, 1903 (I of 1903) Mad. Code.
(2) (1896) Rat. Un. R. Cr. Cas. 843 (843, 844), *Bajaji Laxman.*

Note 7.

(1) (1905) 3 Cri. L. Jour. 41 (42) (Bom.), *Emperor* v. *Moti Dongarshet.*
(2) (1869) 6 Bom. H. C. R. Cr. 75 (75), *Reg.* v. *Bhaishankar Narbheram.*
(3) (1890) 2 Weir 381, Re *Gothuri.*
(1933) 1933 Cal. 861 (863), *Rajeswari Debi* v. *Emperor* (Accused entitled to copy of inquest report and cross-examine prosecution witnesses thereon).
(1925) 1925 Mad. 424 (425), *Chanlet,* In re.
(1927) 1927 Mad. 512 (512): 50 Mad. 750, *Maruthamuthu Kudumban* v. *Emperor.*

Note 8.

(1) (1932) 1932 Cal. 850 (855), *Emperor* v. *Mathuranath De.*

over which the inquest was held was forwarded and examined by the Medical Officer.[1]

S. 174, Notes 9—14.

10. **Post-mortem examination.**—The Medical Officer must note the time when he conducted the examination.[1] Considering the important nature of the evidence which is generally supplied by the results of such examination, the result of the observation external and internal should be fully recorded[2] in the form prescribed by the Local Government.[3] The report of the Medical Officer is not admissible in evidence except for the purpose of contradicting the officer who made it or to refresh his memory under the provisions of Ss. 159 to 161 of the Evidence Act.[4]

When the Medical Officer is not examined at the beginning of the enquiry a copy of the *post-mortem* certificate ought to be given to the accused.[5]

11. **Confessions by the accused at the inquest.**—Confessions made by an accused and recorded in the panchnamas in the presence of the Police-officers must be excluded as inadmissible.[1] *See also* S. 27 of the Evidence Act.

12. **False statement by witness at inquest.**—Statements made in the course of an investigation under Chap. XIV are not 'charges' as contemplated by S. 211 of the Penal Code. It would make criminal investigation very difficult if any person who gave voice to a suspicion were rendered liable to criminal prosecution.[1] The fact that a person accuses another falsely of murder in the course of an investigation under this section is not an offence under S. 194 of the Penal Code especially when he volunteers the information.[2]

But where a person makes contradictory statements one before a Police-officer under this section and the other before the Magistrate in the course of the enquiry, he will be guilty of an offence under S. 193 of the Penal Code.[3]

See also S. 161, *ante*, and the notes thereto.

13. **Inquest by Magistrate—Sub-S. (5).**—The investigation by a Magistrate under this section is distinct from an enquiry under S. 202.[1]

14. **Coroners' Inquest in the Presidency Towns of Calcutta and Bombay.**—Act IV of 1871 Bombay empowers the Coroner to hold an inquest in the City of Bombay. It does not however take away the right of the Presidency Magis-

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Note 9.

(1) (1874) 11 Bom. H. C. R. 242 (243), *Reg.* v. *Jora Hasji.*

(5) (1927) *Emperor.* 1927 Mad. 512 (512): 50 Mad. 750, *Maruthamuthu Kudumban*, In re.

Note 10.

(1) (1931) 1931 Oudh 119 (120): 6 Luck. 475, *Dwarka* v. *Emperor.*

(2) (1911) 12 Cri. L. Jour. 124 (125) (Mad.), *Pachudayan* v. *Emperor.*

(3) For Forms see:
Bombay Govt. Gazette dated 20—11—1873 and Cir. No. 1353, dated 23—4—1868.
Punjab—Punjab Gazette dated 19—7—1874, Part III, p. 274, Punjab Gazette 1883, p. 52, Punjab Cir. Vol., pp. 173-179.

(4) (1930) 1930 Sind 225 (236), *Mohammed Yusif* v. *Emperor.*
(1901) 6 Cal. W. N. 98 (101), *Ram Sarup Rai.*
(1899) 27 Cal. 295 (303), *Jadabdas.*
(1883) 9 Cal. 455 (461), *Roghuni Singh* v.

Note 11.

(1) (1911) 12 Cri. L. Jour. 429 (429, 430) (Bom.), *Emperor* v. *Ranchhod Gokal.*
(1932) 1932 Mad. 24 (24), *Kodangi* v. *Emperor.*

Note 12.

(1) (1932) 1932 Mad. 24 (24), *Kodangi* v. *Emperor.*

(2) (1922) 1922 Lah. 133 (133, 134), *Muhammad Hayat* v. *Emperor.*

(3) (1909) 9 Cri. L. Jour. 304 (305) (Mad.), In re *Fakir Mohideen.*

Note 13.

(1) (1927) 1927 Lah. 30 (31), *Gulab Khan* v. *Gulam Muhammad Khan.*

S. 174, Note, 14.

trate to investigate into the crime independently.[1] The office of Coroner has been abolished so far as the Presidency Town of Madras is concerned by S. 4 of Act V of 1889 (Madras).

S. 175.

175.* (1) A police-officer proceeding under Section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Power to summon persons.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"EVERY PERSON BOUND TO ATTEND AND TO ANSWER TRULY ALL QUESTIONS"	3
RECORD OF INVESTIGATION	4

***(CODE OF 1882—S. 175.)**

175. An Officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Power to summon persons.

If the facts do not disclose a cognizable offence to which S. 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

(CODE OF 1872—S. 134.)

134. An Officer-in-charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and answer all questions (other than questions which would criminate him).

Power to summon persons.

If the facts do not disclose a cognizable offence to which S. 127 is applicable, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

(CODE OF 1861—Nil.)

Note 14.

(1) (1892) 16 Bom. 159 (160), *Mahomed Rajudin.*

Other Topics.

Punishment for failing to attend. See Note 3.

1. Legislative Changes.—

(*a*) The words "A Police-officer proceeding under S. 174" has been substituted for the words "An officer in charge of a Police-station" to bring the section into line with the previous section.

(*b*) The word "truly" was first introduced into the section in the Code of 1882.

2. Scope of the section.—Sections 160 and 161, *ante*, empower any Police-officer making an *investigation under this chapter* to require the attendance of persons *acquainted with the facts of the case*, and to examine them. The words "investigation under this chapter" in the said sections refer to all investigations into *offences*.[1] Section 174, *ante*, deals with the investigations not into any offence but in the nature of an *inquest, i.e.*, into the apparent *cause of death*. This section enables an officer making such an investigation, to summon and examine persons for the purpose of the said investigation, *i.e.*, for the purpose of finding out the cause of death. It also enables him to summon persons other than those acquainted with the facts of the case to act as a jury or *panchayat* in the said investigation and to sign the inquest report. Such an investigation ceases when the cause of death is ascertained, *i.e.*, when it is ascertained whether the death is natural, suicidal, accidental or due to homicide; if the latter, then the investigation becomes an investigation under S. 161.[2]

3. "Every person bound to attend and to answer truly all questions." —A person examined in the course of an investigation into an offence, is not bound to answer *truly* the question put to him, *see* notes to S. 161, *ante*. In an examination under this section however the person examined is bound to answer *truly* the question put to him.[1] In order however that a person may be proceeded against for giving false answer under this section it is necessary that he should have been *summoned* by an order in writing to attend before the Police-officer. A person who comes forward without being so summoned and volunteers information is not bound to give true answers to questions.[2]

4. Record of investigation.—There is nothing in the Code which prevents the statements of witnesses examined at the inquest being recorded in full; verbatim reports of such statements may often be of great use to a Court in testing the value of the evidence given subsequently.[1]

Section 175—Note 2.

(1) (1905) 2 Cri. L. Jour. 590 (592), *Rabari Bhura Dewait* (Kathiawar).

(2) (1905) 2 Cri. L. Jour. 590 (592), *Rabari Bhura Dewait* (Kathiawar).

(1909) 9 Cri. L. Jour. 105 (106): 1908 Pun. Re. No. 25, *Gul Hassan Shah* v. *Emperor*.

(2) (1922) 1922 Lah. 133 (134), *Muhammad Hayat* v. *Crown*.

Note 3.

(1) (1922) 1922 Lah. 133 (134), *Muhammad Hyat* v. *Crown*.

Note 4.

(1) (1911) 12 Cri. L. Jour. 124 (125) (Mad.), *Pachudayan* v. *Emperor*.

S. 176.

176.* (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in Section 174, clauses (*a*), (*b*) and (*c*) of sub-section (1), any Magistrate so empowered may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Inquiry by Magistrate into cause of death.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter corpses.

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*(CODE OF 1882—S. 176.)

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in S. 174, Cls. (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Inquiry by Magistrate into cause of death.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter corpse.

(CODE OF 1872—S. 135.)

135. The nearest Magistrate, duly authorized, may hold an inquiry into the cause of any such death, either instead of or in addition to the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

Inquiry into cause of such death by nearest Magistrate.

(CODE OF 1861—Nil.)

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
OBJECT OF THE SECTION	2
NATURE OF PROCEEDING	3
WHETHER REPORT OR FINDING NECESSARY UNDER THE SECTION	4
CERTIFIED COPIES	5
WHETHER DISTRICT MAGISTRATE CAN STOP PROCEEDINGS UNDER S. 176	6

1. **Legislative changes.**—The provision that in cases where any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests *shall* hold an inquiry, and the provision embodied in sub-S. (2) were first introduced in the Code of 1882.

2. **Object of the section.**—The object of the section is that an enquiry into a suspicious death should not depend merely upon the opinion the Police may form but that there should be a further check by enabling a Magistrate to hold an independent enquiry.[1]

3. **Nature of proceeding.**—"Enquiry" as defined in S. 4 (*k*) "includes every enquiry other than a trial conducted under this Code by a Magistrate or Court."

"Judicial proceeding" as defined in S. 4 (*m*) "includes any proceeding in the course of which evidence is or may be legally taken on oath."

The proceedings under this section are held by a Magistrate and evidence may be legally taken on oath. Therefore the proceedings under this section are both an "enquiry" and a "judicial proceeding."[1]

4. **Whether report or finding necessary under the section.**—The section empowers a Magistrate to hold an *enquiry* into the cause of death, but it does not mention that any *finding* is to be given on report made. A report or finding under the section is therefore not necessary and if there is one, it does not form part of the proceeding.[1]

5. **Certified copies.**—An accused is entitled to get copies of the inquest report and of the statements made by witnesses at the inquest. If they are not available the Court has power under S. 94 to call upon the police to produce them.[1]

6. **Whether District Magistrate can stop proceedings under S. 176.**—As already stated in Note 3 an inquiry under this section is a judicial proceeding. A District Magistrate has therefore, no power to end the inquiry or interfere with it, beyond calling for a report under S. 435 and reporting for the orders of High Court under S. 438.[1]

Section 176—Note 2.

(1) (1928) 1928 Bom. 390 (398), *Lakshminarayan Timmanna Karki*, In re.

Note 3.

(1) (1928) 1928 Bom. 390 (393), *Lakshmi Narayan Timmanna Karki*, In re.

Note 4.

(1) (1878) 3 Cal. 742 (753), *Troylokhanath.*

Note 5.

(1) (1925) 1925 Mad. 424 (425), Re *Chanlet.*

Note 6.

(1) (1928) 1928 Bom. 390 (399), *Lakshmi Narayan Timmanna Karki*, In re.

PART VI.

Proceedings in Prosecutions.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and trials.

S. 177.

A.—*Place of Inquiry or Trial.*

177.* Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

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*(CODE OF 1882—S. 177.)

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.

A.—*Place of Inquiry or Trial.*

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

(CODE OF 1872—S. 63, Para. 1.)

CHAPTER VI.

THE PLACE OF ENQUIRY AND TRIAL.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session, it shall be tried by that Court of Session to which the Magistrate commits.

Place for inquiry and trial of offence.

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(CODE OF 1861—S. 26.)

26. Except where otherwise expressly provided by this Act, every offence shall be enquired into and determined in the District or division of a District in which the offence was committed.

Offence to be ordinarily tried in the jurisdiction where it is committed.

Provided that nothing in this section shall exempt European British Subjects from being tried and convicted before the Supreme Courts of Judicature for offences committed beyond the local limits of such Courts.

Proviso.

S. 177, Note 1.

SYNOPSIS.

	Note No.
SCOPE OF THE SECTION	1
"ORDINARILY"	2
SEVERAL OFFENCES: VENUE	3
"WITHIN THE LOCAL LIMITS . . ."	4
CHEATING AND CRIMINAL MISAPPROPRIATION	5
DEFAMATION, GIVING FALSE INFORMATION, ETC. ..	6
OFFENCES BY FOREIGNERS	7
IRREGULAR ARREST—EFFECT	8
TRANSFER OF TERRITORY TO NATIVE STATE	9
MILITARY OFFENDERS	10
EFFECT OF TRIAL AT WRONG PLACES	11
COMMITTAL BY OR TO WRONG COURT	12

Other Topics.

Conflict of jurisdiction in case of military offenders. See Note 10.
Exceptions to the general rule. See Note 2, Pts. 4-8.
Holding trial outside British India. See Note 4, Pt. 9.
Jurisdiction as to contempt of High Court. See S. 5.
Offences committed in British India.
Bigamy. See Note 4, Pt. 3.
Selling minor. See Note 4, Pt. 8.
Offences on the High Seas. See Note 2, Pt. 7.
Maintenance cases. See Note 4, Pt. 8.
Security proceedings. See S. 107.
Offences outside British India. See Note 1 & S. 188.
Place of publication—Of defamation. See Note 6, Pt. 1.
Abetment. See Note 6, Pt. 4.
Cheating by post. See Note 6, Pts. 5 & 6.
Criminal possession. See Note 5.
Procedure in cases of doubt. See S. 185.
Subject to the power of High Court to transfer. See Note 11, Pts. 3 & 4.

1. Scope of the section.—It is a general principle of law that all crime is *local*.[1] In other words the jurisdiction to try a person for an offence depends upon the crime having been committed *within the area* of such jurisdiction[2] and not upon either the place where the *offender is found*[3] or upon his nationality.[4] This principle is found enacted in S. 2 of the Penal Code which declares that *every* person (which will include foreigners as well as subjects of the State) shall be liable to punishment under the Code for every act or omission contrary to the provisions thereof of which he shall be guilty *within the said territories*. There are, however, some statutory exceptions to this rule. S. 3 of the Penal Code

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Section 177—Note 1.

(1) (1930) 1930 Bom. 490 (491): 55 Bom. 59 (F. B.), *Jiwan Das Savchand*, In re.
(1893) 17 Bom. 369 (373, 374), *Empress* v. *Khoda*.
(2) (1930) 1930 Bom. 490 (491): 55 Bom. 59, *Jiwandas Savchand*, In re.
(1918) 1918 Sind 22 (23): 11 Sind L. R. 128, *Sobhraj Dwarkadas* v. *Emperor*.
(1912) 13 Cri. L. Jour. 575 (576): 34 All. 451, *Emperor* v. *Ganga*.
(1894) 1894 Pun. Re. No. 30, p. 99 (101), *Jaffir Ali* v. *Empress*.
(1934) 1934 All. 829 (829), *Matuk Deo Narain Singh* v. *Vinayak Prasad Singh* (Offence under Child Marriage Restraint Act, 1929).
(1876) 25 Suth. W. R. 14 (14), *Keerut* v. *Narain* (If sanction to prosecute a person for perjury is granted by High Court proper Court to try is Court within whose jurisdiction offence was committed).
(1933) 1933 Bom. 148 (150), *Gulabchand Hirachand Doshi* v. *Emperor* (Case under Emergency Powers Ordinance—Following 1933 Bom. 1).
(3) (1922) 1922 Mad. 215 (216): 45 Mad. 14, In re *Kochuni Elaya Nair*.
(4) (1930) 1930 Bom. 490 (491): 55 Bom. 59, *Jiwan Das Savchand*, In re.

S. 177, Note 1, provides that *any* person may be liable for any act committed by him *beyond* British India, *if there is any law passed by the Governor-General in Council to that effect.* S. 4 of the same Code provides that the Code will aplly to offences committed by—

(1) Native Indian Subjects beyond British India.

(2) British subjects within the territories of any Native Prince or Chief in India.

(3) Any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

It follows from what has been said above that an act committed on land *outside* British territory by a *foreigner* not being a servant of the Queen, is not an offence triable by British Courts under their Criminal Codes.[5] Therefore suppose *A*, a foreigner standing in foreign territory shoots *B* who is in British territory. *A*'s act is not an offence within the Penal Code, and British Courts have no jurisdiction to try *A* for such act even if *A* is subsequently found in British territory.[6] The reason is that where it is sought to punish a person who is not a British subject as an offender in respect of a certain act, the question is not merely "where was the act committed" but "was the person at the time, when the act was done within the British territory." For if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender and he is not subject to the jurisdiction of Criminal Courts.[7] The High Court of Bombay, has, however, in the undermentioned case expressed the view that in such a case, *A* would be triable by the British Courts if he was subsequently found within jurisdiction.[8]

A question of jurisdiction should be determined by reference to the

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(5) (1900) 2 Bom. L. R. 337, *Empress* v. *Ranchhod Daya.*
(1873) 10 Bom. H. C. R. 356 (356), *Reg.* v. *Pirtai.*
(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu.*
(1880) 5 Mad. 23 (25), *Bapu Daldi* v. *Empress.*
(1887) 9 All. 523 (525), *Empress* v. *Kirpal Singh.*
(1901) 1901 Pun. Re. No. 1, p. 3, *Jaimal Singh* v. *Empress.*
(1894) 1894 Pun. Re. No. 7, p. 22, *Ibrahim* v. *Empress.*
(1886) 10 Bom. 186 (188), *Empress* v. *Abdul Latif.*
(1878) 1878 Pun. Re. No. 20, p. 54, *Must. Kishen Kour* v. *Empress.*
(1866-67) 3 Bom. H. C. R. 12 (14), *Reg.* v. *Jiwan Usman.*
(1864) 1 Suth. W. R. 39 (39), *Empress* v. *Dhurmonarain Moitrao.*
(1884) 7 Mad. 354 (355), *Siddha* v. *Biligiri.*
(1918) 1918 Lah. 49 (50): 1918 Pun. Re. 23, *Raj Bahadur* v. *Emperor.*
(1914) 1914 Cal. 725 (725), *Moheswari Prosad* v. *Emperor.*
(1921) 1921 Jour. 29 (2), *Muhammad Hussain* v. *Emperor.*
(1866-67) 4 Bom. H. C. R. Cr. Cas. 38 (39), *Reg.* v. *Beehar Mava.*
(1880) 1880 Pun. Re. No. 16, p. 29, *Hazarmir* v. *Empress.*
(1888) 1888 Pun. Re. 22, p. 42, *Samand* v. *Empress.*
(1875) 1 Bom. 50 (51), *Reg.* v. *Lakhya Govind.*
(1906) 3 Cri. L. Jour. 247 (248): 28 All. 372, *Emperor* v. *Baldewa.*
(1880) 5 Bom. 338 (346), *Empress* v. *Moorga Chetty.*
(1880) 6 Cal. 307 (308), *Empress* v. *Sunker Gope.*
(1914) 15 Cri. L. Jour. 511 (511): 7 Sind L. R. 128: 1914 Sind 80, *Emperor* v. *Anandgir Jiwangir.*
(1889) 1889 Pun. Re. No. 30, p. 110, *Roda* v. *Empress.*
(1881) 1881 Pun. Re. Cr. No. 5, p. 5, *Empress* v. *Hakim.*
(1916) 33 Ind. Cas. 304 (304), *Bhutta Santal* v. *Dama Santal.*
(1913) 14 Cri. L. Jour. 439 (440): 7 Sind L. R. 17, *Emperor* v. *Koochri.*
(1916) 17 Cri. L. Jour. 128 (128): 1917 Cal. 612, *Bhutta Santal* v. *Dama Santal.*
(1923) 1923 Rang. 209 (210): 1 Rang. 56, *Ahmad Ebrahim* v. *A. A. Ganny.*
(1879) Rat. 143 (143), *Empress* v. *Shirbashia.*
(6) (1880) 1880 Pun. Re. No. 35, p. 944, *Taj Muhammud* v. *Empress.*
(1878) 1878 Pun. Re. No. 20, p. 54, *Musumut Kishen Kour* v. *Empress.*
(7) (1878) 1878 Pun. Re. No. 20, p. 54, *Musumut Kishen Kour* v. *Empress.*
(8) (1912) 13 Cri. L. Jour. 426 (427, 428): 36 Bom. 524, *Emperor* v. *Chhotalal Babar.*

provisions of the Code.[9] It should be determined first and not left to be determined after the Court has made up its mind whether to acquit or convict.[10] If a charge is laid before a Magistrate of an offence alleged to have been committed within his district the Magistrate has jurisdiction to deal with it and it is not removed by reason of the evidence disclosing that the offence was really committed in another district. If the charge is not made good by the evidence it will be a ground for acquitting the accused but not for quashing the proceedings.[11] S. 177, Notes 1—2.

A question of jurisdiction should be determined by the Court before which the offence is placed for trial and should not be referred to some superior officer to decide.[12]

This section applies to the trial of *offences*[12-a] and is inapplicable for determining the jurisdiction of a Court competent to entertain an application under S. 488, a refusal to maintain being no offence.[13] But the section applies to *all* offences whether under the Penal Code or otherwise. Thus, the jurisdiction of a High Court to punish a person for contempt of Court (which is not an offence under the Penal Code) is not ousted by the fact that the accused has removed himself beyond the limits of the jurisdiction of the High Court.[14]

2. "Ordinarily".—This section embodies the ordinary or general rule of jurisdiction and the following sections (*viz.*, Ss. 179-184), the exceptions.[1] The word "ordinarily" has been advisedly used,[2] and must be taken to mean "except in the cases provided hereinafter to the contrary".[3] The rule in this section should therefore be read subject to any special provisions of law which may modify it such as S. 197, Cl. (2).[4] S. 14 of the Criminal Procedure Code also enables the Local Government to depart from this rule.[5] For exceptions to the general rule under other Acts, *see* the following cases.[6]

Courts in India have jurisdiction over offences committed on the High seas by virtue of 12 and 13 Vict., C. 96, 23 and 24 Vict., C. 88 and the Merchant

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(9) (1933) 1933 Nag. 33 (34), *Trikamji Paramanandji Phatia* v. *Emperor.*

(10) (1923) 1923 All. 91 (105): 45 All. 226, *Emperor* v. *Harprasad Bhargava.*
(1921) 1921 All. 12 (12), *Sheo Shankar* v. *Mohan Sarup.*
(1930) 1930 All. 449 (450): 52 All. 894, *Rich* v. *Emperor.*
[See also (1868) 9 Suth. W. R. 29 (29), *Motu Chand Baboo* v. *Mohendranath Haldar* (In a case where it is doubtful whether the offence is committed in British or foreign territory, the question of jurisdiction cannot be fully determined, unless the Magistrate proceeds with the investigation and states what in his opinion is proved by the evidence of witnesses).]

(11) (1884) 1884 All. W. N. 31 (31), *Emperor* v. *Divan Singh.*

(12) (1912) 13 Cri. L. Jour. 786 (786): 37 Bom. 114, *Emperor* v. *Abdul Rahiman Momin.*

(12-a) (1896) 1896 Pun. Re. No. 17, p. 41, *Mana Lal* v. *Nahia* (General principles as to local jurisdiction are that jurisdiction depends on (1) residence of defendant and (2) cause of action.

(13) (1893) 1893 Pun. Re. No. 3, p. 33, *Bishen Das* v. *Mussamat Nanaki.*
(1885) 1885 Pun. R. Cr. 13, p. 27, *Rev Father Hildephonsus* v. *Malone.*

(14) (1934) 1934 Mad. 423 (424): 57 Mad. 831 *H. D. Rajah* v. *C. H. Witherington.*

Note 2.

(1) (1930) 1930 Bom. 155 (156): 54 Bom. 171, *Emperor* v. *Sana Mathur.*
(1933) 1933 Oudh 45 (47), *Emperor* v. *Prag.*
(1885) 1885 Pun. Re. No. 44, p. 94, *Mahesh Das* v. *Empress.*

(2) (1917) 18 Cri. L. Jour. 878 (882): 41 Mad. 244: 1918 Mad. 555, *Nagireddy Konda Reddy*, In re.

(3) (1928) 1928 Bom. 140 (140), *Emperor* v. *Goverdhan Ridkaram.*

(4) (1907-08) 4 Low. B. R. 265 (266), *Emperor* v. *Maunga Ka.*

(5) (1901) 1901 Pun. Re. No. 24, p. 64, *Lakshmichand* v. *Emperor.*

(6) (1879) 3 Bom. 384 (385), *Imperatrix* v. *Khimchand.*
(1910) 11 Cri. L. Jour. 380 (381): 1910 Pun. Re. 12, *Ganesha Singh* v. *Karam Din.*
(1898) 25 Cal. 637 (638), *Lal Mohan Chowbey* v. *Hari Charan Das.*

S. 177, Notes 2—4

Shipping Act, the procedure being ordinary procedure under the Code.[7]

S. 684 of the Merchant Shipping Act provides for jurisdiction in any place in which the offender may be.[8] The jurisdiction, however, conferred by these statutes does not extend over offences committed in non-British ships.[9]

3. **Several offences: Venue.**—When an accused is charged with several offences over one or some of which only the Court has jurisdiction it should try only such latter offence or offences.[1] If a conspiracy is entered into in District *A* and acts are committed in pursuance of that conspiracy in District *B* the Magistrate of *A* can try the conspiracy but cannot try the accused for acts committed outside his district.[2] The provisions of S. 239 are governed by S. 177 *et seq* relating to jurisdiction and there can be no joint trial unless the Magistrate has jurisdiction over *all* the offences charged.[3] Where two different offences are committed in the course of the same transaction the case should be tried by the Magistrate who has jurisdiction to try both the offences and not by a Magistrate having jurisdiction over only one of them for it would be highly inconvenient that the two offences should be tried by different officers.[4]

4. **"Within the local limits . . ."**—A Magistrate of a division whose powers have not been formerly limited to any particular portion of the division has jurisdiction over all offences committed in the division.[1] It is only the Magistrate within whose local limits an offence has been committed that has jurisdiction to try it. Thus an offence of escaping from custody must be tried by the Magistrate within whose local limits the escape was effected.[2] An offence of bigamy or of abetment thereof can be tried only in the place where the bigamy or abetment took place and in the place from where the woman was enticed away.[3] Where however, the offence charged is that of *enticing* away a married woman, it is the Court within whose limits the enticement took place that would have jurisdiction and not the Court within whose limits the woman was detained.[4]

The offence of holding out false pretences to labourers and of inducing them thereby to enter into a contract must be tried in the place where such inducement was made.[5] The offence of murder should be committed for trial to the Sessions Court within the local limits of whose jurisdiction the offence was committed.[6] The offence under S. 134 of the Companies Act (failure to file a

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(1916) 17 Cri. L. Jour. 308 (309): 10 Sind L. R. 56: 1916 Sind 86, *Ali Mohamed* v. *Emperor.*

(7) (1870) 7 Bom. H. C. R. 89 (125), *Regina* v. *Elmstone.*

(1871) 8 Bom. H. C. R. 63 (66), *Reg.* v. *Kastya Rama.*

(1901) 25 Bom. 636 (638), *Emperor* v. *Chief Officer of S. S. Mushtari.*

(1890) 14 Bom. 227 (230), *Empress* v. *Sheik Abdool Rahiman.*

(1889) 16 Cal. 238 (244, 245), *Empress* v. *Barton.*

(1894) 21 Cal. 782 (784), *Thomson* v. *Gunning.*

(8) (1912) 13 Cri. L. Jour. 246 (247): 39 Cal. 487, *Emperor* v. *Salimulla.*

(1933) 1933 Cal. 145 (145): 60 Cal. 44, *Superintendent and Remembrancer of Legal Affairs* v. *Raisallee.*

(9) (1918) 1918 Bom. 249 (250): 42 Bom. 234, *Punja Guni* v. *Emperor.*

Note 3.

(1) (1928) 1928 Bom. 475 (476), *Emperor* v. *Mohan Lal Aditram.*

(2) (1924) 1924 Cal. 1034 (1035), *Biseswar* v. *Emperor.*

(3) (1929) 1929 Mad. 839 (840): 52 Mad. 991, *Sachidanandam* v. *Sowmya Gopala Ayyangar.*

(4) (1897) 2 Weir 144, In re *Ponnuswami Naik.*

Note 4.

(1) (1880) 2 Weir 13.

(2) (1864) 1 Bom. H. C. 139 (139), *Reg.* v. *Dossa Sera.*

(3) (1924) 1924 Lah. 732 (732), *Amirchand* v. *Crown.*

(4) (1883) 5 All. 251 (253), *Empress* v. *Tika Singh.*

(5) (1868) 4 Mad. H. C. App. 4 (5).
(1910) 11 Cri. L. Jour. 143 (144): 37 Cal. 27, *Faiz Ali* v. *Emperor.*

(6) (1932) 1932 Cal. 487 (488): 59 Cal. 856, *Lakhi Sahu* v. *Emperor.*

balance sheet) may be tried by the Court within whose jurisdiction the office of the Registrar where the balance sheet should be filed is situate; even though the company itself be located outside its jurisdiction.[7] Mere intention not followed by any act cannot constitute an offence and indirect preparation made, which does not amount to an act but which amounts to the commencement of an offence does not constitute either a principal offence or an attempt or abetment. Hence the place where only the preparation is made has no jurisdiction.[8] *See also* the undermentioned case.[8-a]

An offence committed within British India cannot be tried by a British Court out of British India.[9]

For jurisdiction in proceedings under S. 488, *see* S. 488 and the undernoted cases.[10] Such cases as explained in Note 1 do not strictly come within the scope of S. 177.

A Magistrate holding powers within certain local limits cannot exercise those powers while he is beyond such local limits.[11]

5. **Cheating and Criminal Misappropriation.**—The place where the *deception* was practised and not where the fraud was discovered, is the place where the trial of the offence of cheating should be held.[1] Similarly the offence of misappropriation or breach of trust is triable at the place where it is committed[2] and not where the complainant first acquired evidence that the offence was committed.[3]

As to where the offence of criminal misappropriation can be tried, *see* S. 181.

A Magistrate has jurisdiction to try an offence under S. 486, Penal Code, if the accused be shown to be in possession of goods with a counterfeit trade mark for sale or any other purpose of trade or manufacture though the sale or other purpose for which the accused has the goods in his own possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged.[4]

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(7) (1917) 1917 Cal. 1 (1): 45 Cal. 486, *Debendranath Das Gupta* v. *Registrar of Joint Stock Co., Bengal.*

(8) (1927) 1927 Mad. 77 (78), *Raman Chettiar* v. *Emperor.*

(1900) 24 Bom. 287 (291), *Empress* v. *Baku.*

(8-a) (1902) 1902 Pun. Re. No. 32, p. 86, *Hargobind* v. *Greaves, Cotton and Co., Bombay* (Offence under S. 486, I. P. Code—Court at place where offence was committed can alone try).

(9) (1888) Rat. 376 (376), *Empress* v. *Manek Lal.*

(1891) 13 All. 348 (350), In re *Malcolm De Castro.*

(10) (1885) 9 Bom. 40 (47), In re *Shaik Fakurdi.*

(1897) 24 Cal. 638 (640), *G. Benbow* v. *Benbow.*

(1883) 1883 Pun. Re. No. 9, p. 11, *Mt. Bibi Nur Bhari* v. *Shah Walait.*

(1885) 1885 Pun. Re. No. 13, p. 27, *Rev. Father Hildephonsus* v. *Malone.*

(1893) 1893 Pun. Re. No. 3, p. 35, *Bishen Das* v. *Mussamat Nanki.*

(1928) 1928 Lah. 853 (854), *Allah Ditta* v. *Mt. Sakina Bibi.*

(1926) 1926 Lah. 663 (664), *Ghulam Hussain* v. *Hakam Bibi.*

(11) [See (1910) 11 Cri. L. Jour. 570 (571): 1910 P. R. 23, *Girdhari Lal* v. *Emperor.*]

Note 5.

(1) (1915) 1915 All. 428 (428), *Prag Das Bhargava* v. *Daulat Ram.*

(2) (1839) 26 Cal. 746 (747), *Colville* v. *Krishton Kishore Bose.*

(1925) 1925 Cal. 107 (108), *Maitra* v. *Kamini Mohan Bose.*

(3) (1930) 1930 Bom. 490 (494): 55 Bom. 59, In re *Jiwan Das Savchand.*

(4) (1898) 25 Cal. 639 (641), *Yusuf Mahomed Abaruth* v. *Banshidhur Siraogi.*

S. 177, Notes 6—8.

6. **Defamation, giving false information, etc.**—The sending of a newspaper containing defamatory matter by post from one place to another is publication of such matter at the latter place, and the latter place will therefore have jurisdiction over the offence.[1] The offence may also be tried at the place of posting.[2] When a person presents a defamatory petition to a superior officer who in the ordinary course of official routine sends it to a subordinate officer for inquiry there is publication in the place where the latter officer is.[3]

When one person instigates another to the commission of an offence by means of a letter sent through post the offence of abetment is completed as soon as the contents of such letter becomes known to the addressee and such offence is triable at the place where the letter is received.[4] Similarly the receipt at *M* of a letter by which a person is deceived gives the Magistrate at *M* jurisdiction over the offence.[5] But the offence can be tried even in the place where the letter is posted. So where the accused were charged with trying to cheat the Currency Officer of Bombay by claiming payment of halves of certain currency notes and the declaration in support of the claim was made and posted in Calcutta, it was held that the case was triable in Calcutta.

The gist of the offence under S. 182, Penal Code, is the giving of information so as to cause the public servant to act on it; so the offence is complete only when it reaches the public servant. Hence it is the place of delivery of a letter containing such information and not the place of posting that gives jurisdiction over the offence.[7] On the other hand the gist of the offence of printing seditious matter being the creation of the written words, the printing of the same at a particular place confers jurisdiction on that place though publication has been elsewhere.[8] But where there is no evidence that the printing of papers with the object of deceiving was done in a particular district, the Courts of such district have no jurisdiction over the offence.[9]

7. **Offences by Foreigners.**—*See* Note 1, above. *See also* the undermentioned cases.[1]

8. **Irregular arrest—Effect.**—Irregularity of arrest does not affect the jurisdiction of a Court to try the offender.[1] Moreover, an accused who has submitted to the jurisdiction of a Court must be regarded as having waived any

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Note 6.

(1) (1880) 3 All. 342 (346), *Empress* v. *Malod.*
(1898) 22 Bom. 112 (130), *Empress* v. *Bal Gangadhar Tilak.*
(1908) 8 Cri. L. Jour. 272 (276): 33 Bom. 77, *Emperor* v. *Tribhuvan Das.*
(1866) 5 Suth. W. R. 44 (44), *Empress* v. *Kally Doss.*
(2) (1924) 1924 Mad. 340 (343), *Burke* v. *T. C. W. Skip.*
(1923) 1923 Mad. 666 (666), *Krishnamurthi Iyer* v. *Parasurama Iyer.*
(3) (1889) 1889 Pun. Re. No. 14, p. 60, *Rajah Shah* v. *Empress.*
(4) (1894) 16 All. 389 (390), *Empress* v. *Sheodial Mal* (Whether it is triable also by the Court within whose jurisdiction the letter was posted—Not decided).
(5) (1914) 1914 All. 373 (374), *Yusuf Ali* v. *Wahajuddin.*
[See also (1931) 1931 Notes 25 (25), *Narain Das Premchand.*
(1924) 1924 Pat. 708 (708), *Metcalfe* v. *Watson.*]
(6) (1923) 1923 Cal. 401 (402), In re *Amulya Charan Dutt.*
(7) (1932) 1932 Mad. 427 (427), *Rathinam Pillai* v. *Emperor.*
(8) (1928) 1928 Rang. 276 (276), *Chellam Pillai* v. *Emperor.*
(9) (1919) 1919 Pat. 407 (409), *Lachman Lal* v. *Emperor.*

Note 7.

(1) (1914) 1914 Lah. 181 (182): 1914 Pun. Re. 7, *Emperor* v. *Ram Lal.*

Note 8.

(1) (1907) 5 Cri. L. Jour. 89 (90, 91): 1906 Pun. Re. 17, *Juma* v. *Emperor.*
(1904) 1 Cri. L. Jour. 535 (537): 31 Cal. 557, *Emperor* v. *Madho Dhobi.*
(1903) 26 Mad. 124 (125), *Emperor* v. *Ravalu Kesigadu.*
(1899) 1899 Pun. Re. No. 6, p. 13, *Sobha* v. *Empress.*

irregularity affecting the manner in which his appearance before the Magistrate has been enforced.[2]

S. 177, Notes 8—11.

9. Transfer of Territory to Native States.—Where after the filing of an appeal to a Sessions Judge against the conviction for an offence committed within British India, territory including the place where the offence had been committed was transferred to a Native State it was held that the transfer did not affect the jurisdiction of the Sessions Judge to hear the appeal, the offence having been committed in British India.[1] The same principle applies to cases of committal[2] and it makes no difference that the enquiry into the offence was started only after the transfer of territory.[3]

10. Military offenders.—Under Reg. XX of 1825, Military authorities can require a Magistrate to hand over to them any prisoner who may be apprehended and brought before him for an offence committed more than 120 miles from Calcutta, but proceedings before the Magistrate when taken at the request of and assented to by the Military authorities are not absolutely void.[1]

11. Effect of trial at wrong places.—Sections 177 to 185 deal with venue and S. 531, enacts that no proceedings in a wrong place shall be set aside unless it appears that such error has in fact occasioned a failure of justice.[1] The reason is that territorial jurisdiction is not regarded as synonymous with essential jurisdiction and trial in a wrong district is not a fatal defect.[2]

When an offence is *being* tried in a wrong place the want of jurisdiction may be cured by an order of the High Court under S. 526, transferring the case formally to such Court.[3] A contrary view, has, however, been taken in the undermentioned cases.[4]

Where a commitment is made in respect of an offence committed outside the province, the High Court has no jurisdiction to transfer the case to a Court having jurisdiction in that province.[5]

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(2) (1903) 16 C. P. L. R. 9 (10), *Emperor* v. *Nabad Bediya*.

Note 9.

(1) (1911) 12 Cri. L. Jour. 401 (401): 33 All. 578, *Mahabir* v. *Emperor*.
(1911) 12 Cri. L. Jour. 470 (471), *Emperor* v. *Saheb Din*.
(2) (1912) 13 Cri. L. Jour. 169 (170): 34 All. 118, *Emperor* v. *Ram Naresh Singh*.
(3) (1912) 13 Cri. L. Jour. 575 (576): 34 All. 451, *Emperor* v. *Ganga*.

Note 10.

(1) (1874) 22 Suth. W. R. 20 (24), *Empress* v. *William Jackson*.
(1880) 5 Cal. 124 (125), *Empress* v. *Maquire* (Mutiny Act, S. 101).

Note 11.

(1) (1874) 21 Suth. W. R. 46 (46), In re *Grichchunder Roy* (Case under S. 70 of the Code of 1872).
(1874) 21 Suth. W. R. 88 (89), *Sonatum* v. *Gooroo* (Do.).
(1883) 1883 Pun. Re. No. 9, p. 11, *Mt. Bibi Nur Bhari* v. *Shah Walait* (Do.).
(2) (1902) 1902 Pun. Re. No. 2, p. 6, *Uttamchand* v. *Emperor*.
(1901) 1901 Pun. Re. No. 24, p. 77, *Lakshmichand* v. *Emperor*.
(1905) 4 Cri. L. Jour. 500 (501): 30 Mad. 94, *Public Prosecutor* v. *Doraiswamy Mudali*.
(1911) 12 Cri. L. Jour. 280 (Rang.), *Ket Foon* v. *Emperor*.
(1930) 1930 Rang. 77 (78): 7 Rang. 370, *Mohamad Hayat Mulla* v. *Emperor*.
(1872-1892) 1872-1892 Low. Bur. R. 263, *Maung* v. *Empress*.
(3) (1928) 1928 Bom. 140 (140), *Emperor* v. *Goverdhan Ridkaran*.
(1925) 1925 Oudh 490 (490), *Mubarak Ali* v. *Abdul Haq*.
(1929) 1929 Sind 250 (253), *Wahid Bux Bhutto* v. *Emperor*.
(4) (1923) 1923 Mad. 326 (326), In re *Sikka Goundan*.
(1886) 10 Bom. 274 (280), *Empress* v. *Mangal Tekchand*.
(5) (1925) 1925 Pat. 187 (188): 3 Pat. 417, *Bhagwati* v. *Emperor*.

S. 177, Notes 11—12.

The plea of want of jurisdiction may be taken for the first time in the High Court. Neither the ignorance and consequent silence of parties nor their consent can vest a Magistrate with powers which the law does not give him.[6]

12. Committal by or to wrong Court.—It was held by the Allahabad High Court in I.L.R. 3 All. 258 that when a Magistrate inquired into and committed the accused for trial for an offence which had not been committed in his district, and the Court of Session for that District accepted such committal (though having no jurisdiction) and convicted the accused, it was held that the proceeding was illegal *ab initio*.[1]

The High Court of Bombay on the other hand held that where a committal was made by a wrong Magistrate to the wrong Sessions Court an order of committal being an order of a criminal Court the provisions of S. 531, applied and in the absence of any failure of justice the committal need not be quashed. It was further held that the irregularity in committing the case *to the wrong Sessions* Court could be got over by transferring the case to the right Court.[2] This principle was followed in two later cases of the same High Court, but instead of transferring the cases for trial to the proper Sessions Court, the High Court in the one case retained the same for trial by itself[3] and in the other case passed an order under S. 526 directing that the trial do proceed before the Court to which the case was committed.[4]

The principle laid down by the Bombay High Court was followed in a later Allahabad case[5] and in the Madras High Court[6] but in the latter Court a distinction has been drawn between a committal *by* the wrong Magistrate and committal *to* the wrong Sessions Court. Committal by the wrong Court was held at the most to be an irregularity but committal to the wrong Sessions Court was held to be an illegality which could not be cured by transferring the case to the proper Sessions Court inasmuch as a transfer from a Court having no jurisdiction could not render the proceedings legal.[7] The Oudh Court following the Madras ruling has recognised or applied this distinction in a case before it[8] and a committal was quashed by the Calcutta Court apparently on the same ground of illegality.[9]

But a committal erroneously made to the High Court may be validated under S. 526 because although such committal may be in contravention of S. 206, yet the High Court has criminal jurisdiction under the Letters Patent to try cases committed to it instead of to the local Sessions Judge.[10]

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(6) (1871) 16 Suth. W. R. 69 (70), *Macdonald* v. *Riddell.*

Note 12.

(1) (1881) 3 All. 258 (259), *Empress* v. *Jagannath.*
(2) (1884) 8 Bom. 312 (312), *Empress* v. *Thaku.*
(3) (1892) 16 Bom. 200 (201), *Empress* v. *James Ingle.*
(4) (1900) 2 Bom. L. R. 394 (394), *Emperor* v. *Atmaram Govind.*
(5) (1896) 18 All. 350 (352), *Empress* v. *Ram Din.*
(6) (1894) 17 Mad. 402 (403), *Empress* v. *Abbi Reddi.*
(1903) 26 Mad. 640 (643), *Rayan Kutti* v. *Emperor.*
(7) (1912) 13 Cri. L. Jour. 35 (35): 36 Mad. 387, *Assistant Sessions Judge of North Arcot* v. *Ramammal.*
(8) (1919) 1919 Oudh 69 (69), *Emperor* v. *Sheo Dayal.*
(9) (1873) 19 Suth. W. R. 31 (32), *Empress* v. *Asqur Mullik.*
(10) (1920) 1920 Mad. 824 (825): 42 Mad. 791, In re, *Ganapathy Chetty.*

178.* Notwithstanding anything contained in S. 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Power to order cases to be tried in different sessions divisions.

S. 178, Note 1.

Provided that such direction is not repugnant to any direction previously issued by the High Court under S. 15 of the Indian High Courts Act, 1861, or S. 107 of the Government of India Act, 1915 or under this Code, S. 526.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2

Other Topics.

Direction by Local Government. See Note 2, Pt. 1.

1. **Legislative Changes.—**

Differences between the Codes of 1861 *and* 1872—

There was no corresponding section in the Code of 1861. The corresponding provision in the Code of 1872 was contained in S. 63, para. 2.

Differences between the Codes of 1872 *and* 1882—

The proviso was newly added in the Code of 1882.

Differences between the Codes of 1882 *and* 1898—

The words "under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, S. 15" that occurred in the proviso of this section in the Code of 1882, were omitted and the words "by the High

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***(CODE OF 1882—S. 178.)**

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in S. 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, S. 15, or under this Code, S. 526.

CHAPTER VI.

THE PLACE OF INQUIRY AND TRIAL.

(CODE OF 1872—S. 63, Para. 2, & Explanation.)

63. * * * * *

Place for inquiry and trial of offence.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the district to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

S. 178, Notes 1—2.

Court under S. 15 of the Indian High Courts Act, 1861'' were substituted instead in the Code of 1898.

Changes after 1898—

The words ''or S. 107 of the Government of India Act, 1915'' were newly inserted in the proviso by S. 2, and schedule of the Amending Act, 1916, (Act XIII of 1916).

2. **Scope of section.**—This section empowers the Local Government to direct that a case or class of cases committed for trial in a particular district should be tried in a Sessions division to which such district does not belong. But the Local Government has no power under the section to direct that a case should be tried by a particular Court in such Sessions division.[1] It was held in the undermentioned case[2] that on an order for transfer being made by the Local Government under this section the Sessions Court in the new division has full jurisdiction to try the case notwithstanding that the offence was not committed within the local limits of its jurisdiction. One of the Judges composing the Bench who decided that case however, took a different view and held that such Sessions Court could not try the case unless the offence was committed within the local limits of its jurisdiction. In his view, this section does not create an exception to the general rule of jurisdiction enunciated in S. 177 that an offence should ordinarily be tried by the Court within the local limits of whose jurisdiction it was committed; but applies only to cases where the same officer has jurisdiction over two (or more) Sessions divisions, in which case there would be nothing contrary to S. 177 in his trying it, while sitting in one division, cases committed for trial in another division under his jurisdiction.

S. 179.

Accused triable in district where act is done or where consequence ensues.

179.* When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Explanation.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

(CODE OF 1861—Nil.)

***(CODE OF 1882—S. 179.)**

Accused triable in district where act is done, or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Section 178—Note 2.

(1) (1872-1892) 1872-1892 Low. Bur. R. 263 (267), *Nga Tha Maung* v. *Empress* (*Per* Princep and O'Kinealy, JJ.).
(1884) 10 Cal. 643 (648), *Empress* v. *Nga Tha Moung*.

(2) (1872-1892) 1872-1892 Low. Bur. R. 263 (268), *Nga Tha Maung* v. *Empress* (*Per* Agnew, J.).

S. 179.

Illustrations.

(*a*) *A* is wounded within the local limits of the jurisdiction of Court *X* and dies within the local limits of the jurisdiction of Court *Z*. The offence of the culpable homicide of *A* may be inquired into or tried either by *X* or *Z*.

(*b*) *A* is wounded within the local limits of the jurisdiction of Court *X*, and is, during ten days within the local limits of the jurisdiction of Court *Y*, and during ten days more within the local limits of the jurisdiction of Court *Z*, unable in the local limits of the jurisdiction of either Court *Y* or Court *Z* to follow his ordinary pursuits. The offence of causing grievous hurt to *A* may be inquired into or tried by *X*, *Y* or *Z*.

(*c*) *A* is put in fear of injury within the local limits of the jurisdiction of Court *X*, and is thereby induced, within the local limits of the jurisdiction of Court *Y*, to deliver property to the person who put him in fear. The offence of extortion committed on *A* may be inquired into or tried either by *X* or *Y*.

(*d*) *A* is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing *A's* death may be inquired into and tried in Poona.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2
NATURE OF 'CONSEQUENCE' CONTEMPLATED BY SECTION.	3

Illustrations.

(*a*) *A* is wounded within the local limits of the jurisdiction of Court *X* and dies within the local limits of jurisdiction of Court *Z*. The offence of the culpable homicide of *A* may be inquired into or tried either by *X* or *Z*.

(*b*) *A* is wounded within the local limits of the jurisdiction of Court *X* and is, during ten days within the local limits of the jurisdiction of Court *Y*, and during ten days more within the local limits of the jurisdiction of Court *Z* unable in the local limits of the jurisdiction of either Court *Y* or Court *Z* to follow his ordinary pursuits. The offence of causing grievous hurt to *A* may be inquired into or tried by *X*, *Y* or *Z*.

(*c*) *A* is put in fear of injury within the local limits of the jurisdiction of Court *X*, and is thereby induced, within the local limits of jurisdiction of Court *Y*, to deliver property to the person who put him in fear. The offence of extortion committed on *A* may be inquired into or tried either by *X* or *Y*.

(CODE OF 1872—S. 65.)

Accused triable in district where act is done, or where consequence ensues.

65. When a person is accused of the commission of any offence by reason of anything which has been done, or (of anything which has been omitted to be done) and of any consequence which has ensured, such offence may be inquired into or tried in any district in which any such thing has been done, or omitted to be done, or any such consequence has ensued.

Illustrations.

(*a*) *A* is wounded in the district of *X* and dies in district *Z*. The offence of the culpable homicide of *A* may be inquired into and tried either in *X* or *Z*.

(*b*) *A* is wounded in the district of *X* and is, during twenty days, unable to follow his ordinary pursuits in the district *Y*, where he is being treated. The offence of causing grievous hurt to *A* may be inquired into and tried either in *X* or *Y*.

(*c*) *A* is put in fear of injury in District *X*, and is thereby induced, in the District of *Y*, to deliver property to the person who put him in fear. The offence of extortion committed on *A* may be inquired into and tried either in District *X* or District *Y*.

S. 179, Notes 1—2.

Note No.
CONSEQUENCE FORMING PART OF OFFENCE CHARGED—
WHAT IS 4
CRIMINAL BREACH OF TRUST OR CRIMINAL MISAPPROPRIATION 5
OFFENCES COMMITTED OUTSIDE BRITISH INDIA .. 6

Other Topics.

Applicability of S. 188. See Note 6.
By reason of any thing which has been done. See Note 2, Pt. 1.
Cheating. See Note 4, Pts. 5-6.
Defamation. See Note 4, Pts. 7 and 8.
Falsification of accounts. See Note 3, F.N. 15.
When an offence is already complete. See Note 6, Pt. 2.

1. Legislative Changes.—

Differences between Codes of 1861 *and* 1872—

(1) The words "or of anything which has been omitted to be done" were added in the Code of 1872 after the words "any offence by reason of anything which has been done".

(2) Illustrations (*a*) to (*c*) were added in the Code of 1872.

Changes made in 1882—

(1) The words "or of anything which has been omitted to be done" which occurred after the words "any offence by reason of anything which has been done" in the Code of 1872 were omitted. At the same time, the provision was added in S. 4 to the effect that words which referred to acts done extended also to illegal omissions.

(2) The words "in any district in which" were substituted by the words "by a Court within the local limits of whose jurisdiction".

Changes made in 1898—

Illustration (*d*) was added.

2. Scope of section.—This section prescribes the venue for the trial of cases in which a person is accused of an offence by reason of some act done by him and of some consequence that has ensued from such act. In such cases, the offence can be inquired into or tried by any Court within the local limits of whose jurisdiction the act was done or the consequence ensued. The section applies only to cases in which the offender is accused of the offence by reason of two things, *viz.*, some act done by him *and* some consequence that has ensued from such act.[1] Where such is not the case and the consequence of the accused's act has no bearing at all on the offence charged, the section has no application and the place where the consequence has ensued is not a proper forum for the

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(CODE OF 1861—S. 27.)

May be tried in the jurisdiction where the act is done, or where the consequence ensues.

27. When a person shall be accused of the commission of any offence by reason of any thing which has been done, and of any consequence which has ensued, such offence may be inquired into or determined in any district or division of a district in which any such thing shall have been done or any such consequence shall have ensued.

Section 179—Note 2.

(1) (1930) 1930 Bom. 490 (492) (F. B.), In re *Jivan Das Savchand.*

trial of the offence.[2]

S. 179, Notes 2—3.

As to when a person may be said to be accused of an offence by reason of some consequence that has ensued from his act, *See* Note 3, *infra.*

3. **Nature of 'consequence' contemplated by section.**—There are two views as to the interpretation of the word "consequence" in this section. The first view is that it refers only to a consequence which is an *ingredient* or part of the offence charged. Thus where *A* is charged with committing culpable homicide by wounding *X* at one place resulting in the latter's death at another place, it is the infliction of the wound and the consequent death that together constitute the offence of culpable homicide and the offence can be tried at the place where the wound was inflicted or the place where the death occurred. Where the consequence is not an ingredient of the offence charged it will not according to the first view be a consequence by reason of which a person is accused of an offence, within the meaning of the section. The second view is that it refers to any consequence, which is a *normal* though not a *necessary,* ingredient of the offence charged. The first view is held by the High Courts of Allahabad,[1] Bombay,[2] Calcutta,[3] Lahore,[4] Madras,[5] Patna[6] and

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(2) (1930) 1930 Bom. 490 (492) (F. B.), In re *Jiwan Das Savchand.*
See also cases cited in Note 3, foot-notes 1 to 6.

Note 3.

(1) (1934) 1934 All. 846 (846, 847), *Emperor* v. *Atma Ram.*
(1934) 1934 All. 499 (503), (F. B.).
(1908) 7 Cri. L. Jour. 394 (396) (All.), *Babu Lal* v. *Ghansham Das.*
(1912) 13 Cri. L. Jour. 856 (857): 35 All. 29, *George Langridge* v. *Grace Atkins.*
(1912) 13 Cri. L. Jour. 479 (480): 34 All. 487, *Ganeshi Lal* v. *Nand Kishore.*
(1915) 16 Cri. L. Jour. 825 (825) (All.), *Pragdas* v. *Daulat.*
(1914) 1914 All. 373 (374), *Yusuf Ali* v *Wahajudin.*
(1924) 1924 All. 77 (78), *Girdhar Das* v. *Emperor.*
(1934) 1934 All. 127 (127), *Jagannath* v. *Emperor.*
The following cases are no longer law in view of the Full Bench decision in 1934 All. 499 (503).
(1897) 19 All. 111 (112), *Empress* v. *O' Brien.*
(1926) 1926 All. 466 (467), *Mohammad Rashid Khan Arzoo* v. *Emperor.*
(1930) 1930 All. 449 (450): 52 All. 894, *S. F. Rich* v. *Emperor.*
(1932) 1932 All. 367 (368), *Brij Lal* v. *Emperor.*
(1926) 1926 All. 189 (192, 193), *Munir* v. *Emperor* (Consequence need not be ingredient of offence charged—Charges of bigamy and adultery—Husband of woman living in another jurisdiction—Fact that he was deprived of his wife in such jurisdiction was held to make the offence triable in such jurisdiction).

(2) (1906) 8 Bom. L. R. 514 (516), *Sirdar Meru* v. *Jethabhai.*
(1930) 1930 Bom. 490 (492, 493, 495, 496) (F. B.), *Jiwan Das Savchand,* In re (Overruling 1922 Bom. 39 and 1930 Bom. 358).

(3) (1917) 18 Cri. L. Jour. 762 (762): 44 Cal. 912, *Simhachalam* v. *Rali Kanta.*
(1925) 1925 Cal. 613 (614), *Gunananda Dhone* v. *Lala Santi Prakash Nandy.*
[See also (1931) 1931 Cal. 528 (531): 59 Cal. 92, *Paul De Flondor* v. *Emperor.*]

(4) (1885) 1885 Pun. Re. No. 44, p. 101, *Mahesh Das* v. *Emperor.*
(1901) 1901 Pun. Re. No. 1, p. 3, *Jamal Singh* v. *Emperor.*
(1901) 2 Pun. L. R. 223 (225), *Chint Singh* v. *Crown.*
(1910) 11 Cri. L. Jour. 253 (254): 1910 Pun. Re. No. 7, *Gokal Chand* v. *Phul Chand.*
(1917) 18 Cri. L. Jour. 353 (354): 1916 Pun. Re. No. 28, *Kalidas* v. *Karamchand.*
(1923) 1923 Lah. 90 (91), *Raghbir Saran* v. *Kurukshetra Motor Co.*
(1923) 1923 Lah. 487 (488), *Nadar* v. *Emperor.*
(1924) 1924 Lah. 353 (354), *Abdul Haq* v. *Emperor.*
(1924) 1924 Lah. 663 (665), *Mahtab Din* v. *Emperor.*
(1925) 1925 Lah. 171 (172), *Dinanath* v. *Tulsi Ram.*
(1933) 1933 Lah. 559 (560), *Aya Ram* v. *Gobindlal.*
[But see (1908) 8 Cri. L. Jour. 75 (80, 82) (Lah.), *Ishar Das* v. *Emperor.*
(1900) 1900 Pun. Re. No. 7, p. 18, *Ghulam Ali* v. *Queen-Empress.*]

(5) (1909) 9 Cri. L. Jour. 92 (93) (Mad.), *Swaminathan Chettiar* v. *Annamalai Chettiar.*
(1915) 16 Cri. L. Jour. 491 (493) (Mad.), *Krishnamachari* v. *Shah Wallace and Co.*
(1915) 26 Ind. Cas. 136 (137): 38 Mad. 639, In re *Ram Bilas.*
(1923) 1923 Mad. 50 (51): 45 Mad. 839, In re *Mohideen Pakkiri Marakkayar.*
(1932) 1932 Mad. 427 (428), *Rathinam Pillai,* In re.
(1935) 1935 Mad. 189 (190), *T. Sreeramamurty* v. *Emperor.*
[But see (1914) 1914 Mad. 330 (331): 38 Mad. 779, *Assistant Sessions Judge* v. *Ramaswami Achari* (*Per* Spencer, J.).]

(6) (1921) 1921 Pat. 85 (87), *Jawkaram* v. *Sargo.*

S. 179, Note 3.

Rangoon.[7] The decisions of the Chief Court of Oudh[8] and the Judicial Commissioner's Courts of Nagpur[9] and Sind[10] have varied, some taking the first view and the rest, the second view.

Illustrations.

1. *A* in Madras commits criminal breach of trust in respect of moneys belonging to *B* in Calcutta. In consequence of *A's* act *B* suffers a loss in Calcutta and institutes proceedings against *A*. It is held that the loss suffered by *B* in Calcutta is not a necessary ingredient of the offence of criminal breach of trust. According to the first view, the offence cannot be inquired into or tried in Calcutta[11] while according to the second view the loss is the *normal* consequence of the offence and therefore it can be tried in Calcutta.[12]
2. *A* cheats *B* in Lahore in consequence of which *C* in Nagpur suffers a loss. It is held that the loss suffered by C is not an ingredient of the offence of cheating. According to the first view, *A* cannot be proceeded against in Nagpur[13] while according to the second view, he can.[14]

(1929) 1929 Pat. 640 (642), *Abdul Karim* v. *Emperor*.

(7) (1897-1901) 1897-1901 Upp. Bur. R. 53 (53), *Empress* v. *Nga Mon Gaing*.
(1909) 10 Cri. L. Jour. 86 (87): 5 L. B. R. 57, *Shwe Myat* v. *Subramaniam Chetty*.
(1920) 1920 Upp. Bur. 39 (40): 3 U. B. R. 172, *Abdul Salam* v. *Ramnewal Singh*.
(1923) 1923 Rang. 209 (210): 1 Rang. 56, *Ahmed Ebrahim* v. *Hajee A. A. Ganny*.
(1931) 1931 Rang. 164 (166): 9 Rang. 338, *Ali Mahomed* v. *Emperor*.

(8) (1901) 4 Oudh Cas. 376 (377, 378), *Nirbhae Ram* v. *Kallu Ram* (Consequence must be ingredient of offence).
(1933) 1933 Oudh 215 (221): 8 Luck. 381, *Madho Surendra Sahai* v. *Gobardan* (Consequence need not be ingredient in offence).

(9) (1924) 1924 Nag. 253 (254): 20 Nag. L. R. 72, *Banerji* v. *Potnis* (Consequence must be ingredient of offence).
(1933) 1933 Nag. 33 (34, 35), *Trikamji* v. *Emperor* (Consequence need not be ingredient of offence).

(10) (1931) 1931 Sind 94 (96), *Gobindram* v. *Emperor* (Consequent must be ingredient of offence charged).
(1933) 1933 Sind 333 (334): 27 Sind L. R. 392, *Gokaldas Amarsee* v. *Emperor* (Do.).
(1928) 1928 Sind 166 (167), *Gobindram Jeeban Mal* v. *Emperor* (Consequence need not be an ingredient of offence charged).
(1929) 1929 Sind 30 (31): 22 S. L. R. 404, *Gocind Singh* v. *Emperor* (Do.).

(11) (1912) 13 Cri. L. Jour. 479 (479, 480): 34 All. 487, *Ganeshi Lal* v. *Nand Kishore*.
(1934) 1934 All. 127 (127), *Jagannath* v. *Emperor*.
(1916) 1916 Lah. 453 (454): 1915 P. R. 22, *Emperor* v. *Raghabir Singh*.
(1934) 1934 All. 499 (502) (F. B.), *Kashi Ram Mehta* v. *Emperor*.
[See (1924) 1924 All. 77 (78), *Girdhar Das* v. *Emperor*.
(1914) 1914 All. 373 (374), *Yusuf Ali* v. *Whaajuddin*.
(1925) 1925 Cal. 613 (614), *Gunananda Dhone* v. *Lala Santi Prakash Nandy*.
(1917) 18 Cri. L. Jour. 762 (762): 44 Cal. 912: 1917 Cal. 381, *Simhachalam* v. *Ratikanta Laha*.
(1930) 1930 Bom. 490 (491, 494, 496) (F. B.), In re *Jiwan Das Savchand*.
(1933) 1933 Lah. 559 (560), *Aya Ram* v. *Gobind Lal Verma*.
(1925) 1925 Lah. 171 (172), *Dinanath* v. *Tulsi Ram*.
(1924) 1924 Lah. 663 (665), *Mahtab Din* v. *Emperor*.
(1924) 1924 Lah. 353 (354), *Abdul Haq* v. *Emperor*.
(1923) 1923 Lah. 487 (488), *Nadar* v. *Emperor*.
(1910) 11 Cri. L. Jour. 253 (254): 1910 Pun. Re. No. 7, *Gokalchand* v. *Phul Chand*.
(1901) 2 Pun. L. R. 223 (225), *Chaint Singh* v. *Emperor*.
(1924) 1924 Nag. 253 (254): 20 Nag. L. R. 72, *Banerji* v. *Potnis*.
(1901) 4 Oudh Cas. 376 (377, 378), *Nirohae Ram* v. *Kallu Ram*.
(1915) 26 Ind. Cas. 136 (137): 38 Mad. 639, In re *Rambilas*.
(1920) 1920 U. B. 39 (40): 8 U. B. R. 172, *Abdul Salam* v. *Ramnewal Singh*.
(1923) 1923 Rang. 209 (210): 1 Rang. 56, *Ahmed Ebrahim* v. *Hajee A. Ganny*.
(1931) 1931 Rang. 164 (166, 167): 9 Rang. 338, *Ali Mohamed Kassim* v. *Emperor*.]

(12) (1897) 19 All. 111 (112), *Empress* v. *O'Brien*.
(1932) 1932 All. 367 (368), *Brij Lal* v. *Emperor*.
(1930) 1930 All. 449 (450): 52 All. 894, *S. F. Rich* v. *Emperor*.
(1926) 1926 All. 466 (467), *Mohammad Rashid Khan Arzoo* v. *Emperor*.
(1914) 1914 Mad. 330 (331): 38 Mad. 779, *Assistant Sessions Judge, North Arcot* v. *Ramaswami Achari* (*Per* Spencer, J.).
(1929) 1929 Sind 30 (31): 22 S. L. R. 404, *Gobind Singh* v. *Emperor*.
(1928) 1928 Sind. 166 (167), *Gobindram Jeebanmal* v. *Emperor*.

(13) (1908) 7 Cri. L. Jour. 394 (396) (All.), *Babu Lal* v. *Ghansham Das*.
(1923) 1923 Lah. 90 (91), *Raghbir Saran* v. *Kurukshetra*.
[See also (1931) 1931 Sind 94 (96), *Gobindram Dowlatram* v. *Emperor* (Drafts induced by accused to be issued on false pretences at *P*, and money received by accused at *P* but the drafts honoured in due course at *Q*—Court at *Q* has no jurisdiction to try the accused for the offence of cheating inasmuch as the subsequent honouring of the drafts was not a consequence forming part and parcel of the offence).]

(14) (1908) 8 Cri. L. Jour. 75 (80, 82) (Lah.),

For further instances, *see* the following cases.[15]

4. Consequence forming part of the offence charged—What is.—It has been seen in Note 3, *ante*, that there is a conflict of decisions as to whether the consequence contemplated by this section is one forming an ingredient of the offence charged or covers any consequence whether or not it is an ingredient of

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Ishar Das v. *Emperor.*
(1933) 1933 Oudh 215 (219, 221): 8 Luck. 381, *Madho Surendra Sahai* v. *Gobardan.*
(1900) 1900 Pun. Re. No. 7, p. 18, *Gulam Ali* v. *Empress.*

(15) *The following decisions proceed on the first view* viz., *that the consequence must be an ingredient of the offence charged.*
(1901) 1901 Pun. Re. No. 1, p. 3, *Jaimal Singh* v. *Emperor* (Foreign subject kidnapping in Foreign territory and in conveying the girl to another place in another foreign territory apprehended at a railway station in British India—He cannot be proceeded against in British India for the offence of kidnapping).
(1901) 1901 U. B. R. 53 (53), *Empress* v. *Nga Mon Gaing* (Hurt committed in Minbu District and treatment in hospital in Magwe District—No grievous hurt—Offence cannot be tried in Magwe district).
(1906) 8 Bom. L. R. 514 (516), *Sirdar Meru* v. *Jetha Bai Amirbhai* (Charge of grievous hurt—Assault in Baroda —Leg completely broken immediately—Subsequent treatment in British India and being prevented from attending to ordinary vocations for more than 20 days in British India —Offence complete in Baroda and cannot be tried in British India).
(1909) 9 Cri. L. Jour. 92 (93) (Mad.), *Swaminatha Chettiar* v. *Annamalai Chettiar* (Offence of falsification of account is complete when accounts are falsified with intent to defraud).
(1929) 1929 Pat. 640 (642), *Abdul Karim* v. *Emperor* (Fabricating false evidence at *G* for purpose of being used in judicial proceedings at *M*—*Ex parte* decree obtained in consequence at *M*—Offence completed in *G* and cannot be tried in *M*).
(1909) 10 Cri. L. Jour. 86 (87): 5 L. B. R. 57, *Shwe Myat* v. *M. C. P. Subramanian Chetty* (I. P. Code, S. 206, charge under—Execution of fraudulent deed with intent to defeat claim of decree-holder—Execution of deed in *T* and inability to execute decree in *P*—Offence is complete at *T* and *P* has no jurisdiction).
(1933) 1933 Sind 333 (334, 335, 336): 27 S. L. R. 392, *Gokaldas Amarsee* v. *Emperor* (Charge under I. P. Code, S. 120-A—Criminal conspiracy—Conspiracy completed in *A*—Offence in pursuance of conspiracy in *B*—Charge of a criminal conspiracy cannot be tried in *B*).
(1923) 1923 Mad. 50 (51): 45 Mad. 839, In re *Mohideen Pakiri Marakkayar* (Charge under S. 40 of the Income-tax Act (Making a false statement in a verification) should be tried in district where the verification is made and not where the petition is presented).
(1932) 1932 Mad. 427 (428), *Rathinam Pillai*, In re (Charge under I. P. Code, S. 182 (Giving false information to public servant)—Information given in *T*—Consequence in *K*—Offence cannot be inquired into or tried at *K*).
(1915) 16 Cri. L. Jour. 825 (825): 1915 All. 428, *Prag Das Bhargawa* v. *Daulat Ram* (Complainant was cheated at Meerut, *i.e.*, he was induced to part with his money on the false representation that certain barrel contained a certain amount of spirit. When the barrel reached Agra it was discovered that it did not contain the alleged amount of spirits. *Held*, that the discovery of the alleged fraud at Agra after the goods were delivered cannot be said to be a "consequence which has ensued within the meaning of this section").
(1917) 18 Cri. L. Jour. 353 (354): 1917 Lah. 335: 1916 Pun. Re. No. 28, *Kalidas* v. *Karam Chand* (Offence under S. 7 (*a*) of the Copyright Act III of 1914 (Knowingly making for sale or hire any infringing copy of a work in which copyright subsists)—Infringing copy printed in Lahore—Author resident at Gujranwala—Loss ensuing to author at Gujranwala—*Held*, that Gujranwala Court had *no* jurisdiction).
(1935) 1935 Mad. 189 (190), *Sreeramamurthy* v. *Emperor* (Public nuisance —I P. Code, S. 290) is committed as soon as *act* or illegal omission is complete—Consequent annoyance, etc., is not ingredient of offence).

The following cases proceed on the second view, viz., *that the consequences* need not *be an ingredient of the offence charged*:—
(1926) 1926 All. 189 (192, 193), *Munir* v. *Emperor* (Charge of bigamy and adultery—Husband of the woman in respect of whom offence is committed living in a different district from that where the offence was committed—Offence can be tried at place of husband's residence as he is deprived of the society of his wife there in consequence of the offence).
(1933) 1933 Nag. 33 (34, 35), *Trikamji* v. *Emperor* (Offence under S. 69 (*c*) (*ii*) of the Provincial Insolvency Act (1920) (Fraudulently mortgaging property with intent to diminish the sum to be divided among the insolvent's creditors)—Mortgage effected in Bombay—Diminution of sum to be divided among creditors at Yeotmal—Offence can be tried at Yeotmal).
(1934) 1934 All. 829 (829), *Matuk Deo Narain Singh* v. *Vinayak Prasad* (Child Marriage Restraint Act (1929), S. 5—Offence under—Jurisdiction of Court to try—Court at place whether *Tilak* ceremony was performed has no jurisdiction to try case).

S 179, Note 4

the offence, provided it is a normal consequence of the offence. Assuming that the consequence referred to in the section is one forming an ingredient of the offence, the question arises as to whether a given consequence is an ingredient of the offence charged in the particular case. The case-law bearing on this aspect of the subject may be summarised as follows:

Criminal breach of trust and criminal misappropriation.—Where *A* in *X* commits criminal breach of trust of moneys belonging to *B* in *Y*, the loss suffered by *B* in *Y* in consequence of *A*'s act in *X* is *not* a part of the offence of criminal breach of trust committed by *A* and according to the first view referred to in Note 3 above, the Court in *Y* has no jurisdiction to try the offence.[1]

The fact that in such a case *A* was under an obligation to render accounts to *B* in *Y*[2] or to pay the misappropriated amount to *B* in *Y*[3] does not make the failure to render accounts or make the payment a consequence forming part of the offence.

Cheating.—Where *A* cheats *B* in *X* and in consequence of this *C* in *Y* suffers a loss, the question arises whether the loss to *C* forms an integral part of the offence of cheating. On this question there is a conflict of decisions, some holding that the loss *is* an integral part of the offence[4] and the others, the contrary view.[5]

Where *A* in *X* dishonestly deceives by means of correspondence *B* in *Y* and the latter is thereby induced to part with money in *Y*, the inducement and

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Note 4.

(1) See cases cited in Note 3, Foot-note (11), *supra*.
[See also (1915) 16 Cri. L. Jour. 491 (493): 39 Mad. 576, *Krishnamachari* v. *Shaw Wallace and Co.* (Loss is part of offence charged but loss occurs at the same place as the conversion).]
[But see (1912) 13 Cri. L. Jour. 856 (857, 858): 35 All. 29, *George Langridge* v. *Grace Atkins* (Loss arising from criminal breach of trust is a consequence completing the offence).]
Note. *In the cases cited in Foot-note* (12) *of Note* 3, supra, *it was held that though loss may not be a constituent element of criminal misappropriation of criminal breach of trust, the offence may be tried at the place where the loss occurs, the reason given being that the consequence need not be a part of the offence in order to come within the scope of the section.*

(2) (1915) 26 Ind. Cas. 136 (137): 38 Mad. 639, In re *Ram Bilas*.
(1930) 1930 Bom. 490 (494), In re *Jiwan Das Sarchand*.
(1925) 1925 Cal. 613 (616), *Gunananda Dhone* v. *Lala Santi Prakash*.
[But see (1921) 1921 All. 12 (13) (F.B.), *Sheo Shankar* v. *Mohan Sarup* (Accused, a servant of complainant's firm at Mirzapur employed in collecting dues collecting them and misappropriating them at Allahabad —Plan to misappropraite formed at Mirzapur—Duty to account at *M*—Offence can be tried at *M*.).

(3) (1921) 1921 Pat. 85 (87), *Jawkaran Lal* v. *Sargoo Saw*.

(4) (1908) 8 Cri. L. Jour. 75 (78) (Lah.), *Ishar Das* v. *Emperor* (Cashing at Mercantile Bank in Bombay forged drafts of Punjab National Bank having its headquarters in Lahore—Latter Bank debited with the sum in the books of the former Bank—Offence may be tried in Lahore consequence of loss to Punjab National Bank at Lahore is one completing the accused's act).
(1900) 1900 Pun. Re. No. 7, p. 17, *Ghulam Ali* v. *Empress* (Offence of cheating *comprises* the causing or the likelihood of causing damage in property to the person deceived. Where *A* sent goods by Railway from Karachi to Lahore under a false description, the Court at Lahore could try *A* for *cheating* as the loss of freight to the Railway Company took place at Lahore, the Headquarters of the Company).

(5) See cases cited in Foot-note (13) of Note 3, *supra*.
NOTE.—*The case cited in foot-note* (14) *of Note* 3 *above proceed on the view that though loss may not be a consequence which is an ingredient of the offence of cheating, the offence may be tried or inquired into at a place where the loss occurs, the reason given being that the consequence referred to in the section is not confined to one which is a constituent element of the offence charged.*

the parting with money by *B* are consequences forming part of the offence of cheating committed by *A* and he can be proceeded against in *X* or *Y*.[6]

Defamation.—Where a petition containing defamatory statements is presented to a public officer and it is forwarded to a subordinate officer at a different place for enquiry and report, the publication at the latter place is a consequence of the accused's act which completes his offence and he can be tried there.[7] Where a defamatory letter is posted by the accused at *M* to another person at *T* the publication at *T* is a consequence of the accused's act which is an ingredient of the offence and he can be proceeded against the accused at *T*.[8]

Other instances.—*See* cases cited in Note 3, Foot-Note 15.

5. **Criminal breach of trust or criminal misappropriation.**—Under S. 177 every offence can be inquired into or tried by any Court within the local limits of whose jurisdiction it was committed. Under S. 181, sub-S. (2) the offence of criminal misappropriation or criminal breach of trust can be inquired into or tried not only by the Court within the local limits of whose jurisdiction the offence was committed but also by any Court within the local limits of whose jurisdiction the property was received or retained by the accused. The question has arisen whether the present section applies to the offences of criminal misappropriation and criminal breach of trust. The view has been expressed in some decisions that S. 181, sub-S. (2) being a specific provision with regard to these two offences it excludes the application of this section to them.[1] But this view has been dissented from on the ground that the provisions of this chapter (Chap. XV, Part A) are not mutually exclusive and that the mere fact

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(6) (1924) 1924 All. 77 (78), *Girdhar Das* v. *Emperor*.
(1931) 1931 Notes 25-F, *Narain Das* v. *Prem Chand* (Debtor in *X* sending to creditor in *Y* empty cover by post insuring it for a certain amount with intent to use the postal acknowledgment as evidence of payment—Offence can be tried in *Y*).
(1930) 1930 Bom. 358 (360), *Gafur Karim Bax* v. *Emperor* (Value payable articles posted from *X* to addressee in *Y*—Addressee taking delivery by paying for article which is found to contain nothing—Offence can be tried in *X*).
[See also (1930) 1930 All. 449 (450): 52 All. 894, *S. F. Rich* v. *Emperor* (Accused at Delhi selling to complainant at Meerut a motor lorry—Delivery to complainant at Meerut—Body was to be built at Meerut—Complainant handing over to accused's driver cheque for price of chasis and of insurance not only of chasis but also of body—On lorry being burnt it being discovered that body had not been insured—Charge of cheating can be tried at both **places under S. 179**).
(1915) 1915 Bom. 46 (46), *Jamna Das Vasanji* v. *Emperor* (*A* in Salem deceiving *B* in Dhulia and including him to pay money—"Thing" is done in Dhulia and offence can be tried there).
(1899) 26 Cal. 746 (747), *W. B. Colville* v. *Krishto Kishore Bose* (False entries in accounts made in *H* and accounts submitted in *C* and amount obtained thereby in *C*—Court at *C* has jurisdiction).
(1934) 1934 All. 846 (847), *Kishori Lal* v. *Atma Ram* (*A* at *M* deceived by *B* making representations through *C* at *D* and *A* purchasing certain goods in consequence—Offence can be tried at *M* because, cheating takes place at *M*).]
[But see (1927) 1927 Mad. 544 (544), *M. A. Kaleek* v. *Emperor* (V. P. sent from *M* to *H* complainant taking delivery by paying at *H*—Offence of cheating complete at *H* and subsequent realisation of money by accused at *M* is not consequence necessary to complete offence—This decision ignores the fact that the act of deception was initiated in *M* and the further developments in *H* are consequences of such initiation).]
(7) (1885) 1885 Pun. Re. No. 44, p. 101, *Mahesdas* v. *Empress*.
(1889) 1889 Pun. Re. No. 14, p. 59 (60), *Raja Shah* v. *Empress*.
(8) (1923) 1923 Mad. 666 (666), *Krishnamurthi* v. *Parasurama*.

Note 5.

(1) (1933) 1933 Lah. 559 (560), *Aya Ram* v. *Gobind Lal*.
(1924) 1924 All. 77 (78), *Girdhar Das* v. *Emperor*.
[See also (1930) 1930 Bom. 490 (492): 55 Bom. 59 (F. B.), In re *Jiwan Das Savchand* (*Per* Beaumont, C.J.—It would require strong words to show that any section of more general application was intended to deal also with that particular crime).
(1915) 16 Cri. L. Jour. 491 (493): 39

S. 179, Note 5.

that specific provision is made for certain offences in some sections does not necessarily preclude the application of other sections to such offences.[2] It is submitted that the latter view is more in consonance with the scheme of the Chapter. This, however, does not completely dispose of the question as to the applicability of the section to the offences of criminal breach of trust and criminal misappropriation. The reason is that the question further depends on whether in such cases a person is accused of the commission of an offence by reason of something that has been done and some consequence that has ensued. For a discussion of this aspect of the subject, *see* Notes 3 and 4, *ante*, and the undermentioned cases.[3]

It may be convenient to discuss here scope of S. 181, sub-S. (2) with reference to what may be called some of the *consequences* of criminal misappropriation and criminal breach of trust.

Under that sub-section, the offence may be inquired into or tried by any Court within the local limits of whose jurisdiction the offence was committed[3-a] or the property was received or retained by the accused. Thus, where the accused was entrusted with money at *A* and he failed to account for it as he was bound to do, he may be proceeded against at *A* as being the place where he received the money.[4]

Where the accused was bound to render accounts at *P* and he failed to do so or submitted false accounts there as a result of the misappropriation committed by him, the question has arisen as to whether *P* can be held to be a place where the offence was committed by him or where he received or retained the property within S. 181, sub-S. (2). On this question, it has been held, in some cases, following the English common law, that where there is no evidence as to the place of the actual commission of the offence it may be presumed to have been committed at the place where the accused was bound to render accounts touching the subject-matter of the offence.[5] In some cases, it has been

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Mad. 576: 1916 Mad. 438, *Krishnamachari* v. *Shah Wallace* (In accordance with the ordinary canons of construction the special provision should ordinarily receive effect unqualified by the general).]

(2) (1930) 1930 All. 449 (449): 52 All. 894, *S. F. Rich* v. *Emperor*.
(1926) 1926 All. 466 (467), *Mohammad Rashid Khan* v. *Emperor*.
(1934) 1934 All. 499 (503) (F.B.), *Kashi Ram Mehta* v. *Emperor*.
[See also (1922) 1922 Bom. 39 (40): 46 Bom. 641, *Ramrattan* v. *Emperor*.
(1930) 1930 Bom. 490 (495): 55 Bom. 59 (F. B.), In re *Jivandas Savchand* (*Per* Madgavkar, J.).]

(3) (1931) 1931 Cal. 528 (531): 59 Cal. 92, *Paul de Flonder* v. *Emperor* (Offence complete immediately on accused doing the act with the intention specified and does not depend for completion on any consequence—S. 181 and not S. 179 applies).
(1925) 1925 Cal. 613 (613), *Gunananda Dhone* v. *Lall Santi Prakash* (Do.).
(1917) 18 Cri. L. Jour. 762 (762): 44 Cal. 912: 1917 Cal. 381, *Simhachalam* v. *Ratikanta* (Do.).
(1930) 1930 Bom. 490 (496): 55 Bom. 59 (F. B.), In re *Jiwan Das Savchand* (Do.).
(1924) 1924 Lah. 663 (665), *Mahtab Din* v. *Emperor* (Do.).
(1931) 1931 Rang. 164 (166): 9 Rang. 338, *Ali Mahomed* v. *Emperor* (Do.).

(3-a) (1874) 22 Suth. W. R. 6 (8), *Queen* v. *O. J. Macdonald*.
[See also (1934) 1934 All. 148 (150, 151): 56 All. 409, *Sandal Singh* v. *Dt. Magistrate and Superintendent, Dehra Dun* (Case under Extradition Act—Offence was held to have been committed at *D* in British India and not in a Native State).

(4) (1921) 1921 Pat. 85 (87), *Jawkaram* v. *Sarjoo Saw*.
(1932) 1932 All. 26 (27, 28), *Sunder Lal* v. *Emperor*.

(5) (1931) 1931 Cal. 528 (530, 531): 59 Cal. 92, *Paul de Flondor* v. *Emperor*.
(1934) 1934 Cal. 392 (393), *Prokash Chandra Sircar* v. *Mohim Chand Holdar*.
[See (1928) 1928 Mad. 1136 (1138): 52 Mad. 61, *Public Prosecutor* v. *Podi-*

held that even where the place of the actual misappropriation or conversion with dishonest intent is known, the offence can be regarded as having been committed at the place where the accused was bound to submit his accounts, the reason given being that there is at such a place a dishonest user or disposal of the property in violation of the contract which the accused has entered into touching the discharge of his trust.[6] (*See* S. 405, Penal Code.) This view, however, has been dissented from on the ground that there cannot be a user or disposal at a place, of property which has never been there and which has actually been made away with at a different place.[7] S. 179, Notes, 5—6.

Where the accused was bound to pay at a particular place the balance due on taking accounts, it was held that there was at such a place dishonest *retention* of the money within S. 181, sub-S. (2).[8] *See also* the undermentioned case where it was held that it being uncertain whether the offence was committed at *A* where the accounts were to be rendered or at some other place, the offence could under S. 182, *infra* be inquired into or tried at *A*.[9]

6. Offences committed outside British India.—The Code extends only to British India (S. 1). Hence, where an offence is committed beyond the limits of British India it cannot be inquired into or tried by a Court in British India except in cases falling under S. 188, *infra*. Where an offence is committed outside British India in any case not covered by S. 188 and produces consequences in British India, the question arises as to whether this section applies to the case. If the consequence in question is not one of the kind mentioned in the section, the section does not apply and the happening of the consequence in British India does not confer jurisdiction on any British Indian Court.

Illustrations.

1. *A*, a subject of a Native State kidnaps a minor girl in *P*, a Native State. He then takes the girl to *Q*, another Native State. While he is thus going to *Q* with the girl, he is apprehended at a railway station on the way which is in British India. It is held that the apprehension of *A* in British India is not

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monu Beary (No evidence where offence was committed—Place where failure to deliver as per contract takes place is proper venue).]
[See also (1930) 1930 Bom. 490 (495): 55 Bom. 59 (F. B.), In re *Jiwan Das Savchand*.]

(6) (1925) 1925 Cal. 613 (615, 616), *Gunananda* v. *Santi Prakash*.
(1926) 1926 Lah. 119 (120), *Ram Sahai* v. *Krishna Lal*.
(1928) 1928 Rang. 217 (219): 6 Rang. 380, *Yacoob Ahmed* v. *V. M. Abdul Ganny*.
(1928) 1928 Sind 166 (167), *Gobindram Jeshanmal* v. *Emperor*.
[See also (1922) 1922 Cal. 46 (46), *Abdul Latiff Yusuff* v. *Abu Mahamed Kassim*.
(1921) 1921 All. 12 (13), *Sheo Shankar* v. *Mohan Sarup* (The plan to misappropriate was conceived at *M* and the duty to account was at *M*—Money received at *A* and misappropriated there—Offence can be tried at *M*).]

(7) (1931) 1931 Cal. 528 (530, 531): 59 Cal. 92, *Paul de Flondor* v. *Emperor*.
(1915) 26 Ind. Cas. 136 (137): 38 Mad. 639: 1915 Mad. 600, In re *Ram Bilas*.
(1930) 1930 Bom. 490 (494): 55 Bom. 59 (F. B.), In re *Jiwan Das Savchand*.
(1931) 1931 Cal. 521 (521, 522), *Pascal* v. *Raj Kishore Mathur*.
(1931) 1931 Cal. 532 (533), *Nivasilal Modi* v. *Routhmull*.
(1910) 11 Cri. L. Jour. 685 (685, 686) (Rang.), *Shakur* v. *Nga Me Gyi*.
[See also (1928) 1928 Notes 63 (*c*) (63), *Durga Prasad* v. *Banwari Lal* (Where complainant at *L* appointed accused his agent for sale of certain commodities at *N*, and in pursuance of that arrangement, he sent goods to the accused, who, however, in direct contravention of the directions given to him as to the manner in which the goods had to be sold, sold them and misappropriated the proceeds—*Held*, that a criminal case under S. 409, Penal Code, cannot be instituted in *L*.).]

(8) (1902) 1902 Pun. Re. No. 2, p. 5 (6), *Uttam Chand* v. *Emperor*.
[But see (1901) 2 Pun. L. R. 223 (225), *Chint Singh*.]

(9) (1910) 11 Cri. L. Jour. 372 (373): 32 All. 397, *Mahadeo* v. *Emperor*.

S. 179, Note 6.

a consequence within the meaning of this section. *A* cannot be tried in British India.[1]

2. *A*, a subject of a Native State, assaults *B* in *Q*, a Native State and as a result of the assault one of the legs of *B* is immediately broken. *B* then undergoes treatment in a hospital in British India. *B* has to remain in the hospital for more than 20 days. The consequence of *B's* being confined to the hospital and being prevented from attending to his normal duties for more than 20 days is held not to be a consequence within the meaning of the section. *A* cannot be tried in British India.[2]

3. *A*, the subject of a Native State, enters into a criminal conspiracy in *P*, a Native State, to commit the offence of cheating in British India. The offence of cheating is committed in British India in pursuance of the conspiracy. It is held that the commission of the offence of cheating in British India is not a consequence within the meaning of this section. *A* cannot be tried in British India for the offence of criminal conspiracy.[3]

(See N. 3 as to the nature of consequence contemplated by section.)

Even if the consequence is of a kind mentioned in the section, this section will not apply if the act of the accused was committed beyond the limits of British India under circumstances not coming within S. 188. The reason is that as the Code extends only to British India, this section cannot apply to acts committed beyond the limits of British India except in cases provided for in S. 188.[4] Thus, in the illustrations given above even if it were held that the several consequences referred to therein are consequences within the meaning of this section, the offender cannot be proceeded against in British India. In this connection it may be observed that illustration (*d*) to the section should be taken subject to the restriction that the offender is one of the persons mentioned in S. 188 and the certificate of the Political Agent or the sanction of the Local Government mentioned in the proviso to S. 188 is obtained.

But if an act is committed outside British India under the circumstances mentioned in S. 188 it may, under that section, be dealt with as if it had been committed at any place in British India at which the doer of the act is found. If the act has produced results in British India which constitute a consequence within the meaning of this section, the offender may be tried either at the place in British India where he is found and where under S. 188 his act may be deemed to have been done or at the place where the consequence of his act has ensued.[5] Thus, in illustration (*d*) to the section, the offender may be tried at Poona where the consequence of his act has ensued or at any other place in British India where he may be found.

But, before a person can be proceeded against in British India under the provisions of this section read with S. 188, the certificate of the Political Agent or the sanction of the Local Government mentioned in the proviso to S. 188

Note 6.

(1) (1901) 1901 Pun. Re. No. 1, p. 3, *Jaimal Singh* v. *Emperor*.
(2) (1906) 8 Bom. L. R. 514 (516), *Sirdar Meru* v. *Jethabhai*.
(3) (1933) 1933 Sind 333 (334, 335, 336): 27 S. L. R. 392, *Gokaldas Amarsee* v. *Emperor*.
(4) (1933) 1933 Sind 333 (334, 335, 336): 27 S. L. R. 392, *Gokaldas Amarsee* v. *Emperor*.
(1935) 1935 Mad. 326 (327), *Kakrulla Khan*, In re.
(1935) 1935 Mad. 189 (190), *T. Sreeramamurty* v. *Emperor*.
See also Notes under Ss. 182 and 183.
[But see (1926) 1926 All. 466 (467), *Mohammad Rashid Khan Arzoo* v. *Emperor* (Submitted not correct).]
(5) (1914) 1914 Mad. 330 (331, 332): 38 Mad. 779, *Assistant Sessions Judge, North Arcot* v. *Ramaswami*.

must be obtained. The amendment of the proviso in 1923 makes it clear that the fact that S. 179 also applies to the case does not dispense with such certificate or sanction.[6]

S. 179, Note 6.

180.* When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

S. 180.

Place of trial where act is offence by reason of relation to other offence.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

***(CODE OF 1882—S. 180)**

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

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(6) (1932) 1932 Cal. 465 (467): 59 Cal. 1065, *Superintendent and Remembrancer of Legal Affairs* v. *Ludur Chando Das.* [But see (1914) 1914 Mad. 330 (331, 332): 38 Mad. 779, *Assistant Sessions Judge, North Arcot* v. *Ramaswami* (Case prior to amendment, not good law).]

S. 180.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2
ACTS DONE OUTSIDE BRITISH INDIA	3

Other Topics.

Abatement. See Note 2.

Conspiracy. See Note 2, F.N. (1).

(CODE OF 1872—S. 66.)

Place for trial where act is offence by reason of relation to other offence.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired into and tried, either in the district in which it happened, or in the district in which the offence with which it was so connected happened.

Illustrations.

(*a*) A charge of abetment may be inquired into and tried, either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.

(*d*) *A*, *B*, *C* and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they, conspired, in pursuance of the original concerted plan and with reference to the common object.

(CODE OF 1861—Ss. 28 and 31.)

Abetment.

28. The abetment of an offence, wherever such abetment shall have taken place, may be enquired into or determined in any district or division of a district in which the offence abetted may be enquired into or determined by any Court which has jurisdiction to try such offence, as if the abetment had been committed at the same place at which the offence abetted was wholly or partly committed: or the abetment may be enquired into or determined in any district or division of a district within which the abettor has done anything for abetting the commission of such offence.

Receiving, etc., stolen property.

31. If any person be charged with any offence punishable under S. 411, S. 412, or S. 414 of the Indian Penal Code, under the head "Of the receiving of stolen property," such offence may be enquired into or determined in any district or division of a district in which such person shall have, or shall have had, such stolen property in his possession, or in any district or division of a district in which the offence by which such property came to be stolen property within the meaning of the said Code, may be enquired into or determined.

1. Legislative Changes.— S. 180, Notes 1—3.

Differences between Codes of 1861 *and* 1872—

There was no section in general terms in the Code of 1861 similar to this section. But there were specific provisions embodying the principles contained in illustrations (*a*) and (*c*) of this section. The corresponding section in the Code of 1872 was S. 66.

Changes made in 1882—

The words "or which would be an offence if the doer were capable of committing an offence" were inserted in the section.

2. Scope of section.—This section contemplates cases in which there are two offences in question which are related to each other in such a way that one of them depends for its character as an offence upon its relation to the other offence. The section provides that in such cases, the first mentioned offence can be tried or inquired into by the Court within the local limits of whose jurisdiction either of the offences was committed.

Illustrations.

1. *A* abets at *X* the commission of an offence at *Y* and the offence abetted is committed at *Y*. The offence of abetment can be tried either at *X* or *Y*.[1] [Illus. (*a*)].
2. *A* commits theft at *X* and the stolen property is dishonestly received and retained by *B* at *Y*. *B* can be tried for the latter offence either at *X* or *Y*.[2] [Illus. (*b*).]
3. *A* kidnaps at *X* a minor from lawful guardianship. *B* wrongfully conceals at *Y* the kidnapped person knowing him to have been kidnapped. *B* can be tried at *X* or *Y*.[3] [Illus. (*c*).]

The section applies, not only to cases where *both* the acts in question are offences, but also to cases where an act is an offence by reason of its relation to another act which *is* not an offence but which *would be* an offence if the doer of it were capable of committing an offence.

3. Acts done outside British India.—*See* Notes under Ss. 177 and 188.

Section 180—Note 2.

(1) (1931) 1931 All. 55 (56): 53 All. 140, *Nanhua Dhimar* v. *Emperor* (Abetment can be tried at place where offence abetted is committed).
(1903) 1 Weir 155 (156), In re *Chamanna Gowd* (Do.).
(1917) 18 Cri. L. Jour. 514 (517): 1917 Pun. Re. No. 24, *Gurdit Singh* v. *Crown* (Abetment by conspiracy to murder—Conspiracy in *M* and attempt to commit murder in *R*—Court at *M* can try for conspiracy).
(1872) 17 Suth. W. R. 15 (16), *Empress* v. *Ameer Khan* (Conspiracy to wage war against Queen entered into at *P* but principal offence committed elsewhere—Court at *P* has jurisdiction to try for conspiracy).
(1894) 16 All. 389 (390), *Empress* v. *Sheo Dial Mal* (Person sending letter to another inviting him to commit an offence is guilty of abetment, as soon as the letter is read by the addressee and is triable at the place where received).
[See (1877) 1 Bom. 610 (612), *Reg.* v. *Hanmanta* (Abetment cannot be tried at a place where neither the abetment nor the offence abetted was committed).]
(2) (1926) 1926 All. 167 (168), *Emperor* v. *Bhima*.
(1866) 5 Suth. W. R. 49 (49), *Empress* v. *Ghusoo Khan*.
(3) (1883) 1883 All. W. N. 164 (164), *Empress* v. *Surja*.
(1933) 1933 Oudh 45 (47), *Emperor* v. *Prag*.
(1896) 18 All. 350 (352), *Empress* v. *Ram Debi*.

S. 181.

181.* (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

(3) The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Stealing.

(3) The offence of *theft, or any offence which includes theft or the possession of stolen property*, may be inquired into or tried by a Court within the local limits of whose jurisdiction *such offence was committed or the property stolen* was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Theft.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Kidnapping and abduction.

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*(CODE OF 1882—S. 181.)

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

SYNOPSIS.

		Note No.
I.	APPLICABILITY OF THE SECTION	1
II.	"WHERE THE PERSON CHARGED IS"—SUB-S. (1) ..	2
	(1) THUG	3
	(2) DACOITY	4
	(3) "BELONGING TO A GANG OF DACOITS"	5
	(4) OFFENCE OF ESCAPE FROM LAWFUL CUSTODY ..	6
III.	SUB-S. (2)	7
	(1) PROPERTY WHICH IS THE SUBJECT OF THE OFFENCE ..	8
	(2) 'RECEIVED OR RETAINED'	9
IV.	SUB-S. (3)—THEFT	10
V.	SUB-S. (4)—KIDNAPPING AND ABDUCTION ..	11
VI.	EFFECT OF A TRIAL IN A COURT CONTRARY TO THE PROVISIONS OF THE SECTION	12

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

(CODE OF 1872—S. 67, Ills. and S. 68.)

Place for inquiry or trial where offence consists of several acts.

67. * * *

Illustrations.

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(*c*) A charge of being a thug, or of having belonged to a gang of dacoits, may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*d*) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*e*) A charge of criminal misappropriation, or of criminal breach of trust, may be inquired into and tried, either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(*f*) *A* steals a buffalo from *B* in district *W*, and personally, or by his agent, conveys the buffalo through districts *X* and *Y*, into district *Z*. There is a continuing offence, and *A* may be tried either in *W*, *X*, *Y* or *Z*.

Murder as a thug, dakait or dakaiti with murder.

68. The offence of murder as a thug, dakaiti or dakaiti with murder may be enquired into and tried wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

S. 181, Notes 1—2.

Other Topics.

Applicability of S. 179. See Note 7 and Note 5 to S. 179.
Criminal Breach of Trust, etc. See Note 7.
Entrustment in British India and breach in a foreign territory. See Note 1 and S. 188.
Escape from lawful custody in a foreign state. See Note 1 and S. 188.
Have the Courts where the complainant, who has suffered loss occasioned by the offence, resides, jurisdiction by reason of the consequent loss? See S. 179.
Is loss a necessary consequence? See S. 179, Note 5.
Jurisdiction over foreigners for offences committed in foreign state. See Note 1 and S. 188.
Kidnapping in foreign territory and conveying through British India. See Note 11 and S. 188.
Kidnapping in one place and concealing in another. See Note 11.
Venue for the offence of belonging to a gang of dacoits. See Notes 2 and 5.
"Was conveyed" in sub-S. (4). See Note 11, Pts. 1 and 2.

1. Applicability of the section.—The section applies as between Courts of different local areas whose jurisdictions have been limited under S. 12 of the Code and to which the Code applies. It has no application to an offence committed in a Native State and a Magistrate cannot take cognizance of such an offence except under S. 188, *infra*.[1]

2. "Where the person charged is"—Sub-S. (1).—The words "where the person charged is" do not mean that such person should be *voluntarily* present within jurisdiction. The section will apply if he is physically present within jurisdiction even though such presence is due to the fact that he has been brought under arrest.[1]

(CODE OF 1861—Ss. 32 and 33.)

Being a thug, etc.

32. Whenever any person is charged with being a thug, or with murder as a thug, or with dacoity with or without murder, or with having belonged to a gang of dacoits, or with having belonged to any wandering or other gang of thieves associated for the purpose of habitually committing theft or robbery and not being a gang of thugs or dacoits, the offence may be enquired into in any district in which the accused person is by any Magistrate competent to commit to a Court of Session, and the accused person may be committed to the Court of Session to which such Magistrate is subordinate.

Escape from lawful custody under sentence.

33. If any person shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of justice, or by virtue of a commutation of such sentence, or shall be charged with any offence punishable under S. 227 of the Indian Penal Code or under S. 12 of Act XXIV of 1855 (relating to Penal servitude), the offence may be enquired into or determined, either in the District or division of a District in which such person shall be apprehended and retaken, or in the District or a division of a District in which he was formerly tried, or in the case of an escape from custody, in the District in which he shall have escaped from custody.

Section 181—Note 1.

(1) (1912) 13 Cri. L. Jour. 530 (531): 5 S. L. R. 266, *Imperator* v. *Tribhun.*
(1888) 1888 Pun. Re. No. 22, p. 42, *Samanda* v. *The Empress* (A non-British subject retaining stolen property in Native State is not amenable to British Courts).
(1880) 1880 Pun. Re. No. 16, p. 29, *Hazarmir* v. *The Empress* (Do.).
[See also (1923) 1923 Lah. 487 (487), *Nadar* v. *Crown.*]

Note 2.

(1) (1903) 26 Mad. 124 (125), *Emperor* v. *Ravalu Kasigadu.*
(1928) 1928 Sind 161 (163), *E. C. D. Wheeler* v. *Emperor.*
(1911) 12 Cri. L. Jour. 356 (356): 35 Bom. 225, *Emperor* v. *Vinayak Damodar Savarkar.*
(1882) 6 Bom. 622 (625), *Empress* v. *Maganlal.*
(1911) 12 Cri. L. Jour. 113 (115, 116): 1911 Pun. Re. No. 1, *Emperor* v. *Gobinda.*

3. **Thug.**—For the definition of "thug" *see* S. 310, Penal Code.

4. **Dacoity.**—*See* Ss. 391 and 396 of the Penal Code.

5. **"Belonging to a gang of dacoits".**—*See* S. 400 of the Penal Code.

Under the Code of 1861 the offence of belonging to a *gang of thieves* punishable under S. 401 of the Penal Code was one of the offences specified in the corresponding section of that Code. Such an offence is not now within the present section.

6. **Offence of escape from lawful custody.**—*See* Ss. 224 and 225-B of the Penal Code.

S. 33 of the Code of 1861 provided that offences under S. 227 of the Penal Code may be enquired into and tried in the District in which the accused is retaken for breach of condition.[1] There is no such provision in the present Code. Under the Code of 1861 again a person escaping from custody can be tried only at the place where he escaped from custody.[2] Under this section he can be tried where he is.

As to what is "lawful custody", *see* the following cases.[3]

7. **Sub-S. (2).**—The offence of criminal misappropriation or criminal breach of trust can be tried or inquired into at any place where the offence was committed[1-a] or the property was received or retained.

For the offence of criminal misappropriation, *see* Ss. 403, 404 and for the offence of criminal breach of trust Ss. 405 to 409 of the Penal Code and the following cases.[1] As to whether S. 179 can be applied to the offences of criminal misappropriation and breach of trust, *see* Note 5 to S. 179, *ante*.

8. **Property which is the subject of the offence.**—It is only the receipt of the property *which is the subject of offence* that determines the venue of trial. Thus where *A* was entrusted with a railway receipt for goods at Pegu with instructions to take delivery of the goods at Rangoon and sell the same on the complainant's account, but *A* sold the goods and misappropriated the sale proceeds, it was held, that the property which was the subject of offence was the sale proceeds and not the railway receipt and that the Pegu Court had no jurisdiction to try the offence.[1]

Note 6.

(1) (1872) 9 Bom. H. C. 356 (357), *Reg.* v. *Ahone Akong.*
(2) (1864) 1 Bom. H. C. 139 (139), *Reg.* v. *Dossa Sera.*
(3) (1875) 24 Suth. W. R. 45 (46), *Queen* v. *Ram Saran Tewary.*
(1886) 12 Cal. 190 (191), *Empress* v. *Tafaullah.*
(1882) 5 Mad. 22 (23), *Queen* v. *Bojjigan.*

Note 7.

(1-a) (1935) 1935 Oudh 4 (5), *Mangal Prasad* v. *Emperor* (Money withdrawn from treasury at *S* but converted at *T*—Court at *T* has jurisdiction as offence is committed there).
(1) (1930) 1930 Pat. 221 (224), *Kapildeo Narain* v. *Emperor.*
(1931) 1931 Pat. 86 (87), *Yoganand Das* v. *Emperor.*
(1924) 1924 Cal. 908 (911), *Harry Jones* v. *Emperor.*
(1931) 1931 Pat. 159 (159), *Ragho Prosad Gupto* v. *Emperor.*
(1926) 1926 Jour. 99 (2) (99) (Mad.), *Rukmani Ammal* v. *Muthusamy Reddy.*
(1923) 1923 Lah. 321 (322), *Piran* v. *Crown.*
(1881) 1881 All. W. N. 89 (89), *Empress* v. *Pairia.*
(1926) 1926 Mad. 727 (728), *Dewasikamani Asari* v. *Crown.*
(1926) 1926 Lah. 385 (391, 392), *Ram Chand Gurvalai* v. *Emperor.*
(1925) 1925 All. 673 (674), *Daud Khan* v. *Emperor* (Property means not merely moveable property).
(1926) 1926 All. 302 (303): 48 All. 283, *Indar Singh* v. *Emperor.*

Note 8.

(1) (1917) 18 Cri. L. Jour. 645 (646): 1917 L. B. 10, *P. L. T. A. Kasi Chetty* v. *V. V. Kasi Chetty.*

S. 181, Notes 9—11.

9. **'Received or retained'.**—It is not necessary under this sub-section, that at the time the property is received or retained by the accused person he should have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference thereto. It is sufficient if the property which is the subject of offence was received or retained by the accused at a particular place, even though it was received quite properly and innocently at that place but misappropriated elsewhere.

Thus, where a person hired a cycle for 6 hours at Poona but later on pledged the same at Yeola, it was held that Poona Court had jurisdiction to try the offence.[1]

10. **Sub-S. (3)—Theft.**—An offence of being in possession of stolen property can be tried in the place where the property was stolen or where it was dishonestly possessed.[1] *See also* Illus. (*b*) to S. 180.

The expression "Stolen property" is defined in S. 410 of the Penal Code. Before the year 1882 the definition did not expressly state that property stolen outside British India could come within the definition of stolen property and it was held in some cases that such property was not stolen property.[2] After the amendment of S. 410 of the Penal Code in 1882, this is no longer law and a person can be punished in British India for being in possession of stolen property, though the property was stolen outside British India.[3]

Where a theft is committed in one district in pursuance of a conspiracy entered into in a different district, the Court in the latter district can try only the offence of criminal conspiracy but not of theft even though such Court could have tried both offences jointly, if the theft had been committed within its jurisdiction.[4] Where property stolen in one District is found in the possession of another person in another district, the thief can be legally tried in the latter district as the latter's possession is the constructive possession of the thief.[5]

11. **Sub-S. (4)—Kidnapping and abduction.**—For the definition of kidnapping, *see* Ss. 360 and 361 of the Penal Code and the following cases[1-a] and for the definition of 'abduction', *see* S. 362 of the same Code.

Note 9.

(1) (1927) 1927 Bom. 38 (39): 51 Bom. 101, *Emperor* v. *Laxman.*

Note 10.

(1) (1926) 1926 All. 167 (168), *Emperor* v. *Bhima.*
(1866) 5 Suth. W. R. 49 (49), *Queen* v. *Ghusoo Khan.*
(1934) 1934 All. 455 (456), *Emperor* v. *Zahir Nat.*
(2) (1883) 1883 Pun. Re. No. 4, p. 4, *Alu* v. *The Empress.*
(1880) 5 Bom. 338 (348), *Empress* v. *S. Moorga Chetty.*
(3) (1876) 1 Bom. 50 (51), *Reg.* v. *Lakhya Govind.*
(1886) 10 Bom. 186 (188), *Empress* v. *Abdul Latif.*
(1926) 1926 Bom. 71 (74, 76): 49 Bom. 878, *Emperor* v. *Abdul Gani Bahadur Bai.*
(4) (1924) 1924 Cal. 1034 (1034, 1035), *Biseswar* v. *Emperor.*
(5) (1871) 1871 Pun. Re. No. 4, p. 5, *Crown* v. *Dulloo.*

Note 11.

(1-a) (1912) 13 Cri. L. Jour. 736 (736): 6 S. L. R. 71, *Crown* v. *Manshomal Deumal.*
(1908) 8 Cri. L. Jour. 361 (373): 1 S. L. R. 104, *Imperator* v. *Vilaitalishah.*
(1913) 14 Cri. L. Jour. 109 (110): 1912 U. B. R. 136, *Abdul Rahman* v. *Emperor.*
(1912) 13 Cri. L. Jour. 598 (599) (Mad.), *Pandayaram Sastrulu* v. *Emperor.*
(1912) 13 Cri. L. Jour. 249 (250) (Mad.), In re *Vuppalapu Viraswamy.*
(1916) 17 Cri. L. Jour. 284 (285): 1916 Lah. 361, *Bela Singh* v. *Emperor.*
(1916) 17 Cri. L. Jour. 283 (283): 1916 Pun. Re. No. 13: 1916 Lah. 352, *Meharan* v. *Emperor.*
(1916) 17 Cri. L. Jour. 236 (236, 237): 1916 Lah. 230, *Gurdit Singh* v. *Emperor.*

S. 181, Notes 11—12.

The offence of kidnapping from lawful guardianship defined in S. 361 of that Code is not a continuing offence and is completed as soon as the minor was removed from the keeping of the guardian.[1] So it was held, under the old Codes, that the offence of kidnapping should be tried only in the Court within whose jurisdiction the kidnapping took place and not at any place where the minor was subsequently conveyed.[2] The present section now expressly provides that such offences of kidnapping and abduction are triable either at the place where the offence took place or at the place where the minor was conveyed, concealed or detained. The words 'kidnapping or abduction' in the section do not include the offence of wrongfully concealing or keeping in confinement a kidnapped person, because the latter is a separate offence under S. 368 of the Penal Code.[3]

This sub-section refers only to cases of kidnapping and abduction but does not apply to offences under Ch. XX of the Penal Code. So the offence of enticing away a married woman, under S. 498 of the Penal Code, does not come within the operation of this section and can be tried only at the place where the offence was committed.[4]

Abduction is a continuing offence and can be tried not only at the place where the person was abducted but also at the places where the offence continues.[5]

12. Effect of a trial in a Court contrary to the provisions of the section.—Where a person is tried in a wrong Court, contrary to the provisions of the section, it is only an irregularity within the meaning of S. 531 and the conviction will not be set aside unless there has been a failure of justice.[1]

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(1) (1916) 17 Cri. L. Jour. 532 (532, 533): 1916 All. 272, *Karam Singh* v. *Emperor.*
(1914) 1914 All. 17 (17), *Mt. Ganga Debi* v. *Emperor.*
(1904) 1 Cri. L. Jour. 931 (933) (Bom.), *Emperor* v. *Jetha Nathoo.*
(1932) 1932 Notes 12 (c) (12) (Oudh), *Puttu* v. *Emperor.*
(1913) 14 Cri. L. Jour. 93 (94): 15 Oudh 351.
(1) (1911) 12 Cri. L. Jour. 533 (533) (Mad.), *Sadaya Pillai* v. *Emperor.*
(1876) 1 Mad. 173 (173, 174), *Reg.* v. *Samia Goundan.*
(1903) 26 Mad. 454 (455), *Chekutty* v. *Emperor.*
(1931) 1931 Lah. 53 (54), *Khushal* v. *Emperor.*
(1894) 1894 Pun. Re. No. 8, p. 69, *Muhammad Baksh* v. *Empress.*
(1893) 1893 Pun. Re. No. 13, p. 63, *Chanda* v. *Empress.*
(1898) 2 Cal. W. N. 81 (86), *Rakhel Nikari* v. *Empress.*
(1900) 27 Cal. 1041 (1048, 1049), *Nemai Chattoraj* v. *Empress.*
(1904) 26 All. 197 (199, 200), *Emperor* v. *Tika.*
(1916) 17 Cri. L. Jour. 498 (499): 38 All. 664: 1916 All. 210, *Abdur Rahman* v. *Emperor.*
(1926) 1926 Pat. 493 (494): 5 Pat. 536, *Nanhak Sao* v. *Emperor.*
(1928) 1928 Pat. 159 (160): 6 Pat. 471, *Rakha Rai* v. *Emperor.*
(1931) 1931 All. 55 (55, 56): 53 All. 140, *Nanhua Dhimar* v. *Emperor* (Abduction is a continuing offence).
(2) (1880) 3 All. 258 (260), *Empress* v. *Jagan Nath.*
(1883) 1883 All. W. N. 164 (164), *Empress* v. *Surja.*
(1896) 18 All. 350 (352), *Empress* v. *Ram Dei.*
(1883) 1883 All. W. N. 67 (67), *Empress* v. *Budha.*
(1887) 1887 All. W. N. 139 (139), *Empress* v. *Prasadi.*
(3) (1924) 1924 All. 454 (455): 46 All. 138, *Badhu Shah* v. *Emperor.*
(4) (1918) 1918 Lah. 357 (357), *Jaswant Singh* v. *Emperor.*
(1881) 3 All. 251 (253), *Empress* v. *Tika Singh.*
(5) (1933) 1933 Oudh 45 (47), *Emperor* v. *Prag.*

Note 12.

(1) (1924) 1924 All. 454 (455): 46 All. 138, *Badlu Shah* v. *Emperor.*
(1910) 11 Cri. L. Jour. 372 (373): 32 All. 397, *Emperor* v. *Mahadeo.*
(1918) 1918 Cal. 305 (306), *Bimal Chandra Banerji* v. *Tez Chandra Banerji.*
(1902) 1902 Pun. Re. No. 2, p. 6, *Uttamchand* v. *Emperor.*
(1906) 4 Cri. L. Jour. 500 (501): 30 Mad. 94, *Public Prosecutor* v. *Doraisamy Mudali.*
(1931) 1931 Rang. 164 (168, 169): 9 Rang. 338, *Ali Mohamed Kassim* v. *Emperor.*

S. 182.

182.* When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

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*(CODE OF 1882—S. 182.)

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any one of such local areas.

Place of inquiry or trial where scene of offence is uncertain or not in one district only.

or where offence is continuing

or consists of several acts.

[(CODE OF 1872—S. 67 and Illus. (b).]

67. When it is uncertain in which of several districts an offence was committed; or

Where an offence is committed partly in one district and partly in another; or

Where the offence is a continuing one and continues to be committed in more districts than one; or

Where it consists of several acts done in different districts;

It may be inquired into and tried in any one of such districts.

Place for inquiry or trial where scene of offence is uncertain;

or not in one district only;

or offence is continuing;

or consists of several acts

Illustrations.

* * * * *

(*b*) An offence committed near the boundary between two districts may be inquired into and tried in either.

* * * * *

(CODE OF 1861—S. 29.)

29. When any offence shall be committed on the boundary or boundaries of two or more Districts whether subject to the same Local Government or not, or of two or more divisions of a District, or shall be begun in one District or division of a District and completed in another, whether such Districts be subject to the same Local Government or not, every such offence may be enquired into or determined in any of such Districts or divisions of a District, in the same manner as if it had been actually and wholly committed therein.

Offence committed on boundary.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF SECTION	2
UNCERTAINTY AS TO LOCAL AREA IN WHICH OFFENCE IS COMMITTED	3
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Other Topics.

Consequence of acts—Place of. See S. 179.
Jurisdiction where offence is committed outside British India. See Note 2, Pts. 6 and 7.
Local area—Meaning of. See Note 2, Pt. 5.
Offence partly within and partly without British India. See Note 2, Pt. 8.
Uncertainty as to local area. See Note 3, Pt. 2.

1. Legislative Changes.—

Differences between the Codes of 1861 *and* 1872—

(1) The words "when an offence shall be committed on the boundary or boundaries of two or more districts, whether subject to the same Local Government or not, or of two or more divisions of a district," that occurred in S. 29 of the Code of 1861 were omitted and the words "when it is uncertain in which of several districts an offence was committed" were substituted in S. 67 of the Code of 1872.

(2) The words "or shall be begun in one district or division of a district and completed in another, whether such districts be subject to the same Local Government or not" which occurred in the Code of 1861 were omitted and the words "or where an offence is committed partly in one district and partly in another" were substituted in the Code of 1872.

(3) The words "or where the offence is a continuing one and continues to be committed in more districts than one or where it consists of several acts done in different districts" were newly added in the Code of 1872.

(4) Illustrations (*a*) to (*f*) were added.

Changes made in 1882—

(1) The word "districts" that occurred in S. 67 of the Code of 1872 was omitted and the words "local area" were substituted in the Code of 1882.

(2) The illustrations which were given under S. 67 of the Code of 1872 were omitted; the underlying principle of illustration (*a*) was re-enacted as S. 183; those of illustrations (*c*) to (*f*) reappeared as the first three clauses of S. 181; and illustration (*b*) was not re-enacted.

2. Scope and applicability of section.—The section is intended to provide for the difficulty that would arise where there is a conflict between different areas, in order to prevent an accused person getting off entirely because

S. 182, Note 2.

there may be some doubt as to what Magistrate has jurisdiction to try the case. Hence where an offence is committed only in *one* place and no question of any *other* local area giving rise to jurisdiction this section has no application.[1]

The first clause of the section applies to cases where it is uncertain in which of several local areas an offence was committed. This, however, does not mean that the section applies only to such cases.[2] Thus, in the case of a continuing offence though it is beyond doubt that the place where the initial offence was committed would be a proper place of trial under the law, the offence can be tried under this section either at such place or at any other place where it continues to be committed.[3]

Under illustration (*a*) to S. 67 of the Code of 1872 (which corresponded to the present section) an offence committed in the course of a journey or voyage was treated as falling within the purview of the section and it was provided that it could be tried or inquired into by any Court through whose jurisdiction the offender passed in the course of the journey or voyage.[4] The principle of this illustration is now incorporated in S. 183. Further, the principles embodied in Cls. 1 to 3 of S. 181 were treated by the illustrations to S. 67 of the Code of 1872 as falling within the scope of the section.

As the Code extends only to British India, the expression "local area" in this section refers only to areas *within* British India; the section has no application where one of the local areas in question is outside British India.[5] Thus, if it is doubtful whether an offence was committed within British India or outside British India, this section does not apply so as to give jurisdiction to a British Indian Court.[6] Similarly, where the offence is a continuing offence within the meaning of this section and the initial offence was committed outside British India the fact that the offence was continued in British India does not confer jurisdiction on a Court in British India to inquire into or try the offence.[7] But where an offence is initiated outside British India but completed in British India, it has been held that the offence can be tried or inquired into in British India.[8] It is submitted that this view can be supported on the following ground: Under S. 177 an offence can be tried at any place at which it was committed. In the case of offences partly committed within one jurisdiction and partly within another jurisdiction the place where the offence is *completed* is to be deemed as the place where the offence is committed for the purpose of S. 177 though under this section (S. 182) the offender can also be tried at the place where it was initiated. Hence, if an offence is initiated outside British India and completed in British India, it can be deemed as commit-

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Section 182—Note 2.

(1) (1889) 16 Cal. 667 (676), *Bichitranund Dass* v. *Bhug But Peari.*
(2) (1922) 1922 Nag. 40 (42), *Shamji* v. *Emperor.*
(3) (1922) 1922 Nag. 40 (42), *Shamji* v. *Emperor.*
(4) (1882) Rat. 181 (181), *Empress* v. *Ismal.*
(5) (1889) 16 Cal. 667 (676), *Bichitranund Dass* v. *Bhug But Peari.*
(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu.*
(1882) 5 Mad. 23 (25), *Bapu Reddi* v. *Queen.*
(6) (1923) 1923 Lah. 487 (487), *Nadar* v. *Queen.*
(7) (1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu.*
(8) (1912) 13 Cri. L. Jour. 426 (427, 428, 429): 36 Bom. 524, *Emperor* v. *Chhotalal Barbar* (Conspiracy by abetment—Conspiracy entered into outside British India—Act pursuant to conspiracy necessary to complete the abetment done in British India—Offence can be tried in British India).

[See also (1933) 1933 All. 498 (500), *Manabendra Nath Roy* v. *Emperor* (Offence under S. 121-A of the Penal Code—Conspiracy to wage war against King—Accused resident outside British India—One of centres of the conspiracy in British India—Offence is committed in British India and the accused can be tried in British India).]

ted within British India within the meaning of S. 177 and can be tried there under *that* section.

In cases coming under this section, the Courts having jurisdiction over the several areas in question have *concurrent* jurisdiction.[9] When a question arises as to which of the Courts *ought to* try the case it can be decided by the High Court under S. 185.[10]

3. Uncertainty as to local area in which offence is committed.—Under this section, when it is uncertain in which of several local areas an offence was committed, it may be inquired into or tried by any Court having jurisdiction over any of such local areas.

Illustrations.

A person is charged with the offence of criminal breach of trust. Though it is clear that he must have committed the embezzlement either at Calcutta Burdwan or Murshidabad, it is uncertain at which particular place he actually committed the offence. He may be tried at any of these places.[1]

In the above illustration, the uncertainty is as to the actual *scene* of offence. The section, however, not only applies to such cases but also to cases where there is no doubt as to the spot on which the occurrence took place but the uncertainty is as to the particular jurisdictional division (sessions division, district or sub-district) to which the scene of occurrence belongs. Thus it applies to cases where there is no doubt that the occurrence in question took place at a particular locality *A*, but it is uncertain whether *A* is in district *B* or *C*.[2]

Similarly, the section also applies to cases where the uncertainty is not as to the spot on which the offence took place or the jurisdictional division to which such spot belongs but as to the question at what place an offence is to be deemed in law to have been committed. Thus where there is a doubt as to whether an offence is committed at *B* where the accused's act is done or at *Y* where the consequence of his act ensues, the offence can be tried at either place.[3]

4. Offences committed partly in one local area and partly in another.—Where an offence is committed partly in one local area and partly in another, it can be inquired into or tried at either place.

Illustrations.

(1) *A* at *P* posts certain value payable articles at the post office at *P* to *B* at *H*. *B* at *H* takes delivery of the parcels on paying for them. The parcels on being opened are found to contain nothing but waste paper. *A* can be prosecuted for cheating at *P* or at *H*.[1]

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(9) (1913) 14 Cri. L. Jour. 398 (399) (Cal.), *Hiran Kumar Chowdhury* v. *Mangal Sen.*
(1909) 9 Cri. L. Jour. 581 (582, 582): 5 L. B. R. 17, *Emperor* v. *Chaichal Singh.*
(1933) 1933 Lah. 852 (853): 14 Lah. 320, *Dhanwantri Durga Das* v. *Emperor.*

(10) *See cases cited in Foot-Note* 9 *above.*

Note 3.

(1) (1918) 1918 Cal. 110 (110), *Gauranga Sundar Mandal* v. *Satish Chandra Choudhury* (Criminal misappropriation of monies).
(1910) 11 Cri. L. Jour. 372 (373): 32 All. 397, *Mahadeo* v. *Emperor.*
(1883) 1883 All. W. N. 88 (88), *Empress* v. *Harak Singh* (Breach of trust).
(1934) 1934 All. 499 (505), *Kashi Ram Mehta* v. *Emperor.*

(2) (1898) 25 Cal. 858 (859, 860, 862, 863), *Punardeo Narain Singh* v. *Ram Sarup Roy* (Uncertainty as to which district the scene of offence belonged).
(1929) 1929 Cal. 204 (205), *Kasim Ali Molia* v. *Mahammad Tafajjal Hossein.*

(3) (1933) 1933 Nag. 33 (34, 35), *Trikamji Parmanandji Bhatia* v. *Emperor.*

Note 4.

(1) (1930) 1930 Bom. 358 (360), *Emperor* v. *Gafur Karim Bux.*
[See also (1914) 1914 All. 373 (374), *Yusuf Ali* v. *Wahajuddin* (*A* at *M*

S. 182, Notes 4—5.

(2) A defamatory letter is posted at *A* to be read at *B*. The offence of defamation can be tried at *A* or *B*.[2]

(3) *A* at *C* enters into a conspiracy with *X*, *Y* and *Z* at *P* for the commission of an offence and the further act in pursuance of the conspiracy which is necessary under S. 107 of the Penal Code to complete the offence of abetment by conspiracy is committed at *P*. *A* can be tried at *C* or *P*.[3]

For further instances bearing on this aspect of the subject, *see* the undermentioned cases.[4]

As has been seen in Note 1, the section does not apply to cases where the whole offence is committed within one jurisdiction.[5] As to cases where an offence is partly committed outside British India and partly in British India, *see* the discussion in Note 2, *supra*.

See also Note 6 and S. 179 and the notes thereunder.

5. Continuing offence.—The third clause of this section provides that where an offence is a continuing offence, it may be inquired into or tried in any local area in which it continues to be committed. Thus, abduction is a continuing offence and is committed not only when the abducted person is first taken away from any place but continues to be committed so long as the abducted person is being removed from one place to another.[1] Hence, the offence can be tried or inquired into by any Court having jurisdiction in any of the local areas through which the abducted person has been taken. For other instances, see the undermentioned cases.[2] But, where the offence is not a conti-

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deceived by *E* at *C* by means of certain letters written by *E* at *C* and received and read by *A* at *M*. By means of such deception *A* is induced to send by insured post certain currency notes to *E* at *C*. *E* is prosecuted for cheating under S. 417, I. P. C. Held that the offence is complete at *M* and he can be tried there: and even if there be room for argument that the offence is not complete until the currency notes reach the addressee, under S. 182, the offence can be tried at *M*).

(1913) 14 Cri. L. Jour. 398 (399) (Cal.), *Hiran Kumar Choudhury* v. *Mangal Sen* (Life Policy effected at *C* through fraud—Head office of insurance company at *G*—Offence may be committed at either place).

(1899) 26 Cal. 746 (747), *Colville* v. *Krishto Kishore Bose* (The monies having been received from the complainant's firm at *C* and the false accounts having been rendered at *C* the Court at *C* had jurisdiction).]

(2) (1923) 1923 Mad. 666 (666), *Krishnamurthy Iyer* v. *Parasurama Iyer*.

(3) (1872) 17 Suth. W. R. 15 (16, 17), *Queen* v. *Amirkhan* (Conspiracy).

(1924) 1924 Cal. 1034 (1034, 1035), *Bisseswar* v. *Emperor*.

[See also (1912) 13 Cri. L. Jour. 426 (427): 36 Bom. 524, *Emperor* v. *Chhotalal Babar*.

(1933) 1933 All. 498 (500), *Manabendra Nath* v. *Emperor* (Conspiracy).]

(4) (1918) 45 Cal. 490 (491): 1917 Cal. 2, *Debendra Nath Das Gupta* v. *Registrar of Joint Stock Companies* (Presidency Magistrate at Calcutta has jurisdiction to try director of a company at Darjeeling for offence under S. 32 (4) of Companies Act, for default in filing a copy of the annual list of members and the summary prescribed therein with the Registrar of Joint Stock Companies at Calcutta).

(1917) 18 Cri. L. Jour. 787 (788): 45 Cal. 486: 1917 Cal. 1, *Debendra Nath Das Gupta* v. *Registrar of Joint Stock Companies* (Charge against director of company in moffusil under S. 134 of Companies Act for failure to file balance sheet with Registrar of Joint Stock Companies at Calcutta—Offence can be tried in Calcutta).

(1914) 1914 All. 373 (374), *Yusuf Ali* v. *Wahajuddin* (Criminal breach of trust —Offence is complete where the dishonest misappropriation takes place—No part of the offence takes place at the place where the loss to the principal occurs in consequence —See Notes under S. 179 for full discussion).

(1874) 22 Suth. W. R. 6 (8), *Queen* v. *O. J. Macdonald* (Offence of Criminal breach of trust alleged to have been committed partly, if not wholly in Calcutta—Held, it was triable in Calcutta).

(5) (1865) 4 W. R. 109 (111): 7 Moo. Ind. App. 72 (P.C.), *Nga Hoong* v. *Queen*.

Note 5.

(1) (1933) 1933 Oudh 45 (47), *Emperor* v. *Parag*.

(1931) 1931 All. 55 (55, 56): 53 All. 140, *Emperor* v. *Nanhua Dhimar*.

(1914) 1914 All. 17 (17), *Ganga Dei* v. *Emperor*.

(2) (1898) 25 Cal. 639 (641), *Yusuf Mahomed Abaruth* v. *Bansidhar Sinagi* (Possession of goods with counter-

nuing one, this clause does not apply and the accused can be tried only at the place where the offence was committed. Thus, kidnapping from lawful guardianship is not a continuing offence because the offence is complete as soon as the taking or enticing the minor out of the keeping of the lawful guardian is effected and the offence does not continue so long as the minor is kept out of the custody of the guardian.[3] Independently of this section, however, this offence of kidnapping can under sub-S. (4) of S. 181 be tried by a Court within the local limits of whose jurisdiction the person kidnapped was kidnapped or was conveyed or concealed or detained. *See* Notes to S. 181. S. 182, Notes 5—6.

Illustration (*f*) to S. 67 of the Code of 1872 treated theft as a continuing offence which could be inquired into or tried by any Court within whose jurisdiction the stolen property was conveyed.[4] This illustration has been omitted in the later Codes and it has been held that theft is not a continuing offence and does not continue to be committed so long as the thief is in possession of the stolen goods.[5] But under S. 181, sub-S. (3) the offence of theft can be inquired into or tried by any Court within whose jurisdiction the offence was committed or the stolen property was possessed by the thief.

6. Offences consisting of several acts.—Under the fourth clause of this section, where an offence consists of several acts which are committed in different local areas, the offence can be tried or inquired into by any Court having jurisdiction over any of such local areas. But in order that this clause may apply it is necessary that an act must form *part* of an offence and not merely a preparation for the commission of the offence. Where an act forms part of an offence and not merely a preparation for its commission, the offence can be tried at the place where such act is done as well as at the place where the other acts constituting the offence are done.

Illustration.

A at *H* obtained a false railway receipt and sent it through an agent to *K* at *B*. The agent presented it to *K* and the latter was thereby deceived and induced to part with money. *Held*, that *A* by taking the railway receipt did more than merely prepare for cheating *K* and that he did what was in the cir-

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feit trade mark, for purposes of trade —Goods on their way to another destination where they were to be sold—Possession of goods at any place on the way is also offence and offence can be tried there and not only at the place where the goods were ultimately intended to be sold).

(1872) 17 Suth. W. R. 15 (17), *Queen* v. *Ameer Khan* (Abetment by aiding by sending money from *C* to *P*—Sending is continuing offence and can be tried at *P* where the money is received).

(1909) 9 Cri. L. Jour. 581 (582): 5 L. B. R. 17, *Emperor* v. *Chaichal Singh* (Enticing *and* detaining married woman—Offence is a continuing one).

(3) (1893) 1893 Pun. Re. No. 13, p. 62 (63), *Chanda* v. *Empress*.

(1894) 1894 Pun. Re. No. 8, p. 29, *Muhammad Bakhsh* v. *Empress*.

(1923) 75 Ind. Cas. 297 (298) (Pesh.), *Gulam Yusaf* v. *Emperor*.

(1916) 17 Cri. L. Jour. 498 (499, 500): 38 All. 664: 1916 All. 89, *Abdur Rahman* v. *Emperor*.

(1913) 14 Cri. L. Jour. 93 (94): 15 Oudh Cas. 351, *Habib-ullah* v. *Emperor*.

(1921) 1921 Oudh 226 (226, 227): 24 Oudh Cas. 329, *Emperor* v. *Gokaran*.

(1904) 1 Cri. L. Jour. 561 (562): 26 All. 197, *Emperor* v. *Tika*.

(1903) 26 Mad. 454 (455, 456), *Chekutty* v. *Emperor*.

(1931) 1931 All. 55 (55, 56): 53 All. 140, *Emperor* v. *Nunhua Dhimar*.

(1897) 19 All. 109 (110), *Empress* v. *Ram Sundar*.

(1896) 18 All. 350 (352), *Empress* v. *Ram Dei*.

1883) 1883 All. W. N. 164 (164), *Empress* v. *Surja*.

[See also (1881) 3 All. 251 (253), *Empress* v. *Tika Singh* (An offence under the first part of S. 498, I. P. Code, is not a *continuous* offence).

(1928) 1928 Bom. 530 (531, 532), In re *Shankar Tulsi Ram* (Offence of adultery is not a continuing offence).]

(4) (1875) 1 Bom. 50 (51), *Reg.* v. *Lakhya Govind*.

(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu*.

(5) (1906) 3 Cri. L. Jour. 247 (248, 249): 28 All. 372, *Emperor* v. *Baldeva*.

(1907) 7 Cri. L. Jour. 188 (190): 35 Cal. 361, *Balai Dey* v. *Emperor*.

cumstances an act essential to causing the deception and the Court at *H* had jurisdiction to try him for cheating.[1]

S. 182, Note 6.

Where the acts alleged do not amount to one offence but to several distinct offences some of which are committed outside the jurisdiction, the mere fact that if they had been committed within jurisdiction they could have been tried jointly under S. 239 does not make this clause applicable to the case.[2]

S. 183.

183.* An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF SECTION	2

Other Topics.

Journey must be continuous. See Note 1, Pts. 3—5. 1, Pts. 6, 7.
Offences committed in a journey. See Note Railway journey. See Note 1, Pts. 1, 2.
Voyage on High Seas. See S. 188, Note 9.

***(CODE OF 1882—S. 183.)**

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

[(CODE OF 1872—S. 67, Illus. (a).]

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Place for inquiry or trial where scene of offence is uncertain.

Illustration.

(a) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

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Note 6.

(1) (1922) 1922 Nag. 40 (42), *Sheamji* v. *Empress.*

(2) (1924) 1924 Cal. 1034 (1035), *Bisseswar* v. *Emperor.*

S. 183, Notes 1—2.

1. Legislative Changes.—

Differences between Codes of 1861 *and* 1872—

The corresponding section in the Code of 1861 was S. 30. In the Code of 1872 there was no substantive section dealing specifically with offences committed in the course of a journey or voyage; but under S. 67 which corresponded to S. 182 of the present Code an illustration was given (Illus. A) which embodied the principle of the present section.

Changes made in 1882—

(1) A separate section was enacted embodying the principle of the said illustration.

(2) The words "An offence committed on a journey or voyage" which occurred in the prior Code were substituted by the words "An offence committed whilst the offender is in the course of performing a journey or voyage."

(3) The words "in any district through which . . ." which occurred in Illus. (*a*) to S. 67 of the previous Code were submitted by the words "by a Court through or into the local limits of whose jurisdiction."

2. Scope and applicability of section.—This is one of the sections that amplify the general rule of jurisdiction laid down in S. 177 that an offence should ordinarily be tried or inquired into by a Court within the local limits of whose jurisdiction it was committed. The section deals with offences committed in the course of a Journey or voyage. In such cases, besides the tribunals referred to in S. 177, the offence can be inquired into or tried under this section by any Court within the local limits of whose jurisdiction the parties or the subject-matter of the offence passed in the course of the journey or voyage.

Illustrations.

1. *A*, while performing a railway journey from Delhi to Bhatinda commits an offence. In the course of the journey the train passes through Feroze-

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(CODE OF 1861—S. 30.)

Offence committed during journey, &c.

30. When any offence shall be committed on any person, or on, or in respect of, any property in or upon any coach, cart, or other carriage or conveyance, or upon any beast of burden employed in any journey, or shall be committed on any person, or on, or in respect of, any property on board any vessel, employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be enquired into or determined in any District or division of a District, through any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if the offence had been actually and wholly committed in such District or division of a District; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts or divisions of a District, such offence may be enquired into or determined in either of such Districts or divisions of a Disrict, through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, conveyance, beast of burden, or vessel, shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually and wholly been committed in such District or division of a District.

S. 183, Note 2.

pore District. *A* can be tried for the offence in Ferozepore District.[1]

2. *A*, while performing a railway journey from Shikarpur to Jacobabad commits an offence at some place between Sultan Kot and Hamayun. *A* can be tried for the offence at Jacobabad though the Court there has no jurisdiction over the area in which the offence was committed.[2]

It is necessary however, that the parties or the subject-matter of the offence should have passed through the jurisdiction of the Court proposing to hold the inquiry or trial in the course of the *same* journey or voyage in which the offence was committed. Such journey or voyage must be *continuous* from one place to another, regard being had for the purpose of estimating the continuity, to all the ordinary incidents affecting the journeys or voyages of the particular kind which may be under consideration.[3]

Illustration.

The complainant and the accused were travelling by the same train from Bombay to Calcutta *via* Allahabad. They broke their journey at Allahabad for a day or two and then proceeded to Calcutta. The accused was alleged to have criminally intimidated the complainant while they were at Allahabad. The stoppage at Allahabad was not due to the nature of the journey itself because the journey might have been completed without any appreciable stoppage simply by continuing in the train in which they were passengers before they came to Allahabad. *Held*, that the offence could not be tried or inquired into at Calcutta.[4]

But if the halt in the course of a journey or voyage is incidental to it, the halt does not affect the continuity of the journey or voyage for the purpose of this section. Hence, an offence committed during such a halt can be inquired into or tried at the place of destination.[5]

The journey or voyage referred to in the section is the journey or voyage which the *offender* was performing at the time of committing the offence. Hence, a Court has no jurisdiction to inquire into or try an offence under this section unless the parties or the subject-matter of the offence passed within its jurisdiction in the course of the journey or voyage which the *offender* was making at the time of committing the offence.[6]

Illustration.

A, desiring to go from *S* to *K* purchases a through ticket at *S* and proceeds by train from *S* to *G* and by steamer from *G* to *K*. *B* makes a voyage from *G* to *K* in the same steamer and in the course of the voyage he commits an offence against *A*. *B* cannot be proceeded against at *S* because *A* did not pass through *S* in the course of the journey which *B* was making at the time of committing the offence.[7]

As the Code extends only to British India, this section applies only to offences committed in British India. Hence, an offence committed outside

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Section 183—Note 2.

(1) (1924) 1924 Lah. 351 (352), *Lazarus Megh Nath* v. *Emperor*.
(2) (1925) 1925 Sind 177 (177), *Emperor* v. *Moulabux*.
(1882) Rat. Un. Re. Cr. Cas. 181 (182), *Empress* v. *Ismal*.
[But see (1863) 1 Mad. H. C. 193 (196), *Regina* v. *Malony* (Case under S. 35, Act XVIII of 1862).]
(3) (1874) 21 Suth. W. R. 66 (68), *Peerun* v. *C. D. Field*.
(4) (1874) 21 Suth. W. R. 66 (68), *Peerun* v. *C. D. Field*.
(5) (1876) 25 Suth. W. R. 45 (45), *Queen* v. *Abdul Ali*.
(6) (1905) 2 Cri. L. Jour. 411 (413) (Cal.), *Aminulla Serang* v. *P. M. Guha*.
(7) (1905) 2 Cri. L. Jour. 411 (413) (Cal.), *Aminulla Serang* v. *P. M. Guha*.

British India in the course of a journey cannot be tried or inquired into in British India although a part of the journey was made in British India.[§] S. 183, Note 2.

As to the offences committed on the high seas, *see* Notes under S. 188.

184.* All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post Office or Arms and Ammunition may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not: S. 184, Note 1.

Offences against Railway, Telegraph, Post Office and Arms Acts.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

1. **Legislative Changes.**—

There was no section corresponding to this in the Codes of 1861 and 1872. The section was incorporated in the Code for the first time when the Code of 1882 was passed.

185. (1) Whenever any doubt arises as to the Court by which any offence should be inquired into or tried under the preceding provisions of this

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185.† (1) *Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any*

S. 185.

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*(CODE OF 1882—S. 184.)

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-Office, or Arms and Ammunition, may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-Office, and Arms Acts.

(CODES OF 1872 and 1861—Nil.)

†(CODE OF 1882—S. 185.)

185. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in cases of doubt, district where inquiry or trial shall take place.

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(8) (1923) 1923 Lah. 487 (488), *Nadar* v. *Crown.*
(1882) 5 Mad. 23 (25), *Bapu Daldi* v. *Queen.*
(1928) 1928 Mad. 1136 (1137): 52 Mad. 61, *Public Prosecutor* v. *Podimonu Beary.*

S. 185. Chapter be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

*(2) *Repealed by the Lower Burma Courts Act (VI of 1900).*

offence, it shall be decided by that High Court.

(2) *Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending, may give a like direction, and upon its so doing all other such proceedings shall be discontinued.*

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

***(CODE OF 1898, Para. 2.)**

(2) In Lower Burma, when the offender is an European British subject, the Court of the Recorder of Rangoon, and in all other cases the Court of the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

SYNOPSIS.

S 185, Note 1.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF SECTION	2
SUB-S. (1)—COURTS SUBORDINATE TO THE SAME HIGH COURT—QUESTION AS TO WHICH COURT SHOULD DISPOSE OF CASE	3
SUB-S. (2)—CASE WHERE SAME OFFENCE IS TAKEN COGNISANCE OF BY TWO DIFFERENT COURTS SUBORDINATE TO DIFFERENT HIGH COURTS	4

Other Topics.

Applicability of section to proceedings under S. 145. See Note 2, Pt. 2.
Jurisdiction of High Court outside its province. See Note 4.
Nature of doubt. See Note 3, Pts. 1-5.
S. 185 and S. 527 compared. See Note 4, Para. 3.

1. Legislative Changes.—

Differences between the Code of 1882 *and the earlier Codes—*

(1) The words "district in which any offence" which occurred in the earlier Codes were substituted by the words "the Court by which any offence".

(2) The words as to the inquiry or trial mentioned in the section being one under the preceding provision of the chapter were added.

(3) The words "within the local limits of whose appellate criminal jurisdiction" were substituted for the words "within whose jurisdiction".

(4) The words "the offender actually is" were substituted for the words "the offender is apprehended".

(5) Paragraph 2 was added making provision as to what Court should be regarded as the High Court for the purposes of the section in British Burma.

Changes subsequent to 1898—

Sub-S. (2) corresponding to the second paragraph of the section in the Code of 1882 was repealed by the Lower Burma Courts Act, 1900.

(CODE OF 1872—S. 69.)

High Court to decide, in case of doubt, district where inquiry shall take place.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which district the offence shall be inquired into, or tried.

(CODE OF 1861—S. 34.)

Sudder Court to decide when doubt arises as to the jurisdiction where an enquiry shall take place.

34. Whenever any doubt shall arise as to the district in which any offence should be enquired into or determined, it shall be lawful for the Sudder Court within whose jurisdiction the offender is apprehended, to decide in which District the offence shall be determined.

S. 185, Notes 1—2.

Changes made in 1923—

(1) The word "question" was substituted for the word "doubt".

(2) The words as to the inquiry or trial mentioned in the section being one under the preceding provisions of the chapter were omitted.

(3) Prior to the amendment the section purported to provide for cases where the question was as to "the Court by which an offence would be tried or inquired into". Under the amendments, the section purports to lay down the procedure where the question is as to "which of two or more Courts ought to inquire into or try an offence".

(4) Prior to the amendments, the power to decide the question mentioned in the section was conferred on the High Court within the local limits of whose appellate criminal jurisdiction the offender actually was. Under the amendments the power to decide the question is given to the High Court to which both the Courts as to which the question arises are subordinate.

(5) Prior to the amendments it was provided that the High Court "may" decide the question; under the amendments it is provided that the question "shall" be decided by the High Court (where both the Courts in question are subordinate to the same High Court).

(6) Prior to the amendments, the section did not contain any express provision for cases in which the question as to forum was raised with reference to Courts subordinate to different High Courts. Sub-S. (2) which was added by the amendments specially provides for such cases.

2. **Scope and applicability of section.**—This section provides for the solution of the difficulties that might arise with regard to the relative jurisdiction of different Courts to dispose of a case and the expediency on grounds of convenience and other considerations of having a case tried or inquired into by one Court or another. Thus, where two Courts have concurrent jurisdiction to try a case, the mere fact that one of them has taken cognizance of the offence does not preclude the other Court from taking cognizance of the same offence.[1] In such cases the High Court might interfere under the provisions of this section to declare in which of the two Courts the proceedings should be continued.

The section has been extensively amended in 1923. The section divides the cases it is intended to provide for into two classes. Sub-S. (1) refers to cases where the Courts in question are subordinate to the same High Court. Sub-S. (2) refers to cases where such Courts are *not* subordinate to the same High Court.

The section applies only to cases of *offences*. Hence it does not apply to proceedings under Chapter XII.[2]

Section 185—Note 2.

(1) (1933) 1933 Lah. 852 (853): 14 Lah. 820, *Dhanwantri Durga Das* v. *Emperor*.

(2) (1914) 1914 All. 473 (474), *Rudra Partap Sahi* v. *Dawan Singh*.

See also the undermentioned case.[3] *See also* notes under Ss. 526 and 527. S. 185, Notes 2—4.

3. **Sub-S. 1.—Courts subordinate to the same High Court—Question as to which Court should dispose of case.**—This sub-section provides that when a question arises as to which of two or more Courts subordinate to the *same* High Court ought to try or inquire into an offence the question must be decided by such High Court. Previous to the amendments of 1923, there was a conflict of decisions as to the nature of questions that would come within the scope of the section. On the one hand it was held by the Allahabad High Court[1] that the section applied only to cases where the doubt was as to the *jurisdiction* of different Courts and where there was no question of jurisdiction involved but the question raised was purely one of *convenience* and expediency the section did not apply. On the other hand, it was held by the High Courts of Calcutta[2] and Madras[3] and the Chief Court of Punjab[4] that the section applied notwithstanding there was no doubt raised as to the *jurisdiction* of different Courts but only as to the greater convenience and desirability of inquiring into or trying a case in one Court or another. The legislature has adopted the latter view by the amendments it has made in sub-S. (1). Where a question is raised as to the jurisdiction of a Court the section will apply though the question is based on a ground of *law*.[5]

In a case before the amendments of 1923, it was held that a doubt not as to the *place* of inquiry or trial under the preceding provisions of the chapter, but as to the competence of the Magistrate to commit the accused as an European British subject for trial did not fall within the purview of the section.[6] The words as to the inquiry or trial being one under the preceding provisions of this chapter have now been omitted in the section and hence, it is submitted that the section would apply whatever be the ground on which it is contended that one Court and not another should deal with a case.

4. **Sub-S. 2.—Case where same offence is taken cognizance of by two different Courts subordinate to different High Courts.**—Previous to the amendments of 1923, there was a conflict of decisions as to the power of the High Court under this section to direct that a case instituted in a Court *not* subordinate to itself should be tried by a different Court.[1] Sub-S. (2) now provides a new

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(3) (1896) Rat. 849 (849), *Empress* v. *Ramji Bapuji* (Case prior to 1923—High Court of Bombay *declined* to exercise its power under the section).

Note 3.

(1) (1924) 1924 All. 77 (78), *Girdhar Das* v. *Emperor*.
(2) (1917) 18 Cri. L. Jour. 81 (88): 44 Cal. 595: 1917 Cal. 137, *Charu Chandra Majumdar* v. *Emperor* (Overruling 1914 Cal. 386 (386).
(1913) 14 Cri. L. Jour. 398 (399) (Cal.), *Hiran Kumar Chowdhury* v. *Mangal Sen*.
(1874) 22 Suth. W. R. 6 (8), *Queen* v. *O. J. Macdonald*.
(3) [See (1917) 18 Cri. L. Jour. 148 (150): 40 Mad. 835: 1918 Mad. 1183, *Mahomed Ghouse Rahman Sahib* v. *Nathu Vallabhji*.]
(4) (1917) 18 Cri. L. Jour. 514 (518): 1917 Pun. Re. No. 24: 1917 Lah. 237, *Gurdit Singh* v. *Emperor*.
(5) (1889) 1889 Pun. Re. No. 14, p. 60, *Raja Shah* v. *Empress*.
[See also (1917) 21 Cal. W. N. 434 (435), *Benode Behari Mal* v. *Ganesh Chandra*.]
(6) (1887) 1887 Pun. Re. No. 13, p. 27, *Empress* v. *Cligg*.

Note 4.

(1) (1913) 14 Cri. L. Jour. 398 (399) (Cal.), *Hiran Kumar Chowdhury* v. *Mangal Sen* (High Court had the power).
(1917) 18 Cri. L. Jour. 81 (92): 44 Cal. 595: 1917 Cal. 137, *Charu Chandra Majumdar* v. *Emperor* (Do.).
(1909) 9 Cri. L. Jour. 581 (582): 5 L. B. R. 17, *Emperor* v. *Chaickal Singh* (Do.).
(1917) 18 Cri. L. Jour. 148 (150, 151): 40 Mad. 835: 1918 Mad. 1183, *Mahomad Ghouse Rahman* v. *Nathu Vallabhji* (High Court could *not* interfere).

S. 185, Note 4.

procedure to be followed in such cases and the old cases are only of academic importance now. Under this sub-section though the jurisdiction of the High Court is not totally ousted merely because a case has been instituted in a Court subordinate to a different High Court it is clear that one High Court has no power to *transfer* a case pending in a Court subordinate to another High Court.

This sub-section only applies to cases where *two or more* Courts have taken cognizance of an offence. Where only one Court has taken cognizance of an offence the High Court has no jurisdiction to interfere under this sub-section.[2] Hence the view taken in some decisions prior to the amendments of 1923 that where a case is instituted in a Court subordinate to a High Court such High Court could decide that the offence should be dealt with by another Court subordinate to a different High Court[3] (though such Court has not taken any proceedings against the accused) is no longer good law.

The provisions of this sub-section may be compared with those of S. 527. The scope of the two sections entirely differ. Under S. 527 the Governor-General-in-Council has the power of *transferring* cases pending in one High Court or in a Court subordinate to one High Court to another High Court or to a Court subordinate to another High Court. Under this sub-section the High Court has *no* power to *transfer* any case from a Court subordinate to one High Court to a Court subordinate to a different High Court. The power of the High Court is only to direct that proceedings should continue in a Court subordinate to itself, though, on such an order being made proceedings in other Courts are to stop. Thus the High Court has only indirectly the power to *stop* proceedings pending in a Court in a different province and not to *transfer* such proceedings. Moreover, the power of the High Court under this sub-section arises only where *two or more* Courts subordinate to different High Courts have taken cognizance of the same offence while the power of the Governor-General in Council under S. 527 arises as soon as proceedings have been instituted in any (*one*) Court. Again, the order under S. 527 is an *executive* order while that under this sub-section is a *judicial* order.

S. 186.

186.* (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe

Power to issue summons or warrant for offence committed beyond local jurisdiction.

***(CODE OF 1882—S. 186.)**

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of Ss. 177 to 184

Power to issue summons or warrant for offence committed beyond local jurisdiction.

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(2) (1933) 1933 Oudh 45 (48), *Emperor* v. *Prag*.

(3) (1908) 7 Cri. L. Jour. 394 (396) (All.), *Babu Lal* v. *Ghansham Das*.

(1917) 18 Cri. L. Jour. 148 (150): 40 Mad. 835: 1918 Mad. 1183, *Mahomed Ghouse* v. *Nathu Vallabhji* (*Per* Sadasiva Iyer, J.).

that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of Ss. 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate. S. 186.

Magistrate's procedure on arrest.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

(both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

(CODE OF 1872—Ss. 157 and 174.)

157. The Magistrate of the District, a Magistrate of a division of a District, or a Magistrate of the first class duly authorized in that behalf and having local jurisdiction in such District or division of a District, may issue a summons or warrant for the apprehension of any person within such District or division of a District, in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

Summons or warrant for offence committed beyond local jurisdiction.

S. 186, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF SECTION	2
ISSUE OF WARRANT UNDER THE SECTION FROM PLACE BEYOND JURISDICTION	3
POWERS OF HIGH COURT	4

Other Topics.

Effect of proceedings by a Magistrate not empowered. See S. 529. 2.

Offence committed outside. See Note 2, Pt. Who can act under this section. See Note 2, Pt. 3.

1. Legislative Changes.—

Differences between the Codes of 1861 *and* 1872.—

The Code of 1861 conferred the power under the section only on a District Magistrate and a sub-divisional Magistrate. The Code

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174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of S. 157, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable.

Magistrate's procedure on arrest, under his own warrant, for offence committed out of his jurisdiction.

When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

(CODE OF 1861—Ss. 74 and 88.)

74. The Magistrate of the District or a Magistrate in charge of a division of a District, may issue a summons or warrant, for the apprehension of any person within such District or division of a District in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the High Seas, or in a foreign country, and for which, if committed within the jurisdiction of such Magistrate, he might issue a summons or warrant.

Summons or warrant when grantable for an offence committed beyond local jurisdiction.

88. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of S. 74 of this Act, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorised to complete the enquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable. When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the Sudder Court.

Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

of 1872 extended the power to a Magistrate of the first class specially empowered in this behalf.

Changes made in 1882—

(1) The Presidency Magistrate was included among the Magistrates who might act under this section.

(2) The prior Codes referred in terms to an offence committed outside the local limits of the jurisdiction of the Magistrate, for which, if committed within his jurisdiction, he might issue process. The Code of 1882 purported to provide for offences committed outside the local limits of the jurisdiction of the Magistrate, which could not be tried or inquired into by any Court within such limits, but which could be tried or inquired into elsewhere in British India.

(3) The Code of 1882 conferred on the Magistrate the power to *inquire* into the offence as if it had been committed within his jurisdiction.

(4) The words "when there are more Magistrates than one having such jurisdiction" in the second paragraph of the section were newly added.

2. Scope and applicability of section.—In order that this section may apply the following conditions must be satisfied:—

(1) the Magistrate must have reason to believe that an offence has been committed *outside the local limits of his jurisdiction*, whether within or without British India;[1]

(2) the offender must be *within* the local limits of the Magistrate's jurisdiction;

(3) the offence must be one which *could not be tried within such local limits* under the provisions of Ss. 177 to 184;

(4) the offence must be one *triable in British India*.

Where an offence is *triable within the local limits* of the Magistrate's jurisdiction, though committed outside such limits the third condition is not satisfied and this section does not apply.[2]

The powers conferred by this section are conferred only on certain specified Magistrates and not on all Magistrates.[3]

3. Issue of warrant under the section from place beyond jurisdiction.—It has been held that it is not necessary that a Magistrate issuing a warrant under this section should be present within the local limits of his jurisdiction at the time of issuing it. It is enough that at such time the *offender* is found within such limits though the Magistrate himself is outside such limits.[1]

Section 186—Note 2.

(1) (1923) 1923 Cal. 401 (401, 402), *Amulya Charan Dutt*, In re.

(2) [See (1875) Rat. 97 (98), *Reg* v. *Kahandas* (Case under Code of 1872).]

(3) [See (1896) Rat. 849 (849), *Empress* v. *Ramji valad Bapuji*.]

Note 3.

(1) (1876) 1 Bom. 340 (341), *Reg.* v. *Locha Kala*.

[But see (1910) 11 Cri. L. Jour. 570 (571): 1910 Pun. Re. No. 23, *Girdhari Lal* v. *Emperor* (*Search warrant* signed by the Magistrate at a place outside his jurisdiction is illegal—A Magistrate holding powers within certain local limits cannot exercise those powers from a place beyond such local limits).]

S. 186, Note 4.

4. Powers of High Court.—When the facts of a case fall within this section not only can the Magistrate follow the procedure laid down therein, but also the High Court can, under Cl. 29 of the Letters Patent (Madras) direct a Magistrate to hold a preliminary investigation and commit the case to the sessions if a *prima facie* case is made out. But S. 186 being a special provision and Cl. 29 of the Letters Patent being a general provision, the High Court will not make such an order unless the case is of an extremely exceptional character; and *ordinarily*, the Magistrate must be allowed to follow the procedure laid down in this section.[1]

S. 187.

187.* (1) If the person has been arrested under a warrant issued under Section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by Subordinate Magistrate.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under Section 186, such Magistrate shall send such person to such Court.

***(CODE OF 1882—S. 187.)**

187. If the person has been arrested under a warrant issued under S. 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under S. 186, such Magistrate shall send such person to such Court.

(CODE OF 1872—S. 175.)

175. If the arrest was made under a warrant issued under S. 157, by a Magistrate

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Note 4.

(1) (1901) 2 Weir 146 (146, 147), *Oriental Government Security Life Assurance Co.* v. *Masilamani.*

188.* When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

Liability of British subjects for offences committed out of British India.

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Procedure where such warrant issued by Subordinate Magistrate.

other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence of which the person arrested is suspected has been committed in the jurisdiction of another Subordinate Court of the same district, the Magistrate who issued the warrant under S. 157, shall send the person arrested to the Magistrate of the Division of the District in which the offence was committed.

(CODE OF 1861—S. 89.)

89. If the arrest was made under a warrant issued under S. 74 of this Act by a Magistrate subordinate to the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed, shall issue his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer or other person executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued. If the offence of which the person arrested is suspected, shall have been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under S. 74, of this Act, shall send the person arrested to the Magistrate-in-charge of the division in which the offence was committed.

Subordinate Magistrate how to proceed in such cases.

***(CODE OF 1882—S. 188.)**

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

Liability of British subjects for offences committed out of British India.

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

S. 188.

Political Agents to certify fitness of inquiry into charge.

Provided that *notwithstanding anything in any of the preceding sections of this chapter* no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the *Indian Extradition Act*, 1903 in respect of the same offence in any territory beyond the limits of British India.

SYNOPSIS.

LEGISLATIVE CHANGES. 1
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BRITISH INDIA 3
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Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

(CODES OF 1872 and 1861—Nil.)

Other Topics.

Certificate obtained late--Effect. See Note 7, Pts. 5-7-a.
Certificate whether can be issued after arrest. See Note 7, Pt. 20.
Effect where arrest is illegal. See Note 6, Pt. 2.
Jurisdiction over foreigners. See Note 2, Pt. 5.
Native Indian subject—Meaning of. See Note 5, Pts. 3-5.
Preliminary enquiries—If certificate necessary. See Note 7, Pts. 3 and 4.
Proviso—Applicability. See Note 7, Pts. 9 and 10.
Revocation of the certificate. See Note 7, Pt. 19.
Want of Certificate—Effect on trial. See Note 7, Pts. 1 and 2.
Where there is no political agent. See Note 7, Pt. 1.
Whether trial confined to the section mentioned in the Certificate. See Note 7, Pt. 18.

1. Legislative Changes.—

The Law prior to the Code of 1882:—

The Codes of 1861 and 1872 did not contain any provision corresponding to this section. But S. 9 of the Foreign Jurisdiction and Extradition Act, XXI of 1879 contained such a provision.[1-a] This was transplanted as S. 188 of the Code of 1882 when that Code was enacted. As to the law prior to Act XXI of 1879, *see* the undermentioned cases.[1]

Changes made in 1898:—

(1) With regard to offences committed in Native States the Code of 1882 applied only to *European* British subjects. The present section applies to *any* British subject.

(2) The clause as to offences by *servants* of the Queen committed in Native States is new. This supersedes the undermentioned decision.[2]

(3) In the first proviso, the provision for obtaining the sanction of the Local Government was added.

Amendments of 1923:—

The words "notwithstanding anything in any of the preceding sections of this chapter" in the first proviso were newly added.

2. Scope and applicability of section.—It has been seen in the Notes under S. 177 that all crime is *local* and that the jurisdiction to try an offence arises at the place where the offence is committed and does not depend on the nationality of the offender or the place where he is found. This principle is given effect to in that section which provides that ordinarily, all offences should be tried by the Court within the local limits of whose jurisdiction it was commit-

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Section 188—Note 1.

(1-a) (1882) 8 Cal. 985 (990, 991) (F.B.), *Empress* v. *Keshub Mohajan*.
(1) (1870) 5 Mad. H. C. App. 13 (14) (Case under Act I of 1849).
(1870) Rat. Un. Re. Cr. Cas. 35 (35) (Do.).
(1871) 8 Bom. H. C. R. 92 (93), *Reg.* v. *Chill* (Do.).
(1878) 1878 Pun. Re. No. 29, p. 71, *Crown* v. *Dad Gul* (Native Indian subject committing offence in any part of the world is triable in British India).
(1865) 4 Suth. W. R. Cr. L. 6 (6) (Do.).
(1865) 2 Suth. W. R. 60 (61), *Queen* v. *Moulvie Abmudooliah* (Do.).
(1880) 2 All. 218 (234, 235) (F.B.), *Empress* v. *Sarmukh Singh* (Do.).
(1865) 2 Mad. H. C. 444 (446, 448), *Reg.* v. *James Watkins*.
(1878) 3 Bom. 334 (339), *Empress* v. *Dossaji Gulam Husein* (High Court of Bombay can try prisoner charged with having committed murder at Zanzibar and sent by the British Consul there to Bombay).
(2) (1892) 16 Bom. 178 (181, 182, 183), *Government of Bombay* v. *Natawarai Mulrai*.

S. 188, Note 2.

ted. It also finds embodiment in S. 2 of the Penal Code, which provides that every person violating the provisions of the Code within the *said territories* (British India) shall be liable to punishment under the Code. Similarly, S. 1 of the Code provides that the Code extends to the whole of *British India*. It has also been seen in the Notes under Ss. 179 to 183 that those sections do not apply to offences committed outside British India so as to make such offences triable in British India. It will thus be clear that the criminal jurisdiction of British Indian Courts is primarily *territorial* and is confined to offences committed within the borders of British India. But there are certain exceptions to this rule. This section embodies some of these exceptions. It provides for the *extra-territorial* jurisdiction of British Indian Courts in certain cases. It has its counterpart, so far as the substantive law is concerned, in S. 4 of the Penal Code. Under these two sections British Indian Courts are empowered to deal with offences alleged to be committed outside British India in certain cases. These cases are as follows:—

(1) offences committed by Native Indian subjects in *any* place beyond the limits of British India;

(2) offences committed by any other British subject in the territories of any Native Prince or Chief in India;

(3) offences committed by a servant of the King, whether a British subject or not, in the territories of any Native Prince or Chief in India.

In such cases, the section provides that the offender can be dealt with in respect of the offence as if it was committed at any place in British India at which he may be found. But the section imposes as a condition for the trial of an offender under it that the certificate of the Political Agent for the area in which the offence was committed, or, where there is no Political Agent, the sanction of the Local Government, should be obtained. The object of such a provision is to prevent the accused being tried over again for the same offence in two different places.[1-a] (*Cf.* Proviso 2).

The section applies only to offences committed *outside* British India. Where an offence is committed *within* British India, the mere fact that it is connected with other criminal acts done outside British India does not make the section applicable.[1] Similarly, offences committed outside British India

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Note 2.

(1-a) (1934) 1934 Sind 96 (99): 28 S.L.R. 27, *Jeramads Vishendas* v. *Emperor*.

(1) (1932) 1932 Cal. 465 (467): 59 Cal. 1065, *Superintendent and Remembrancer of Legal Affairs of Bengal* v. *Ludur Chandra Das* (Charge under Opium Act, S. 9 (*c*)—Importing opium into British India—Offence consists in bringing the opium into the country—Sendng opium from Cooch Behar by parcel into Assam—Offence complete in Assam and sanction or certificate under Prov. 1 of Section not necessary).

(1933) 1933 Lah. 977 (984), *Punjab Singh Ujagar Singh* v. *Emperor* (Dacoity in British territory (Railway line in Patiala State over which the State had conceded full jurisdiction to British Indian Government)—Murder actually outside British territory—The murder held part of the offence of dacoity. No certificate necessary—In such cases it is the place where the offence is *primarily* committed that determines jurisdiction though the offenders may also be liable to be tried for one or other of the offences by the Court within whose jurisdiction the grievous hurt of death was caused).

(1933) 1933 Mad. 461 (461), *Narayanaswami Padayachi* v. *Emperor* (Theft in British India—Possession of stolen property in French territory—No sanction of Local Government necessary for trial of theft in British India).

(1933) 1933 All. 498 (500), *Manabendranath Roy* v. *Emperor* (Accused living in a foreign State—Corres-

by persons or in places *not* covered by the section cannot be tried in British India under the section.[2] Thus, a person who is neither a British subject nor a servant of the King cannot be tried in British India for an offence committed by him in a Native State. Where an *objection* is raised as to the jurisdiction of the Court on the ground that the offence was committed outside British India, the question must be investigated by the Court and a decision arrived at on the facts.[3] As to submission to jurisdiction, *see* the undermentioned case.[4]

Where an offence is committed within British India it can, under S. 177 and the general principle already stated, be tried in British India notwithstanding that the offender is a *foreigner*.[5] Where a foreigner in a foreign territory initiates an offence there which is completed in British India, there is a conflict of decisions as to the jurisdiction of British Indian Courts to try the foreigner. (*See* S. 177, Note 1.)

Though the section empowers British Indian Courts to try offences committed outside British India in the cases specified therein, it does not affect the liability of the offender in such cases to be dealt with in the state wherein the offence was committed.[6] It has also been held that a judgment of acquittal or conviction passed by a foreign Court in such a case will be a bar to proceedings being started against the alleged offender under this section in British India.[7]

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pondence with co-conspirators in British India—Offence of conspiracy is committed in British India and section not applicable).

(1895) 19 Bom. 105 (109), *Empress* v. *Ganpat Rao Ramchandra* (Abetment in British India of offence outside British India is not covered by section as it is not an offence committed outside British India).

(2) (1878) 1 Bom. 50 (51), *Reg.* v. *Lakhya Govind*.

(1882) 5 Mad. 23 (25, 26), *Bapu Daldi* v. *Empress*.

(1876) 1 Mad. 171 (172), *Reg.* v. *Adivigadu*.

(1897) 25 Cal. 20 (30) (P.C.), *Muhammad Yusufuddin* v. *Empress*.

(1881) 6 Cal. 307 (308), *Empress* v. *Shunker Gope*.

(1886) 10 Bom. 186 (188), *Empress* v. *Abdul Latif*.

(1918) 14 Cri. L. Jour. 439 (440): 7 Sind L. R. 17, *Emperor* v. *Koochri*.

(1927) 1927 All. 80 (81): 48 All. 687, *Gunna* v. *Emperor*.

(1914) 1914 Cal. 725 (725, 726), *Meheshwari Prasad* v. *King-Emperor*.

(1884) 7 Mad. 354 (355), *Siddha* v. *Büligiri*.

(1914) 1914 Sind 80 (80, 81): 7 Sind L. R. 128, *Emperor* v. *Anandgir*.

(1887) 9 All. 523 (525), *Empress* v. *Kirpal Singh*.

(1918) 1918 Lah. 49 (50): 1918 Pun. Re. No. 23, *Raj Bahadur* v. *Emperor*.

(1919) 1919 Lah. 459 (464): 1918 Pun. Re. No. 31, *Balwat Singh* v. *Emperor*.

(1867) 3 Mad. H. C. 354 (362), *Queen* v. *Venkanna*.

(1864) 1 Suth. W. R. 39 (39), *Empress* v. *Dhuronarain*.

(1870) 6 Mad. H. C. App. 3 (4).

(1933) 1933 Sind 333 (334, 335): 27 Sind L. R. 392, *Gokaldas* v. *Emperor*.

(1900) 2 Bom. L. R. 337 (337), *Empress* v. *Ranchhod Daya*.

(1867) 1867 Pun. Re. No. 29, p. 48, *Empress* v. *Deva*.

(1881) Pun. Re. No. 5 Cr., p. 5, *Empress* v. *Hakim*.

(1888) 1888 Pun. Re. No. 22 Cr., p. 42, *Samanda* v. *Empress*.

(1880) 1880 Pun. Re. No. 16, p. 28 (29), *Hazarmir* v. *Empress*.

(1894) 1894 Pun. Re. No. 6, p. 25 (26), *Ibrahim*, In re.

(1901) 1901 Pun. Re. No. 1, p. 2 (3), *Jaimal Singh* v. *Emperor*.

(1900) 1 Weir 579 (580), *Krishnan Nambudri* v. *K. K. Embrantri*.

(1879) 2 Weir 145 (145).

(3) (1868) 9 Suth. W. R. 29 (29), *Motee* v. *Mohendranath*.

(4) (1882) 6 Bom. 622 (626), *Empress* v. *Maganlal*.

(5) (1880) 6 Cal. 307 (308), *Empress* v. *Sunker Gope*.

(1894) 1894 Pun. Re. No. 30, p. 100 (101), *Jafar Ali* v. *Empress*.

[See also (1865) 2 Suth. W. R. 49 (49), *Empress* v. *Roopa*.

(1886) 10 Bom. 186 (188), *Empress* v. *Abdul Latif*.

(1881) 6 Cal. 307 (308), *Empress* v. *Sunker Gope*.]

[But see (1895) 19 Bom. 105 (110), *Empress* v. *Ganpat Ramachandra* (Abetment of offence—Abetment in British India—Offence outside—Abetment no offence—Not good law in view of S. 108-A of I. P. Code).

(1880) 5 Bom. 338 (346, 347, 348, 351) (F.B.), *Empress* v. *Moorga Chetty* (Retaining stolen property in British India—Property got by theft outside British India—No offence committed in British India—Not good law in view of I. P. Code, S. 410).]

(6) (1910) 11 Cri. L. Jour. 390 (391): 1910 Pun. Re. No. 14, *Bishen Das* v. *Emperor*.

(7) (1924) 1924 Lah. 238 (239), *Tej Singh* v. *Emperor*.

S. 188, Notes. 2—5.

Extradition.—Where a person commits an offence outside the British India and is later on found in British India there are two courses open. He can be tried in British India under this section if the case falls within its purview. Or, he can be arrested and sent to the state where he committed the offence to take his trial there. This is called *extradition*. As to the rules and principles governing the subject of extradition, *see inter alia*, the Indian Extradition Act (XV of 1903), and the following cases.[8]

3. British India.—*See* Notes under S. 1 and the undermentioned cases.[1]

4. Transfer of territory to another state after commission of offence —Effect.—*See* S. 177, Note 9.

5. Liability of Native Indian subject.—The first paragraph of this section makes Native Indian subjects of His Majesty committing an offence in *any part* of the world liable to be dealt with in British India.[1] The provision is based on the principle that the judicial power of every independent state extends to the punishment of all offences against the municipal laws of the state by whomsoever committed within the territory and also to the punishment of all such offences by its subjects wheresoever committed.[2]

The expression "Native Indian subject" is not defined anywhere. The points to be considered in deciding if a person is a Native Indian subject are his parentage, the place and time of his birth and his habits as to residence within and without the territory.[3] The mere fact that a person owns property in British India is not sufficient to make a person a native Indian subject.[4] Nor does mere occasional residence in British India confer on a person the status of a Native Indian subject, the reason being that the expression Native Indian subject must be held to refer to a *de jure* and not merely a *de facto* Native Indian subject of His Majesty.[5] It has been held that the son of an alien, *born* in British India is a Native Indian subject of His Majesty.[6] See also the under-

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(8) (1906) 4 Cri. L. Jour. 49 (52, 53), *Emperor* v. *Mahamad Buksh*.
(1871) 8 Bom. H. C. Cr. 13 (16 to 19), *Reg.* v. *Souter*.
(1873) 1873 Pun. Re. No. 14, p. 17, *Hukum Chand* v. *Empress*.
(1920) 1920 Cal. 636 (638): 47 Cal. 37, *Rahmat Ali* v. *Emperor*.

Note 3.

(1) (1886) 10 Bom. 186 (188), *Empress* v. *Abdul Latif* (Rajkot Civil Station is not part of British India).
(1903) 5 Bom. L. R. 873 (874, 875), *Emperor* v. *Raghunath Roo* (Offence committed in Kalol Railway Station in a Native State—Jurisdiction along railway line conferred on British Indian Government—Held that still, unless there was actual cession of territory, the station cannot form part of British India).
(1912) 13 Cri. L. Jour. 790 (791): 37 Bom. 152, *Emperor* v. *Chimanlal* (Wadhwan Civil Station whether in British India).
(1882) 8 Cal. 986 (990), *Empress* v. *Keshub Mohajan* (Mohurbhunj not part of British India).

Note 5.

(1) (1927) 1927 Oudh 627 (628), *Emperor* v. *Bandi Ali* (Offence committed in Foreign territory).
(1894) 1894 Pun. Re. No. 6, p. 25 (26), *Ibrahim* v. *Empress*.
(1888) 13 Bom. 147 (149), In re *Daya Bhima* (Do.).
(1919) 1919 All. 44 (45): 42 All. 89, *Nandu* v. *Emperor* (Offence committed in Native State).
(1919) 1919 All. 370 (370): 41 All. 452, *Narain* v. *Emperor* (Do.).
(1882) 6 Bom. 622 (626), *Empress* v. *Magan Lal* (Case under Act XXI of 1879).
(1882) 8 Cal. 985 (990, 991) (F. B.), *Empress* v. *Keshub Mohajan* (Do.).
(2) (1912) 13 Cri. L. Jour. 575 (576): 34 All. 451, *Emperor* v. *Ganga*.
(3) (1883) 1883 Pun. Re. No. 22, p. 53, *Fakir* v. *Empress*.
(4) (1883) 1883 Pun. Re. No. 22, p. 50 (51, 52, 53), *Fakir* v. *Empress*.
(1885) 1885 Pun. Re. No. 1, p. 1 (3, 4), *Fakir* v. *Empress*.
(5) (1885) 1885 Pun. Re. No. 1, p. 1 (3, 4), *Fakir* v. *Empress*.
[See also (1881) 1881 Pun. Re. No. 37, p. 95, *Empress* v. *Nawabji*.]
(6) (1893) 1893 Pun. Re. No. 9, p. 51, *Fozal Ali* v. *Empress*.

mentioned cases.[7]

S. 188, Notes 5—7.

6. "At which he may be found."—The expression is not restricted to cases where a person can be said to be "discovered" in British India. It includes cases where the accused is brought by the police to a place in British India from a place outside.[1] Similarly, the illegality of the arrest under which the accused is brought into India from a foreign place does not affect the jurisdiction of British Indian Courts under this section.[2]

7. Certificate of Political Agent or sanction of Local Government (First proviso).—The first proviso to the section imposes certain restrictions on the exercise of the power conferred by the first three paragraphs of the section on British Indian Courts to inquire into or try offences committed outside the limits of British India. The restriction is to the effect that no such offence should be inquired into in British India unless the Political Agent for the territory wherein the offence was committed certifies that in his opinion the offence should be tried in British India, or where there is no Political Agent, the sanction of the Local Government is obtained. The certificate or the sanction prescribed by this proviso is *essential* to the jurisdiction of the Court to proceed with the matter and an inquiry or trial held without such sanction or certificate is void.[1] The contrary view,[2] *viz.*, that the want of such sanction or certificate is only an irregularity covered by S. 537 is, it is submitted, not correct.

The requirement of the certificate or sanction applies to preliminary inquiries with a view to commitment to the sessions[3] as well as to regular trials.

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(7) (1882) 6 Bom. 622 (625), *Empress* v. *Magan Lal* (Ahmedabad, the home of the accused's parents—Accused born and educated there and occasionally residing outside British India—Held accused was a Native Indian subject).
(1891) 16 Bom. 178 (181, 183), *Empress* v. *Natwarai* (Merely being a servant in British Indian Government Service is not enough to make a Native Indian subject).
2 J. G. 7, In re, *Ram Phul Singh* (A subject of His Majesty by choosing to reside beyond the limits of British India for ten or twelve years, does not divest himself of his allegiance to His Majesty or of his liability to be tried as a British Subject).

Note 6.

(1) (1882) 6 Bom. 622 (625), *Empress* v. *Magan Lal.*
(2) (1911) 12 Cri. L. Jour. 356 (357, 358): 35 Bom. 225, *Emperor* v. *Vinayak Damodar Sarvarkar.*

Note 7.

(1) (1899) 24 Bom. 287 (290, 291, 292), *Empress* v. *Baku.*
(1930) 1930 Pat. 501 (503), *Ram Prasad Guru* v. *Emperor.*
(1933) 1933 Mad. 461 (461), *Narayanaswami* v. *Emperor.*
(1899) 1899 Pun. Re. No. 11, p. 33, *Empress* v. *Mastana.*
(1872-1892) Low. B. R. 334 (334), *Empress* v. *Maung Shwitu.*
(1932) 1932 Cal. 229 (231), *Sashadhur* v. *Sir Charles*
(1919) 1919 All. 370 (370): 41 All. 452, *Narain* v. *Emperor.*
(1919) 1919 All. 44 (45): 42 All. 89, *Nandy* v. *Emperor.*
(1882) 5 Mad. 23 (25, 26), *Bapu Daldi* v. *Empress.*
(1925) 1925 Lah. 185 (186): 5 Lah. 416, *Ramcharu* v. *Emperor.*
(1890) 13 Mad. 423 (426), *Empress* v. *Kathar Permat.*
(1925) 1925 Sind 88 (88): 19 Sind L. R. 122, *Allibhoy Jivraj* v. *Emperor* (Objection raised at intermediate stage of proceedings—Proceedings cannot be allowed to go on uncorrected).
[See also (1913) 14 Cri. L. Jour. 298 (298): 6 Sind L. R. 260, *Imperator* v. *Chellaram Narain Das* (Objection as to want of certificate or sanction under proviso—Magistrate overruling objection on ground that the case had been transferred to him by the District Magistrate under S. 192—*Held*, that an order by a District Magistrate under S. 192 does not import a decision of any question either of law or fact arising in the case and that the Magistrate was therefore wrong in *not* allowing the accused to raise the question of jurisdiction).]
(2) (1894) 1894 Pun. Re. No. 7, p. 29, *Mohd. Baksh* v. *Empress.*
(1888) 1888 Pun. Re. No. 35, p. 86 (87, 88), *Shahmir Khan* v. *Empress.*
(1889) 1889 Pun. Re. No. 30, p. 111, *Roda* v. *Empress.*
(1902) 1902 Pun. Re. No. 4 (13, 14), *Fateh Din.*
(1934) 1934 Lah. 827 (829): 16 Lah. 73, *Mohammad Qasum Khan* v. *Emperor.*
(3) (1902) 2 Weir 148 (148).

S. 188, Note 7.

A commitment made in the absence of the certificate or sanction is illegal and must be quashed.[4] The obtaining of sanction *ex posi facto* after the commitment has been made does not validate the commitment.[5] Suppose the certificate is obtained *pending* an inquiry. Is such a certificate sufficient? Yes, according to the High Court of Bombay,[6] and the Judicial Commissioner's Court of Sind.[7] No, according to the High Court of Allahabad.[7-a]

The introduction of the words "notwithstanding anything contained in any of the preceding sections of the chapter" into the proviso by the amendments of 1923 makes it clear that the fact that an offence committed outside British India falls also within the purview of any of the previous sections of the Chapter does not dispense with the certificate or sanction prescribed by this proviso.[7-b] Thus, *A* is wounded by *B*, a Native Indian subject in the Native State of Baroda and dies of his wounds in Poona. In such a case, under S. 179, the offence of causing *A's* death may be inquired into and tried in Poona, (*see* Illus. (*d*) to S. 179]. Similarly, where *A*, a Native Indian subject abets, in a Native State the commission of an offence in *P* in British India, he can, by virtue of S. 180 be tried in *P* in British India. But the certificate of the Political Agent for the Native State in question will be necessary for the trial in each of these cases. For other instances, *see* the undermentioned cases.[8]

(1896) 19 All. 109 (110), *Empress* v. *Ram Sundar*.
(1926) 1926 Lah. 582 (582): 7 Lah. 396, *Buta Singh* v. *Emperor*.
(1925) 1925 Lah. 185 (186): 5 Lah. 416, *Ram Charu* v. *Emperor*.
(1902) 24 All. 256 (257), *Emperor* v. *Kali Charan*.
(1890) 13 Mad. 423 (425), *Empress* v. *Katha Perumal*.

(4) See cases cited in foot-note 3, above.

(5) (1890) 13 Mad. 423 (425, 426), *Empress* v. *Kathaperumal*.
[See also (1926) 1926 Lah. 609 (611): 7 Lah. 468, *Rulya Singh* v. *Emperor* (Order sanctioning trial in British India passed by Political Agent before the inquiry—Copy of order produced after the commitment—Proceedings not vitiated).]
The following cases decided under Act I of 1849 that the sanction or certificate might be obtained after the commitment but before the actual trial are no longer good law.
(1870) Rat. Un. Re. Cr. C. 33 (34), *Reg.* v. *Poonjakala*.
(1868) 1868 Pun. Re. No. 19, p. 47, *Empress* v. *Ram Sahi*.

(6) (1910) 11 Cri. L. Jour. 543 (544) (Bom.), *Emperor* v. *Sakharam*.
(1924) 1924 Bom. 51 (52): 47 Bom. 907, *Rambharathi Hirabharthi*, In re (The defect would be cured if the certificate has been obtained subsequently).
(1906) 4 Cri. L. Jour. 49 (53) (Bom.), *Emperor* v. *Mahammad Buksh* ("Charge" in proviso is used in same sense as elsewhere in Code—In any case the defect is only irregularity).

(7) (1925) 1925 Sind 88 (88, 89): 19 Sind L. R. 122, *Allibhoy Jivraj* v. *Emperor*.

(7-a) (1902) 24 All. 256 (257), *Emperor* v. *Kalicharan*.

(7-b) (1932) 1932 Cal. 465 (467): 59 Cal. 1065, *Superintendant and Legal Remembrancer of Bengal* v. *Ludur Chandra Das* (Accused, a Native Indian Subject committing an act in a Native State from which certain consequence ensued in British India—Accused liable under S. 179 to be tried in British India—But the certificate of the Political Agent is necessary).
(1925) 1925 Sind 88 (89): 19 Sind L. R. 122, *Allibhay Jivraj* v. *Emperor* (Accused, a Native Indian subject committing in Basra criminal breach of trust—Retaining the property in Bombay—He can be tried in British India under S. 181 (2)—But certificate of the Political Agent is necessary).
(1935) 1935 Mad. 326 (327), *T. Fakarulla Khan* v. *Emperor*.
(1935) 1935 Mad. 189 (190), *T. Sreeramamurty* v. *Emperor* (Offence of nuisance committed in French territory—People in British territory annoyed—Even if S. 179 applies, Magistrate cannot inquire into charge without certificate of Political Agent).
[But see (1914) 1914 Mad. 330 (331, 332): 38 Mad. 779, *Assistant Sessions Judge of North Arcot* v. *Ramaswamy* (No longer good law).]

(8) (1912) 13 Cri. L. Jour. 530 (531): 5 Sind. L. R. 266, *Imperator* v. *Tribhun* (Native Indian subject committing criminal breach of trust in Native State—Property retained in *S*. in British India—Under S. 181 (2) offence can be tried in *S*—But certificate of Political Agent necessary).
(1910) 11 Cri. L. Jour. 306 (307) (Mad.), *Sessions Judge, Tanjore* v. *Sundara Singh* (Charge under I. P. Code, S. 411 (Dishonestly receiving or retaining stolen property)—Offence alleged to be committed in Native State by Native Indian subject—Theft by which property was removed alleged to have been committed

The applicability of the proviso is not restricted to offences committed in Native States. Thus, where a Native Indian Subject commits an offence in Spain he cannot be tried in British India without the sanction of the Local Government.[9] But the proviso does not apply to offences committed on the *High seas*, the reason being that the proviso applies only to offences committed in any *territory*.[10]

A formal or *express* certificate or sanction is necessary under the proviso. Thus, the mere fact that the Magistrate who initiated the proceedings is himself the Political Agent for the area in which the offence was committed does not dispense with the necessity for the certificate.[11]

As seen already, the requirement as to the certificate or sanction is a peremptory one. The mere fact that an agreement has been entered into between the executive authorities of the British Indian Government and the State wherein the offence was committed to the effect that Native Indian Subjects committing offences in such State should be triable in British India does not dispense with the certificate or sanction.[12] Similarly, the mere fact that a charge is framed against the accused in the alternative so as to include an offence committed inside British India does not dispense with the certificate with reference to the offence alleged to have been committed *outside* British India. Thus, where the charge is in the alternative under S. 379, I. P. C. (theft) (Committed in British India) or under S. 411, I. P. C. (receiving stolen property) committed outside British India the latter charge cannot be tried in British India without the certificate referred to in the proviso.[13]

But, there is no particular *form* in which the certificate or the sanction must be issued. In each case it must be found as a *fact* that the certificate or the sanction was issued by the proper authority.[14] It is not necessary that the

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in *T* in British India—Under S. 180 charge under S. 411 can be tried in *T*—But the certificate of the Political Agent is necessary).

(1930) 1930 Bom. 155 (157): 54 Bom. 171, *Emperor* v. *Sana Mathur* (Do.).

(1896) Rat. Un. Re. Cr. Cas. 870 (871), *Empress* v. *Juze bin Francis Souza* (Offence of escaping from lawful custody—Accused a Native Indian subject, committing offence in Native State and subsequently being found in British India—Under S. 181-1 he can be tried in British India at the place where he is found—But the certificate of the Political Agent is necessary).

See also the cases cited in foot-note (7-b) above.

(9) (1913) 14 Cri. L. Jour. 298 (300): 6 Sind L. R. 260, *Imperator* v. *Ohellaram Narain Das*.

The following decisions prior to the Code of 1898 that where there is no Political Agent appointed for the territory in which the alleged offence was committed the proviso was not applicable are no longer law as the present section expressly provides for the sanction of the Local Government being taken in such cases.

(1888) 1888 Pun. Re. No. 35, p. 86, *Shah Mir Khan* v. *Emperor*.

(1890) 14 Bom. 227 (230), *Empress* v. *Sheikh Abdool Rahiman*.

(1895) Rat. Un. Re. Cr. Cas. 773 (774), *Empress* v. *Abdul Hussein Abdul Kadir*.

(1888) 13 Bom. 147 (149), *Empress* v. *Daya Bhima*.

(10) (1917) 1917 Bom. 280 (281, 282): 41 Bom. 667, *Manuel Phillip* v. *Emperor*.

(1911) 12 Cri. L. Jour. 198 (204): 5 L. B. R. 221, *Po Thaung* v. *Emperor*.

(11) (1892) 13 Mad. 423 (426), *Empress* v. *Kathaperumal*.

[See also (1884) 1884 All. W. N. 85 (85), *Empress* v. *Chan* (The circumstance that the accused have been sent for trial in British India on a requisition sent through the Commissioner who is *ex-officio* Political Agent for the Native State in question is not sufficient).]

(12) (1919) 1919 All. 44 (45): 42 All. 89, *Nandu* v. *Emperor*.

(13) (1930) 1930 Bom. 155 (157): 54 Bom. 171, *Emperor* v. *Sana Mathur*.

(14) (1926) 1926 Lah. 609 (611): 7 Lah. 468, *Rulya Singh* v. *Emperor* (Section does not mention the word "certificate" at all and there is no direction for the signing of a certificate by any particular person. Nor is the manner prescribed in which it is to be proved that the Political Agent has certified that the charge ought to be enquired into in British India although obviously the most conve-

S. 188, Notes 7—9.

certificate should be signed by the Political Agent himself. Signature by some person who is authorised to communicate the Political Agent's opinion is enough.[14-a] A mere letter from the Secretary of the Political Agent that in *his* (the Secretary's) opinion the case was a fit one to be tried in British India cannot justify a Magistrate in presuming that the Political Agent himself had certified that the case should be tried in British India.[15] But where the Political Agent has in fact passed an order that the case should be tried in British India the mere fact that it was not *communicated* to the Magistrate does not vitiate his proceedings.[16]

A certificate issued under this proviso is not bad merely because it does not specify the section under which the accused must be tried. It is enough if it sanctions the prosecution of the accused for the offence alleged.[17] Similarly, a certificate issued under the section will authorise the trial of the accused for any offence disclosed in the proceedings; the trying Magistrate is not bound to confine himself to the section specified in the certificate.[18]

A certificate of the Political Agent issued under this proviso cannot be revoked by him.[19] The Political Agent can issue a certificate under this proviso even after the issue of a warrant for the arrest of the accused under the Extradition Law.[20] Where a commitment is quashed or an accused is discharged for want of a certificate under the proviso, fresh proceedings can be started after obtaining such certificate.[21] Such proceedings are not a revival or continuation of the previous proceedings against the accused.[22]

For definition of "Political Agent," *see* the General Clauses Act (1897) S. 3, Cl. 40 and the following cases.[23]

8. **Jurisdiction over railway lines in Native States.**—*See* the undermentioned cases.[1]

9. **Offences committed on the high seas.**—A Native Indian subject committing an offence on the high seas is amenable to the jurisdiction of British Indian Courts by virtue of the first paragraph of this section.[1] But the pro-

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nient method of proving this is the production of a document signed by the Political Agent).

(1934) 1934 Bom. 41 (42, 43): 58 Bom. 97, *Emperor* v. *Bhaiji Manor* (Opinion of Political Agent need not be signed by Political Agent himself).

(14-a) (1926) 1926 Lah. 609 (611): 7 Lah. 468, *Ruliya Singh* v. *Emperor*.

(1934) 1934 Bom. 41 (42, 43): 58 Bom. 97, *Emperor* v. *Bhaiji Manor*.

(15) (1926) 1926 Lah. 609 (610): 7 Lah. 468, *Ruliya Singh* v. *Emperor*.

[See also (1934) 1934 Bom. 41 (42): 58 Bom. 97, *Emperor* v. *Bhaiji Manor*.]

(16) [See (1926) 1926 Lah. 609 (611): 7 Lah. 468, *Ruliya Singh* v. *Emperor*.]

(17) (1910) 11 Cri. L. Jour. 531 (531, 532) (Mad.), In re *Sessions Judge of South Arcot*.

(18) (1911) 12 Cri. L. Jour. 359 (360): 33 All. 514, *Krishnanath Tewari* v. *Emperor*.

(19) (1912) 13 Cri. L. Jour. 537 (537, 538) (Bom.), *Vazirsaheb Alli Saheb*, In re.

(1886) Rat. 253 (253, 254), *Hormusjee Nasarwanji*, In re.

(20) (1912) 13 Cri. L. Jour. 537 (537, 538) (Bom.), In re *Vazir Saheb*.

(21) (1890) 13 Mad. 423 (426), *Empress* v. *Katha Perumal*.

(1926) 1926 Lah. 582 (582): 7 Lah. 396, *Buta Singh* v. *Emperor*.

(22) (1933) 1933 Lah. 659 (660), *Bhan Singh* v. *Emperor*.

(23) (1934) 1934 Lah. 827 (828): 16 Lah. 78, *Mohammad Qasim Khan* v. *Emperor* (His Brittanic Majesty's Minister at Kabul is not "Political Agent").

(1934) 1934 Sind 96 (98, 99): 28 S.L.R. 27, *Jeramdas Vishen Das* v. *Emperor* (British Vice-Consul is not "Political Agent".)

Note 8.

(1) (1919) 1919 Lah. 459 (464): 1918 Pun. Re. No. 31, *Balwant* v. *Emperor* (Railway in Patiala).

(1903) 5 Bom. L. R. 873 (874, 875), *Emperor* v. *R. Vinayak Rao*.

(1898) 25 Cal. 20 (32): 24 Ind. App. 137: 7 Sar. 239: 1897 Pun. Re. No. 6 (P. C.), *Muhammad Yusufuddin* v. *Empress* (Hyderabad State Railway).

Note 9.

(1) (1917) 1917 Bom. 280 (281, 282): 41

viso to the section does not apply to such offences as it applies only to offences committed in a *territory*.[2] *See also* S. 177, Note 2 and the undermentioned cases.[3] S. 188, Note 9.

189.* Whenever any such offence as is referred to in S. 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate. S. 189.

Power to direct copies of depositions and exhibits to be received in evidence.

1. **Any case in which such Court might issue a commission for taking evidence.**—*See* Ss. 503—508.

B.—Conditions requisite for initiation of proceedings.

190.† (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence— S. 190.

Cognizance of offences by Magistrates.

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*(CODE OF 1882—Ss. 189 and 190.)

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Power to direct copies of depositions and exhibits to be received in evidence.

"Political Agent" defined.

190. In sections 188 and 189 the expression "Political Agent" means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

†(See next page.)

Bom. 667, *Manuel Phillip* v. *Emperor*.

(2) (1917) 1917 Bom. 280 (231, 282): 41 Bom. 667, *Manuel Phillip* v. *Emperor*.

(1911) 12 Cri. L. Jour. 198 (204): 5 L. B. R. 221, *Po Thaung* v *Emperor*.

(3) (1911) 12 Cri. L. Jour. 198 (204): 5 L. B. R. 221, *Po Thaung* v. *Emperor* (Native Indian subject committing offence, on high seas—Substantive law applicable is I. P. Code).

(1927) 1927 Mad. 688 (688), *Shengodai Vannan* v. *Emperor* (Native Indian subject committing offence in British ship on high seas can be tried in British India).

(1875) 8 Mad. H. C. 85 (86), In re *William John Reardon*.

S. 190.

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*b*) *upon a report in writing of such facts made by any police-officer*;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (*a*) or clause (*b*), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (*c*), of offences for which he may try or commit for trial.

(*b*) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the foreign jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

(CODES OF 1872 and 1861—Nil.)

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†**(CODE OF 1882—S. 191.)**

B.—Conditions requisite for Institution of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

(CODE OF 1872—S. 141, Para. 1 and S. 142, Para. 1.)

Who may entertain Complaints.

141. The Magistrate of the District, any Magistrate of a Division of a District, or any Magistrate duly empowered in that behalf, in any case which he is competent to try or to commit for trial, may entertain a complaint of an offence, whether preferred directly by the complainant, or on report of a Police-officer, and may issue process, in the manner hereinafter prescribed, to compel the appearance of persons accused of such offences.

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SYNOPSIS.

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Who may act without complaint.

142. The Magistrate of the District, any Magistrate of a Division of a District, or any Magistrate duly empowered in that behalf, in any case in which he is competent to try or to commit for trial, may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

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(CODE OF 1861—NIL.)

S. 190, Note. 1.

IX. "UPON RECEIVING A COMPLAINT OF FACTS WHICH CONSTITUTE OFFENCE" 19
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Who may bring a complaint. See Note 19, Pt. 1 and S. 4 (h), Note 5.

1. Legislative Changes.—

The section was enacted substantially in its present form for the first time in S. 191 of the Code of 1882. The undermentioned cases[1] bearing on the corresponding sections in the previous Codes are no longer of any practical importance.

Section 190—Note 1.

(1) (1868) Rat. Un. Re. Cr. Cas. 8 (10), *Reg.* v. *Sudasevappa*.
(1869) 6 Bom. H. C. 69 (73), *Shanker Abaji* v. *Hosing*.
(1867) 4 Bom. H. C. 4 (4), *Reg* v. *Larkins*.
(1867) 4 Bom. H. C. 30 (31), *Reg.* v. *Dipchand Kushlal*.
(1867) 4 Bom. H. C. R. 34 (35), *Bagu Valad Oswari*.
(1873) 10 Bom. H. C. 70 (71), *Reg.* v. *Lala Shambhu*.
(1868) 5 Bom. H. C. R. 99 (99), *Reg.* v. *Mahipya Valad Bomya Mahar*.
(1873) 19 Suth. W. R. 30 (30), *In re Dhanput Singh*.

S. 190, Notes 1—3.

Cl. (*b*) in sub-S. (1) was amended in 1923 by the substitution of the words "report in writing of such facts made by a Police-officer" for the words "police report of such facts" that occurred before. As to the effect of the change, *see* Note 20 below.

2. Scope of the section.—This section provides that the Magistrates specified therein may take cognizance of an offence, upon receiving a complaint, or upon a report in writing made by a Police-officer, or on information received from a person other than a Police-officer, or upon his own knowledge or suspicion. It is, however, not exhaustive of the *Courts* that can take cognizance, or of the *materials* on which cognizance can be taken.[1] Thus S. 193 provides that a Court of Session can take cognizance of an offence as a Court of original jurisdiction on a *commitment* made to it. Under S. 480 *any* Court, whether civil, criminal or revenue, may take cognizance of certain offences when they are committed *in its view or presence*. Again, when, after the initiation of judicial proceedings with reference to one offence or against one person, another offence appears to be involved in the criminal transaction in question or another person appears to be implicated therein and the Court *then seised* of the case takes action by starting proceedings in respect of such offence or against such person, it really takes cognizance of such offence, *by virtue of its being seised of the case* relating to the criminal transaction in question and not under *this section* (*see* Notes 6, 8, and 9).

Ordinarily, however, where a Court has not yet become seised of a case relating to a criminal transaction, judicial proceedings with reference to an offence involved therein can only be initiated under this section.[2]

As to the meaning of the expression "taking cognizance of an offence", *see* Note 3 below.

3. "Taking cognizance of an offence"—What is.—The expression "taking cognizance of an offence" has not been defined in the Code. In its broad and literal sense it would mean "taking notice of an offence" and would include—

(*a*) the taking notice of an offence with the intention of initiating judicial proceedings against the offender in respect of that offence, or

(*b*) the taking notice of an offence with a view to take steps to see *whether there is any basis* for initiating judicial proceedings against the offender in respect of the offence, or

(*c*) the taking notice of an offence for other purposes.

(1873) 19 Suth. W. R. 4 (5), *Panna Lal.*
(1872) 18 Suth. W. R. 43 (43), In re *Roy Luchmiput Singh.*
(1871) 16 Suth. W. R. 50 (51), Re *Sidheswry.*
(1870) 13 Suth. W. R. 27, *Surendro Nath Roy.*
(1870) 13 Suth. W. R. 1 (4, 5), *Purna Chandra.*
(1869) 11 Suth. W. R. 1 (1), *Biseeshur Roy* v. *Baboo Hurpershad Singh.*
(1871) 6 Mad. H. C. App. 49, *Proceedings* dated 29th December, 1871.
(1871) 3 N.-W. P. 317 (318), *Queen* v. *Oomrao Singh.*
(1873) 1873 Pun. Re. No. 27, p. 86, *Crown* v. *Rama.*
(1870) 1870 Pun. Re. No. 10, *Crown* v. *Hurbhagwan.*

Note 2.

(1) See (1909) 10 Cri. L. Jour. 303 (304, 305): 5 N. L. R. 113, *Emperor* v. *Sakhia.*
(2) See (1920) 1920 Pat. 670 (670), *Mangu Koeri* v. *Emperor.*
[See also (1902) 6 Cal. W. N. 202 (208), In the matter of *Akbar Momin.*]

S. 190, Notes 3—4.

The expression has, however, been used in the Code, not in the broad sense stated above, but only in the limited sense covered by the first clause mentioned above. Thus the taking notice of an offence on a Police report under S. 157 and acting on such report under S. 159, falls under the second clause referred to above but is not "taking cognizance of an offence" for the purposes of the Code. Similarly, the taking notice under S. 480 of the Code of an offence committed in the view or presence of the Court with a view to detain the offender in custody falls under the third clause referred to above, but is not "taking cognizance of an offence" as is clear from the fact that the section provides that the Court "at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence". In *Emperor* v. *Sourindra Mohun*[1] it was observed that "taking cognizance occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence". In view of the discussion above, this broad definition, is, it is submitted, not correct.[2]

4. How to determine whether and when cognizance has been taken.— No formal action or action of any kind whatever is necessary in order to take cognizance.[1] Cognizance is taken of an offence as soon as a Court, competent for the purpose, applies its mind to the offence with the intention of initiating judicial proceedings against the offender in respect of the offence. The *date* on which the judicial proceedings are actually commenced against the offender need not necessarily be the date on which the cognizance is taken.[2] Thus a Magistrate who takes cognizance of an offence, may without anything further transfer the case under S. 192 to another Magistrate[3] and in such cases the judicial proceedings against the accused are actually commenced before the transferee Magistrate some time later. The examination of the complainant, in cases where cognizance is taken on a *complaint*, is not necessary to complete the taking of cognizance.[4]

The taking of cognizance being, as has been seen before, a purely mental act, the question whether cognizance has been taken in any particular case, must depend upon the facts and circumstances of each case. Thus a Magistrate receiving a complaint can, under S. 202, order preliminary inquiry only after the examination of the complainant on oath, which again can be held only if the Magistrate has taken cognizance of the offence. (*See* S. 200). Where in such a case a Magistrate ordered a preliminary inquiry *without examining* the complainant, it was held that he did not take cognizance of the offence.[5] As a

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Note 3.

(1) (1910) 37 Cal. 412 (416), *Sourindra Mohun Chuckerbutty* v. *Emperor*.
(2) (1933) 1933 Pat. 297 (299): 12 Pat. 758, *Baldeo Prasad* v. *Emperor* (See remarks of Dhavle, J.).
(1932) 1932 Mad. 673 (675), *Venkatasubba Rao* v. *Naraharisetty Anjanayalu* (See observations).

Note 4.

(1) [See (1910) 37 Cal. 412 (416), *Sourindra Mohun Chuckerbutty* v. *Emperor*.
(1930) 1930 Pat. 30 (31), *Paramanand Brahmachari* v. *Emperor*.
(1934) 1934 Pat. 467 (468), *Mathura Singh* v. *Emperor*.]
(2) (1924) 1924 Pat. 597 (599), *Raghupat Narain Singh* v. *Emperor* (The date on which the order sheet of the Magistrate commences need not necessarily be the date on which he takes cognizance of the offence).
(3) [See (1934) 1934 Pat. 467 (468), *Mathura Singh* v. *Emperor*.
(1926) 1926 Cal. 470 (477): 53 Cal. 350, *Emperor* v. *Colin Mackenzie Mackay*.]
(4) (1924) 1924 Mad. 587, *Ambayara Goundan* v. *Pachamuthu Goundan*.
[See also (1929) 1929 Pat. 473 (475), *Bharat Kishore Lall Singh Deo* v. *Judhistir Modak*.]
[But see (1920) 1920 Pat. 670 (672), *Mangu Koeri* v. *Emperor* (Submitted not correct).]
(5) (1929) 1929 Pat. 473 (475), *Bharat Kishore Lal Singh Deo* v. *Judhistir Modak*.

general rule where a Magistrate does any act which he is authorised to do only after taking cognizance, he will be deemed to have taken such cognizance provided he is *competent* to take such cognizance. S. 190, Note 4.

Illustrations.

(1) *A*, a Magistrate who is competent to take cognizance of an offence, transfers a case under S. 192 to B. *A* must be deemed to have taken cognizance of the offence, as a transfer under S. 192 can be made by a Magistrate only when he has taken cognizance of the offence.[6]

(2) *A*, a Magistrate who is competent to take cognizance of an offence on complaint, received a complaint and examined the complainant on oath. *A* must be deemed to have taken cognizance of the offence, as otherwise he could not examine the complainant on oath under S. 200.[7]

(3) *A*, a Magistrate who is competent to take cognizance of an offence on complainant, receives a complaint from a public servant, and holds a preliminary inquiry himself under S. 202. *A* must be deemed to have taken cognizance of the offence inasmuch as he could hold the inquiry under S. 202, only if he had taken cognizance of the offence.[8]

(4) *A*, a District Magistrate, while holding an inquiry under the Land Revenue Code, came to the conclusion that *X* had committed an offence. He recorded an order directing his prosecution and transferred the case to *B*, a Subordinate Magistrate. It was held that *A* must be deemed to have taken cognizance of the offence under Cl. (*c*) of S. 190.[9] Where, however, in a similar case it was found as a fact that the District Magistrate had not applied his mind to the offence with a view to initiate judicial proceedings against the offender, it was held that it was the Subordinate Magistrate who must be deemed to have cognizance of the offence.[10]

As will be seen from Note 17, *infra*, where a Magistrate obtains information or suspects the commission of an offence, he is not *bound* at once to take cognizance of such offence. He may like to verify the information or confirm the suspicion before taking cognizance of the offence. Proceedings which he may take for the purposes of such verification or confirmation, really fall within Cl. (*b*) referred to in Note 3, *ante*, and do not amount to taking cognizance of the offence for the purposes of the Code. In such cases the Magistrate will be considered to have taken cognizance, only after such verification or confirmation.

Illustrations.

(1) In acquitting an accused person *X* a Magistrate was inclined to suspect *Y* as being guilty of the offence. But before proceeding against *Y* he wished to ascertain clearly whether there were sufficient grounds for taking cognizance under Cl. (*c*) of this section. He accordingly examined *X* and thereupon summoned *Y* to answer a charge for an offence. *Held*, that when exa-

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(1914) 1914 Lah. 165 (166), *Makhan Singh* v. *Gunner Jepson* (Where a Magistrate on receiving information from another Magistrate about the commission of an offence by *A* held a preliminary enquiry, thought *B* to be the real culprit and consequently proceeded to try *B* in his own Court. *Held*, that the Magistrate took cognizance of the case under S. 190 (*c*)).

(6) [See (1905) 2 Cri. L. Jour. 582 (Bom.), In re *Shriniwas Krishna Shriralkar.*]

(7) (1931) 1931 Oudh 392 (393), *Bhagirath* v. *Saiyid Ali Hamid Sahib.*

(8) (1930) 1930 Pat. 30 (31), *Parmanand Brahmachari* v. *Emperor.*

[See also (1921) 1921 Cal. 719 (720), *Bajranga* v. *King-Emperor* (Complaint—Complainant examined—Case referred to Police for investigation—Cognizance is taken under Cl. (*a*).]

(9) (1905) 2 Cri. L. Jour. 582 (583) (Bom.), In re *Shriniwas Krishna.*

[See also (1934) 1934 Pat. 467 (468), *Mathura Singh* v. *Emperor.*]

(10) (1910) 11 Cri. L. Jour. 602 (603) (Lah.), *Sital Das* v. *Emperor* (Notwithstanding the order of the District Magistrate to a Subordinate Magistrate to try the case, held that the District Magistrate had not taken cognizance of it as he had not applied his mind to the offence with a view to initiate judicial proceedings with reference to it).

[See also (1929) 1929 Oudh 87 (87): 4 Luck. 353, *Lachmi Narain* v. *Emperor* (Do.).]

S. 190, Note 4.

mining *X* the Magistrate had not taken cognizance of the offence against *Y*. At that time there was no case before the Magistrate and the examination was directed simply to obtain information upon which a case might be started against *Y*.[11]

(2) A District Magistrate received a petition stating that the jurors in a Sessions case had been bribed and praying that he should take steps for an appeal being filed against the acquittal in the case. The District Magistrate thereupon directed a Sub-Magistrate to inquire into the matter and report to him. On receipt of the report he proceeded against a certain person for the offence of attempting to bribe the jurors. *Held*, that he did not take cognizance of the offence when ordering the inquiry by the Subordinate Magistrate but only did so under Cl. (*c*) on receipt of the report.[12]

(3) A Magistrate received by post information that an offence had been committed by certain persons. He sent the papers to the Police for investigation and report, and on receipt of the report he directed the issue of process against the accused. *Held*, that he did not take cognizance on the information received by post but only took cognizance on the police-report.[13]

(4) A Magistrate who suspected the commission of an offence by a certain person directed the police to charge-sheet him, and on the receipt of the charge-sheet tried him for the offence. *Held* that the Magistrate took cognizance on the police charge-sheet and not under Cl. (*c*) of this section. The very fact that he ordered the police to put in a charge-sheet was held to show that he did not take cognizance on his own knowledge or suspicion but only on the police charge-sheet.[14]

(5) While a Sub-divisional Magistrate was on a visit to a village a case of theft was reported to him. Thereupon he and the proprietor of the village made a search and found the stolen property in the house of the accused. The next day a formal complaint was filed before him about the theft and thereupon

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(11) (1900) 27 Cal. 455 (457), *Hari Charan Singh* v. *Queen-Empress*.

(12) (1899) 3 Cal. W. N. cclxii (cclxiii), *Sarat Chandra* v. *Emperor*.

[See also (1914) 1914 Lah. 165 (166), *Makhan Singh* v. *Gunner Jepson* (Information from another Magistrate that *A* had committed an offence—Magistrate receiving information holding a preliminary inquiry and coming to a conclusion that *B* and not *A* was the real culprit and proceeding to try *B* in his own Court—Held that the Magistrate took cognizance under Cl. (*c*) and not on the information which might be treated as complaint—Compare however illustration in this connection).

(1929) 1929 Oudh 87 (87): 4 Luck. 353, *Lachmi Narain* v. *Emperor* (Case of theft brought to notice of the District Magistrate by the Settlement Officer—District Magistrate ordering preliminary inquiry by Sub-Divisional Magistrate does not take cognizance. Sub-Divisional Magistrate takes cognizance under Cl. (*c*)).

(1870) 2 N.-W.P. 132 (136), *Queen* v. *Lekhraj* (When, on receiving some information as to the circulation of hundis alleged to be forged, the Magistrate orders an inquiry by a subordinate, but takes no action against the accused till a complaint is filed the case is to be deemed as instituted only on the *complaint*).

(1913) 14 Cri. L. Jour. 297 (297): 40 Cal. 854, *Abdullah Mandal* v. *Emperor* (Information to Police—Investigation by them and report that there is no evidence against the accused—Inquiry by Subordinate Magistrate ordered by Magistrate—Held that such procedure was not warranted after taking cognizance).

(1913) 14 Cri. L. Jour. 425 (Cal.), *Ananta Ram Tewari* v. *Altep Sarkar* (Information to Police by *S* against *A*—Police reporting case to be false and recommending prosecution of *S*. Magistrate ordering preliminary inquiry by Subordinate Magistrate—Latter Magistrate as a result of the inquiry issuing process against *A*—Held that the original Magistrate did not take cognizance against *A* but only that the Subordinate Magistrate did so).]

(13) (1913) 14 Cri. L. Jour. 218 (218, 219) (All.), *Srafaraz Khan* v. *King-Emperor*.

[See also (1910) 11 Cri. L. Jour. 156 (156) (Mad.), *In re Asadulla Hussain Khan* (Magistrate can direct police investigation under S. 155 (2) into a non-cognizable offence without first taking cognizance of the offence).]

[But see (1912) 13 Cri. L. Jour. 691 (692) (Cal.), *Feroja Peshakar* v. *Emperor* (Directing Police under S. 155 to investigate non-cognizable offence is a method of taking cognizance—Submitted not correct).]

(14) (1921) 1921 Bom. 365 (365), *Gundo Chikko Kulkarni* v. *Emperor* (In such cases, however, Magistrate is not competent to try accused himself).

(1932) 1932 Mad. 673 (675), *Venkatasubbarao* v. *Naraharisetty Anjanayalu*.

[See also (1906) 3 Cal. L. Jour. 87 (89), *Jharu Jola* v. *Shukh Deo Singh*.

(1903) 1903 Pun. L. R. No. 116, p. 483, *Crown* v. *Jumman* (In such cases, the accused is entitled to have case tried by another Magistrate).]

proceedings were started against the accused. *Held* that under the circumstances, the Magistrate did not take cognizance on the previous day when he was in the village but only the next day when the complaint was received.[15]

Where a question arises as to under *which clause* of this section cognizance is taken in a particular case, the test may be applied as to whether the Magistrate was *empowered* to take cognizance under a particular clause. Thus where a Magistrate is not empowered to take cognizance under Cl. (*c*), it may be presumed that he did not intend to take cognizance under that clause.[16] Similarly it may be considered whether, in the *particular circumstances* of the case it is open to the Magistrate to take cognizance under a particular clause. Thus where a complaint was made to a Magistrate, and he endorsed thereon the remark that he took cognizance under Cl. (*c*), it was held by one of the Judges in the case[17] that "information" under Cl. (*c*) only referred to such information as did not constitute a complaint or the report of a Police-officer, and that therefore the Magistrate could not have taken cognizance under Cl. (*c*) but must be held to have done so only under Cl. (*a*). According to the other Judges in the case, however, it was open to the Magistrate to treat the complaint as "information" under Cl. (*c*) and proceed under that clause, but that as the Magistrate in question was not *empowered* to take cognizance under Cl. (*c*), he must be presumed not to have done so but to have proceeded only under Cl. (*a*).

See also the undermentioned cases.[18]

5. Taking cognizance if refers to the particular individual who is charged for the time being.—There is a different of opinion as to whether the existence of a specific individual as an accused person, is a necessary essential before a Magistrate can take cognizance of an offence. On the one hand it has been held that the taking cognizance of an offence in the sense in which it is

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(15) (1927) 1927 All. 101 (102), *Saldeo* v. *Emperor*.

(16) (1914) 1914 Sind 121 (121): 8 S. L. R. 66, *Hotu* v. *Emperor*.
[See also (1897-1901) 1 U. B. R. 55 (55), *Queen-Empress* v. *Nga Ta Yok*.]

(17) (1908) 8 Cri. L. Jour. 505 (510): 4 L. B. R. 300, *Meshidi Khan* v. *Rangoon Municipal Committee*.

(18) (1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendra* v. *King-Emperor* (Order by which accused is remanded to custody to enable police investigation to be completed held not to amount to taking cognizance).
(1895) 19 Bom. 51 (60), *Queen-Empress* v. *Karigowda* (Departmental enquiry by District Magistrate into allegations against public servants is not taking cognizance).
(1921) 1921 Pat. 302 (303), *Tiloki Mahton* v. *Emperor* (Accepting Police report that case is false is not taking cognizance).
(1932) 1932 Mad. 673 (675), *Venkatasubba* v. *Anjenayalu* (Do.).
(1910) 11 Cri. L. Jour. 602 (603) (Lah.), *Sital Das* v. *Crown* (Held that in circumstances of case the Magistrate had not applied his mind to the offence with a view to initiate judicial proceedings with reference to it).
(1929) 1929 Oudh 87 (87): 4 Luck. 253, *Lachmi Narain* v. *Emperor* (Do.).
(1905) 1905 Pun. Re. No. 8, p. 17, *King-Emperor* v. *Abdul Rahim* (Cantonment Magistrate warning accused that he must not tie his buffaloes at a certain spot in Cantonment—Accused persisting in doing so and on Cantonment Magistrate going out one morning finding the spot in a filthy state—Accused sent for and fined—Held that cognizance was taken under Cl. (*c*)).
(1905) 2 Cri. L. Jour. 365 (367): 1905 Pun. Re. No. 36, *Emperor* v. *Mul Raj* (District Magistrate issuing order to stop certain work and on seeing that his order was disobeyed by the accused, taking action against them under I. P. C., S. 188—Held, that he took cognizance under Cl. (*c*)).
(1927) 1927 Nag. 202 (202), *Ramjiwan Marwadi* v. *Lahimi* (Complaint of offence under Stamp Act, S. 70 thereof requiring sanction of Collector for institution of prosecution—Complaint filed with Magistrate and latter forwarding it to Collector for sanction of prosecution and on receiving Collector's sanction issuing process—Held that the prosecution was instituted without the Collector's sanction and hence illegal and that the subsequent sanction of the Collector could not validate the proceedings. Submitted that the question when cognizance was taken by the Magistrate did not arise in the above case).

S. 190, Notes 5—6.

used in the Code [*see* Cl. (*a*), Note 3] refers to the *particular* person who is charged at the time. Thus where in the course of a Sessions trial one of the prosecution witnesses was suspected of being involved in the offence under trial and he was thereupon transferred from the witness-box to the dock and tried along with the person originally committed to the Sessions, it was held that such a proceeding amounted to "taking cognizance of an offence" and was therefore precluded under S. 193.[1] On the other hand it has been held in the undermentioned cases[2] that a Court takes cognizance of an *offence* and not an *offender* and that therefore when proceedings are commenced against a new accused by a Court having seisin of a case it does not take cognizance of any offence. The reasons for such a view appear to be two:—

(1) the expression "taking cognizance of an offence" contains no express reference to any *offender*;

(2) under S. 190, a Court can take cognizance of an offence on a complaint and a complaint according to the definition in S. 4 (*h*) need not specify any particular person as having committed the offence.

It is submitted that the above view is not correct. As has been seen in Note 3, the expression "taking cognizance of an offence" has the limited meaning of taking notice of an offence with the *intention of initiating judicial proceedings against the offender* in respect of that offence. This shows that before cognizance is taken of the offence, the offender should be a specified individual so as to enable the Court to initiate proceedings against him.

6. Taking cognizance refers to the particular offence charged for the time being.—The expression "taking cognizance of an offence" has reference to a *specific offence.*[1] Hence, when a Court takes cognizance of an offence it does so with reference to the particular offence then charged and not also with reference to other offences that may subsequently appear in the course of the proceedings to be involved in the criminal transaction under inquiry. When a Court commences proceedings with reference to any such offence that is subsequently disclosed it takes cognizance of that.

Illustration.

(1) A Court takes cognizance of an offence of rape. In the course of the proceedings it is found that the offence really amounts to adultery and not rape. If the Court takes action against the accused with reference to the offence of adultery, it would be *taking cognizance* of that offence. Hence, under S. 199 of

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Note 5.

(1) (1892) 15 Mad. 352 (353), *Queen-Empress* v. *Rama Tevan.*
(1895) 22 Cal. 50 (71), *Queen-Empress* v. *Jagat Chandra Mali.*
(1884) 1884 Pun. Re. No. 42, p. 95, *Mussammat Sharina* v. *The Empress.*
[See also (1930) 1930 Rang. 51 (52), *Narainjan Dass* v. *Emperor* (It is wrong that any Court should accept a complaint which charges two people in the alternative).]
(2) (1906) 8 Cri. L. Jour. 426 (427): 1905 U. B. R. 41, *Nga Kun* v. *Emperor.*
(1917) 18 Cri. L. Jour. 901 (902) (Cal.), *Giridharee Lal Sarowgee* v. *Emperor.*
(1911) 12 Cri. L. Jour. 399 (399): 4 S. L. R. 258, *Imperator* v. *Lalu Walad Sabul.*
(1924) 1924 Sind 71 (72, 73): 17 S. L. R. 150, *Mehrab* v. *The Crown.*
(1925) 1925 Oudh 739 (740), *Sri Kishan* v. *Debi Dayal.*
(1923) 1923 Rang. 31 (35, 37): 11 L. B. R. 398 (F. B.), *Nga Chan Tha* v. *Emperor.*

Note 6.

(1) (1898) 1 Weir 720 (720), *Palavesam Pillai.*

the Code the Court cannot take such action in the absence of a complaint from the husband or other persons mentioned in that section.[2]

(2) A Court takes cognizance of an offence under Ss. 352 (assault) and 504 (insult) of the Penal Code. In the course of the proceedings it appears that the offence really committed by the accused was defamation (S. 500). If the Court takes action against the accused with reference to defamation, it would be *taking cognizance* of the offence. Hence, under S. 198 of the Code, the Court cannot take such action in the absence of a complaint from the person aggrieved by the offence.[3] *See also* the undermentioned case.[4]

7. Taking cognizance on different occasions in the course of judicial proceedings about same criminal transaction.—*See* Notes 2, 5 and 6.

8. Taking cognizance of offence and becoming seised of case relating to criminal transaction involving such offence—Distinction between.—The *taking cognizance* of an offence and *becoming seised* of the case relating to the criminal transaction involving such offence are not identical.[1] An offence is defined in S. 4 (*o*) as any act or omission made punishable by any law for the time being in force. A criminal transaction may consist of several offences. These offences may be committed by several persons. When a Court becomes seised of the case relating to a criminal transaction it becomes seised of the entire case. In other words, the Court obtains jurisdiction over all the offences and all the persons involved in the transaction (provided that it is otherwise open to the Court to proceed in respect of such offences or persons). The Court may first proceed on the footing that a particular offence has been committed and that a particular person has committed it. But in the course of the proceedings it may be disclosed that the criminal transaction under inquiry involves a different offence or that a different person is implicated in the transaction. But the *seisin* of the Court extends not only to the offence with reference to which and the accused person against whom the judicial proceedings originally commenced but also to other offences that may subsequently appear to be involved in the transaction and to other persons that may subsequently appear to be implicated therein. Hence, when proceedings are started with reference to such offences or persons, the Court cannot be said to *become seised* of the case as to the criminal transaction. What the Court does in such cases is only to exercise a power which it possesses by virtue of the *seisin* it has already acquired over the case relating to the criminal transaction in question.

But a specific offence and a specific accused person are among the essentials of taking cognizance of an offence. (*See* Notes 5 and 6.) Hence, such taking cognizance (in the sense of initiation of judicial proceedings) refers to the particular offence alleged and the particular person accused for the time

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(2) (1883) 5 All. 233 (235), *Empress* v. *Kallu.*

(3) (1888) 10 All. 39 (43), *Queen-Empress* v. *Deokinandan.*

(4) (1925) 1925 All. 129 (130): 47 All. 114, *Narain Singh* v. *Emperor* (Prosecution commencing under S. 225, I. P. C.—Offence committed found to be one under S. 173, I. P. C.—Proceedings with reference to latter offence is taking cognizance within S. 195 and is precluded under that section in the absence of a complaint from the authority specified in that section).
(1933) 1933 Pat. 297 (298, 300): 12 Pat. 758, *Baldeo Prasad* v. *Emperor* (Magistrate dealing with new offences disclosed does not take cognizance *under S.* 190, *Cl.* (*c*). This it is submitted cannot be taken to mean that he cannot take cognizance of such offence otherwise than under S. 190).

Note 8.

(1) See Annadurai Iyer's Criminal Procedure Code, 3rd Edn. (1918) Vol. I, p. 573, Note 4.

S. 190, Notes 8—9.

being. It does not extend to other offences that may be subsequently disclosed or other persons that may subsequently appear to be concerned in the transaction. When the Court institutes proceedings with reference to such offences or persons, it must be deemed to take cognizance of an offence again. (*See* **Notes 5 and 6** above).

Thus, becoming seised of the case relating to a criminal transaction and taking cognizance of an offence are *distinct* aspects of the judicial proceedings relating to a criminal transaction. The former applies to the entire transaction without special reference to any particular offence or any particular individual, while the latter refers to a specific offence alleged to be involved in the transaction and to a specific individual alleged to have committed such offence. Again, the former occurs only once in the course of the judicial proceedings relating to a criminal transaction, *viz.*, at their commencement, while the latter occurs not only at the commencement of such proceedings but also subsequently whenever action is taken with reference to a different offence which appears to be involved in the criminal transaction under inquiry or against a different person appearing to be implicated therein.

But the two aspects are closely connected with each other and are interdependant. Thus, a Court becomes seised of the case relating to a criminal transaction when for the first time it takes cognizance of an offence involved in the transaction. Similarly, when, subsequent to the initiation of judicial proceedings with reference to a particular offence or a particular person, the Court takes action with reference to other offences involved in the transaction or other persons implicated therein, it exercises a power which it has by virtue of its being seised of the case relating to the criminal transaction in question.

9. **Initiation of proceedings with reference to one offence some other offence appearing to be involved in the transaction—Action with reference to such offence is not under this section.**—Where proceedings are started with reference to one offence but it subsequently appears in the course of the proceedings that a different offence or an additional offence has been committed in the course of the same transaction, the Court can proceed with reference to such offence against any person who appears to be implicated in it.[1] In taking such action the Court as has been seen already *takes cognizance of such offence* by virtue of its *being seised of the case*. It does not take cognizance under Cl. (*c*)

Note 9.

(1) (1927) 1927 P. C. 44 (46): 5 Rang. 53: 54 Ind. App. 96 (P.C.), *V. M. Abdul Rahman* v. *King-Emperor*.

(1926) 1926 Rang. 53 (57), *V. M. Abdul Rahman* v. *King-Emperor*.

(1933) 1933 Pat. 297 (299, 300): 12 Pat. 758, *Badeo Prasad* v. *Emperor*.

(1868) 5 Bom. H. C. R. 100 (102), *Reg.* v. *Dhondu Ramchandra*.

(1908) 8 Cri. L. Jour. 374 (376): 1 S. L. R. 119, *Emperor* v. *Allahwarayo Md. Khudabaksh*.

(1893-1900) 1893-1900 L. B. R. 386 (387), *Queen-Empress* v. *Nga Ye*.

(1881) 4 All. 147 (148), *Empress of India* v. *Murari*.

(1899) 26 Cal. 786 (789), *Jagat Chandra Mozumdar* v. *Queen-Empress*.

(1914) 15 Cri. L. Jour. 546 (547): 41 Cal. 1013, *Dedar Bux* v. *Syamapada Malakar*.

(1935) 1935 Rang. 198 (198), *Nandi* v. *Emperor* (In this case it was held that the police report on which cognizance was originally taken did itself afford sufficient material for taking cognizance of the other offence also).

[But see (1933) 1933 Mad. W. N. 916 (917), *Narasimha Reddi* v. *Emperor* (Submitted not correct).

of this section.[2] In the undermentioned case[3] it was observed that in such cases cognizance is taken under that clause of this section under which proceedings were *originally started* in the case. It is submitted with respect that this view is not correct for the following reasons:— S. 190, Note 9.

(*a*) It will be unduly straining the ordinary meaning of words to hold that cognizance of an offence is taken on that basis of a material which not even suggests the existence of the offence.

(*b*) This section applies only to the initiation of judicial proceedings when a Court *for the first time* becomes seised of the case relating to a criminal transaction. It does not apply to cases where subsequently it appears that the transaction involves a different offence and action is taken with reference to such offence. (*See* Pt. 4, below).

The true principle, therefore, seems to be that in such cases, cognizance of the offence is not taken at all under this section. Cognizance is taken by virtue of a power which vests in every Court having *seisin* of the case relating to a criminal transaction and which is independent of this section. Such a power is based on the principle that a Court having *seisin* of the case relating to a criminal transaction is bound to see that justice is done that the offender is brought to book though the offence originally charged may not be the same as appears subsequently to have been involved in the transaction. This principle is recognised in various sections of the Code. For instance, it is recognised in Ss. 210, 227, 237, 238, 246, 254, 346, 347, etc. Such a power as said already, is vested in every Court having *seisin* of the case relating to a criminal transaction and is not confined to the Magistrates mentioned in this section.[4] (*See also* Note 10, Pt. 12).

The abovementioned power of taking cognizance of a new offence disclosed in the course of judicial proceedings with reference to another offence applies not only to the person originally accused but also to any other person who may appear to be implicated in it.

Illustrations.

(1) Proceedings are instituted on a complaint against *A* and *B* in respect of offences under Ss. 352 and 354 of the Penal Code. In the course of the proceedings it is found that an offence has been committed under S. 193 and that *C* also is involved in it. The Court can proceed under S. 193 against *C* as well as against *A* and *B*.[5]

(2) A complaint is filed against *A* under Ss. 342 and 363 of the Penal Code. On evidence being taken it is found that *A* did not commit any offence but that *B* committed offences under Ss. 342, 352 and 363. The Court can proceed against *B* in respect of these offences.[6]

But if the offence that is subsequently disclosed pertains to a distinct transaction, the abovementioned power cannot apply to it and cognizance can be taken of such offence only under this section.[7]

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(2) See cases in Foot-note (1) above.
(3) (1926) 1926 Rang. 53 (57), *V. M. Abdul Rahman* v. *King-Emperor*.
(4) (1933) 1933 Pat. 297 (299): 12 Pat. 758, *Baldeo Prasad* v. *Emperor* (See observations of Dhavle, J., in).
(5) (1899) 26 Cal. 786 (789), *Jagat Chandra Mozumdar* v. *Queen-Empress*.
(6) (1914) 15 Cri. L. Jour. 546: 41 Cal. 1013, *Dedar Bux* v. *Syampada Malakar*.
(7) (1902) 6 Cal. W. N. 202 (203), In re *Akbar Momin*.

S. 190, Note 10.

10. Initiation of proceedings against one person—Another person found implicated in the criminal transaction under inquiry—Action against such person.—Suppose in the course of proceedings initiated against *A* it transpires that *B* is implicated in the criminal transaction under inquiry. In such a case, the Court can add or substitute *B* as an accused person in the case and proceed against him.[1] This power, however, is subject to the condition that it is otherwise open to the Court to proceed against *B*. Thus by force of S. 193 a Sessions Court cannot add *B* as an accused person in the absence of an order of commitment by a duly empowered Magistrate.[2] Similarly, it is conceived if *B* is a public servant coming within the terms of S. 197, he cannot be proceeded against in the above manner in the absence of the previous sanction referred to in the section.

The fact that *B* is implicated may appear from the evidence in the case or otherwise. Thus, the fact of *B's* implication may be learnt by the Court on a perusal of the Police diaries in the case.[3] Similarly, the fact may be brought to the notice of the Court by an application for issue of warrant against him.[3-a] If the fact appears from the evidence in the case against *A* and if *B* is present in Court, S. 351 would apply and the Court can detain him in custody and proceed against him under that section.[4] In other cases, the Court can take such steps to compel *B's* appearance as may be open to it under the law. For instance, if the presiding officer is a Magistrate, he can, under S. 204 issue a summons or warrant against *B*[5] or have him arrested in his presence under S. 65, *ante*.

The question has arisen whether action taken as above amounts to taking cognizance under Cl. (*c*) of this section. On this question there is a conflict of decisions. The general opinion is that Cl. (*c*) of this section does not apply to such cases.[6] But in a few decisions it has been held that Cl. (*c*) applies to

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Note 10.

(1) (1933) 1933 Pat. 244 (246): 12 Pat. 341, *narain Singh* v. *Emperor*.
(1932) 1932 Pat. 65 (66): 10 Pat. 347, *Bindeshwar Prasad* v. *Emperor*.
(1908) 7 Cri. L. Jour. 414 (415, 416): 4 L. B. R. 137, *Hakim Ally* v. *Emperor*.
(1904) 1 Cri. L. Jour. 511 (512): 1904 P. R. 32, *Quetba* v. *Crown*.
(1900) 4 Cal. W. N. 367 (369), *Charu Chandra Das* v. *Narendra Krishna Chakravarti*.
(1900) 4 Cal. W. N. 560 (562), *Bishen Doyal Rai* v. *Chedikhan*.
(1899) 3 Cal. W. N. 279 (280), *Raghab Acharjee* v. *Empress*.
(1893) Rat. Un. Re. Cr. Cas. 652 (655), *Queen-Empress* v. *Govinda*.
[See also (1934) 1934 Pat. 467 (469), *Mathura Singh* v. *Emperor*.]
See also cases cited in Foot-notes 8, 9 and 10 below.

(2) (1892) 15 Mad. 352 (353), *Queen-Empress* v. *Rama Tevan*.
(1895) 22 Cal. 50 (71), *Queen-Empress* v. *Jagat*.
(1884) 1884 Pun. Re. No. 42, p. 95, *Sharina* v. *Empress*.

(3) (1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deonarain Singh* v. *Emperor*.
[See also (1924) 1924 Sind 71 (72): 17 S. L. R. 150, *Mehrab* v. *Crown*.
(1931) 1931 All. 273 (274, 275), *Nek Ram* v. *Emperor*.
(1904) 1 Cri. L. Jour. 844 (845) (Cal.), *Rajani Kanto Chatterji* v. *Emperor*.]

(3-a) (1900) 27 Cal. 979 (980), *Golpady Sheikh* v. *Empress*.

(4) (1909) 10 Cri. L. Jour. 303 (305): 5 N. L. R. 113, *Emperor* v. *Sakhia*.
(1911) 12 Cri. L. Jour. 399 (399): 4 S. L. R. 258, *Imperator* v. *Lalu*.
(1923) 1923 Rang. 31 (37): 11 L. B. R. 398 (F. B.), *Nga Chan Tha* v. *Emperor*.
See also cases cited in Foot-notes 8, 9 and 10 below.
But in the following cases, the practice of proceeding against a witness immediately was depreciated as such a course was likely to intimidate the other witnesses in the case:—
(1905) 2 Cri. L. Jour. 448 (449), *Emperor* v. *Krishnaravji Gaikwar*.
(1889) Rat. Un. Re. Cr. Cas. 477 (478), *Queen-Empress* v. *Bhogilal*.
(1871) 8 Bom. H. C. R. (Cr. Cas.) 126 (154), *Reg.* v. *Kashinath Dinkar Govind Natayan*.

(5) (1913) 14 Cri. L. Jour. 290: 9 N. L. R. 65, *Sarwa* v. *Emperor*.
(1924) 1924 Sind 71 (72, 73): 17 S. L. R. 150, *Mehrab* v. *The Crown*.

(6) See the cases cited in Foot-notes 1 above and 8, 9 and 10 below.
[See also (1897-1901) 1 Upp. Bur. R. 56 (58), *Nga Paing Nga Lu Wa, Mi Net Te* v. *Queen-Empress*.
(1907) 4 L. B. R. 137 (138), *Hakim Ally* v. *King-Emperor*.
(1899) 3 Cal. W. N. 279 (280), *Raghab Acharjee* v. *Empress*.

such cases.[7] It is submitted that the latter view is not correct, the reason being that S. 190 applies only to the initiation of judicial proceedings at the time when the Court becomes seised of the case relating to a criminal transaction and not to cases where action is taken against a person (not originally included in the proceedings) who subsequently appears to be implicated in the criminal transaction under inquiry. (*See* Pt. 12 below.) S. 190, Note 10.

The former of the two views set forth above is supported on the following grounds:—

(1) In such cases, the Court does not take cognizance of an offence at all. A Court takes cognizance of an offence and not of an offender and when an accused person is added or substituted in the course of proceedings already started the Court does not take cognizance of an offence.[8] It has been seen in Note 5, *ante*, that such a view is not correct.

(2) In such cases, the Court takes cognizance under that clause of S. 190 under which proceedings were originally initiated.[9] It is submitted that this view is not also correct for the following reasons:—

(*a*) it would be unduly straining the ordinary meaning of words to hold that a Court takes cognizance against a person on a material which does not even suggest his implication in the offence;

(*b*) this section applies only where a Court first becomes seised of the case relating to a criminal transaction and not to cases where subsequently action is taken against persons not originally charged. (*See also*, Note 9).

(3) In such cases, the Court is not taking cognizance under this section at all but does so in the exercise of a power which it has independently of this section.[10]

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(7) (1897) 1 Cal. W. N. 105 (105), *Khudiram Mookerjee* v. *Empress*.
(1934) 1934 Lah. 210 (211), *Emperor* v. *Malak*.
(1898) Rat. 951 (952), *Queen-Empress* v. *Hirashankar Uday Shanker*.
(1909) 9 Cri. L. Jour. 64 (65) (Rang.), *Maung Shwe Hla* v. *The Crown*.
[See also (1906) 28 All. 212 (213), *Emperor* v. *Chedi*.
(1932) 1932 Pat. 65 (66): 10 Pat. 847, *Bindeshwar Prasad* v. *Emperor* (The reference to cl. (*c*) in this case however, seems to be a mistake).
(1931) 1931 All. 273 (274, 275), *Nek Ram* v. *Emperor*.
(1870) 1870 Pun. Re. No. 34, p. 462, *Crown* v. *Ramjee*.]

(8) (1923) 1923 Rang. 31 (35): 11 L. B. R. 398, *Nga Chan Tha* v. *Emperor*.
(1924) 1924 Sind 71 (72, 73): 17 S.L.R. 150, *Mehrab* v. *The Crown*.
(1925) 1925 Oudh 739 (740), *Sri Kishan* v. *Debi Dayal*.
(1911) 12 Cri. L. Jour. 399 (399): 4 S. L. R. 258, *Imperator* v. *Lalu*.
(1917) 18 Cri. L. Jour. 901 (902) (Cal.), *Girdharee Lal* v. *Emperor*.
(1906) 3 Cri. L. Jour. 426 (427): 1905 U. B. R. 41, *Nga Kun* v. *Emperor*.
[See also (1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deonarain Singh* v. *Emperor*.]

(9) (1910) 11 Cri. L. Jour. 489 (490): 1910 U. B. R. 2, *Nga Pon Yon* v. *Emperor*.
(1911) 12 Cri. L. Jour. 399 (399): 4 S. L. R. 258, *Imperator* v. *Lalu Wd. Sabul*.
(1924) 1924 Sind 71 (72, 73): 17 S.L.R 150, *Mehrab* v. *Crown*.
(1913) 14 Cri. L. Jour. 290 (291): 9 N. L. R. 65, *Sarwa* v. *Emperor*.
(1923) 1923 Rang. 31 (35, 36): 11 L. B. R. 398, *Nga Chan Tha* v. *Emperor*.
[See also (1929) 1929 Sind 17 (17), *Sher Muhammad* v. *Emperor*.
(1905) 1905 U. B. R. 41 (42), *Nga Kun Emperor*.
(1914) 1914 Cal. 801 (804): 41 Cal. 1013, *Dedar Bux* v. *Syamapada Malakar*.]

(10) (1909) 10 Cri. L. Jour. 303 (305): 5 N. L. R. 113, *Emperor* v. *Sakhia*.
(1923) 1923 Rang. 31 (35): 11 L. B. R. 398, *Nga Chan Tha* v. *Emperor*.
[See also (1934) 1934 Rang. 193 (194), *Intaj Khan* v. *Emperor*.]

S. 190, Notes 10—11.

It is submitted that the third view set forth above is correct. It is based on the principle that it is the duty and is within the power of all Courts having seisin of the case relating to a criminal transaction to see that justice is done and to proceed against any person who may be found to be involved in the transaction notwithstanding that such person might not have been originally charged with any offence.[11] Such a power vests in every Court having seisin of case and is not confined to the Magistrates empowered to proceed under this section.[12]

Further, it has been held that no *other* Court can proceed against any person in the above position. In other words, where subsequent to the initiation of proceedings against one person in regard to a certain criminal transaction it is alleged that another person is implicated in such transaction no Court other than the one which already has seisin of the case relating to the transaction can proceed against such person.[13] (*See also*, Note 17 below).

Illustration.

On an investigation by the police in respect of the looting of a house, one person, *J* was sent in for trial and the case was made over to a subordinate Magistrate. Subsequent to this, or a representation by the Superintendent of Police, the District Magistrate issued warrants against *K* and *L* in order that they might also be tried. *Held* that so long as the case relating to the *occurrence* remained with the subordinate Magistrate no other Magistrate was competent to deal with it, and as the case had never been withdrawn by the District Magistrate to his own file he could not pass orders directing proceedings to be taken against other persons.[14]

But if the offence imputed to such person relates to a *distinct* criminal transaction the above bar does not apply.[15]

Illustration.

The inquiry by a Court into one criminal conspiracy discloses the existence of another conspiracy. Proceedings in respect of the latter conspiracy can be initiated before a different Court.[16]

The offence in respect of which a new accused is added or substituted under the above power may be the same as that in respect of which proceedings were originally initiated,[17] or may be a different offence provided it is alleged to have been committed in the course of the same criminal transaction as is under inquiry. (*See* Note 9, Pts. 5 and 6.)

11. Cognizances in cases where the facts disclose a graver as well as a minor offence.—Where the same facts disclose a graver offence as well as a minor offence, the prosecution must ordinarily be for the graver offence.[1] But

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(11) See cases cited in Foot-note 1 above.
(12) (1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deo Narain Singh* v. *Emperor.*
(13) (1900) 27 Cal. 979 (980), *Golapdy Sheikh* v. *Queen-Empress.*
(1903) 30 Cal. 449 (452), *Radhabullav Roy* v. *Benode Behari Chatterjee.*
(1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deo Narain Singh* v. *Emperor.*
(1900) 4 Cal. W. N. 242, *Moul Singh* v. *Mahabir Singh.*
(14) (1900) 27 Cal. 979 (980), *Golapady Sheikh* v. *Queen-Empress.*
[See also (1903) 30 Cal. 449 (452), *Radhabullav Roy* v. *Benode Behari Chatterjee.*]
(1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deo Narain Singh* v. *Emperor.*
(15) (1935) 1935 Pat. 91 (93), *Chandra Shekhar Prasad* v. *Emperor.*
(16) (1935) 1935 Pat. 91 (93), *Chandra Shekhar Prasad* v. *Emperor.*
(17) (1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deo Narain Singh* v. *Emperor.*

Note 11.

(1) (1901) 5 Cal. W. N. 252 (253), *Kailash Chander Pal* v. *Joynuddi.*
(1931) 1931 Rang. 12 (14): 8 Rang. 499, *Ma Paw* v. *Emperor.*
(1931) 1931 Mad. 702 (703): 54 Mad. 1018, *Dholiah* v. *Sub-Inspector of Police, Wellington Station.*
(1929) 1929 Mad. 21 (23), *Perianna Muthirian* v. *Vengu Ayyar.*

a conviction for the minor offence in such cases will not be *illegal*.[2] If for any reason the Court is unable to proceed with reference to the more serious offence, the question arises whether it can proceed with reference to the minor offence. As to this, *see* Note 12 below.

12. Cognizance in cases where previous sanction or complaint of particular person or Court is necessary for prosecution of offence.—A Court can take cognizance of any offence which appears to be involved in a criminal transaction irrespective of the *sections* actually mentioned in the complant (*see* Note 19 below) or the offences *originally charged* against the accused. (*See* Note 19 below.) Suppose now that an offence which appears to have been committed is one for the prosecution of which certain pre-requisites such as the previous sanction of a particular authority or the complaint of a particular person or Court, are necessary and that such pre-requisites are wanting in the case it is clear that the Court cannot take cognizance of such offence. (*See* Note 6, Pts. 2, 3 and 4). But can the Court take cognizance of any other offence which appears, on the facts of the case, to have been committed and with which it is otherwise open to the Court to deal? Thus where an offence under S. 211, Penal Code appears to have been committed in relation to a proceeding in a Court, but no complaint has been preferred by the Court concerned (which is a pre-requisite for taking cognizance of the offence) but the facts of the case disclose an offence under S. 182, Penal Code in addition to an offence under S. 211, it is clear that the Court cannot take cognizance of the offence under S. 211. But can it take cognizance of the offence under S. 182? On this question there is a conflict of judicial opinion and the following views have been expressed in the matter:—

(1) The offence under S. 182, *can* be taken cognizance of.[1]

(2) The offence under S. 182, *cannot* be taken cognizance of.[2]

(3) Though the proper course may be not to take cognizance of the offence under S. 182 and though proceedings in regard to the offence may be quashed in their earlier stages, yet, if the proceedings have been completed and the accused has been convicted of the offence, the conviction cannot be set aside as illegal.[3]

(4) The offence under S. 182, *cannot* be taken cognizance of *where the complaint* specifically charges an offence under S. 211.[4]

(1901) 5 Cal. W. N. 727 (728), *Giridhari Naik* v. *Empress*.
(1928) 1928 Rang. 254 (255): 6 Rang. 578, *Rambrose* v. *Emperor*.
(1928) 1928 Rang. 243 (244), *Maung Pe* v. *Maung Chaw*.
(2) (1931) 1931 Rang. 12 (14): 8 Rang. 499, *Maw Shaw* v. *Emperor*.

Note 12.

(1) (1925) 1925 Pat. 717 (719): 5 Pat. 33, *Daroga Gope* v. *Emperor*.
(1928) 1928 All. 765 (766): 51 All. 383, *Prag Datt Tiwari* v. *Emperor*.
[See also (1880) 5 Cal. 184 (187), *Bhoteram* v. *Heera Kolita* (Offence under S. 211 includes offence under S. 182; it is therefore open to the Magistrate to proceed under either section).]
(2) (1928) 1928 Rang. 254 (255): 6 Rang. 578, *Rambrose* v. *Emperor*.
(1928) 1928 Rang. 243 (244), *Maung Pe* v. *Maung Chaw*.
[See also (1901) 5 Cal. W. N. 727 (728), *Giridhari Naik* v. *Emperor*.
(1883) 7 Bom. 184 (185), *Empress* v. *Arjun*.]
(3) (1931) 1931 Rang. 12 (14): 8 Rang. 499, *Ma Paw* v. *Emperor*.
(4) (1931) 1931 Mad. 702 (703): 54 Mad. 1018, *Dholiah* v. *Sub-Inspector of Police, Wellington Station*.
(1929) 1929 Mad. 21 (23), *Perianna Muthirian* v. *Vengu Ayyar*.

S. 190, Notes 12—16.

(5) Where the complaint is specifically under S. 182, the Court is not only competent but *bound* to take cognizance of an offence under that section if such offence is constituted by the facts stated in the complaint. The Court cannot refuse to take cognizance of such offence on the ground that the facts also disclose an offence under S. 211 the necessary conditions for proceeding with reference to which are not present.[5]

13. **Cognizance of same offence by different Courts.**—*See* Note 17.

14. **Taking cognizance, a judicial act.**—As seen in Note 3, *ante*, the expression "taking cognizance of an offence" signifies the judicial proceedings with reference to the offence. Hence, taking cognizance of an offence is a judicial act though it may be only with a view to initiate such proceedings.[1] The contrary view expressed by some of the judges in the undermentioned case[2] is, it is submitted, not correct.

It is also clear that acts of a Magistrate not amounting to taking cognizance of an offence in any sense of the term as defined in Note 3, *ante*, would fall outside the province of judicial proceedings with reference to the offence. Hence, such act would not be judicial acts with reference to the offence.[3]

15. **"Except as hereinafter provided".**—As instances of the exceptions to the general power conferred by this section reference may be made to the restrictions imposed by Ss. 195, 196, 196-A, 197, 198 and 199. By virtue of S. 1 and S. 5, sub-S. (2), the provisions of this section must also be held to be subject to any special enactments that may be in force for the time being as to the institution of proceedings in regard to offences under such enactments.[1]

16. **Who can take cognizance under this section.**—As seen in Note 3, *ante*, the power of taking cognizance under this section is a special power which does not belong to all Magistrates although they may be competent to try or commit the accused for trial. The power belongs only to the Magistrates mentioned in the section. Hence, proceedings initiated by a Magistrate who is not

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(5) (1922) 1922 Mad. 62 (62), *Ponnusamy Thevar* v. *Emperor*.

Note 14.

(1) (1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendra Nath Chakrabarthi* v. *King-Emperor*.

[See also (1868) 5 Bom. H. C. R. Cr. 29 (30, 31), *Reg.* v. *Sadashivappa*.]

(2) (1926) 1926 Cal. 470 (479): 53 Cal. 350, *Emperor* v. *Golin Mackenzie Mackay* (*Per* B. B. Ghose, J. Compare also observation of Cuming, J., in same case that taking cognizance does not involve any judicial consideration (See at p. 478, 1926 Cal.).

(3) (1932) 1932 Mad. 673 (675), *Venkatasubba Rao* v. *Anjanayulu* (Directing Police to charge-sheet or accepting report of Police that case is not true is not judicial act).

(1912) 13 Cri. L. Jour. 480 (480) (Mad.), *Bhimaraja Venkateswarlu* v. *Moova Bapulu* (Accepting Police report that case is not true is not judicial act).

[See also (1900) 27 Cal. 455 (457), *Hari Charan* v. *Queen-Empress* (After acquitting *A* in one case, Magistrate examining him to ascertain if there is ground for taking action against *B* who is suspected by the Magistrate under cl. (*c*) of S. 190—*Held* that *A* cannot be examined on oath).

(1913) 14 Cri. L. Jour. 600 (601): 7 S. L. R. 75, *Imperator* v. *Shonkatmal* (Oath cannot be administered to person examined before the offence is taken cognizance of).]

[But see (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Shugadeva Sahay* v. *Hamid Miyan* (Order directing Police to charge-sheet is judicial order).]

Note 15.

(1) (1883) 1883 Pun. Re. 28, p. 75, *Kirpal Singh* v. *Emperor* (The Excise Act being a special Act, its provisions as to the mode of institution of proceedings for offences under that Act are not affected by the provisions of the Code of Criminal Procedure in S. 191 as they are expressly saved by S. 1).

duly empowered to take cognizance under this section are liable to be set aside.[1] But such proceedings are not necessarily void. Under S. 529 (*e*) if a Magistrate not empowered to take cognizance of an offence under Cl. (*a*) or Cl. (*b*) of this section erroneously does so in good faith his proceedings cannot be set aside merely on the ground of his want of authority.[1-a] But if the Magistrate has "taken cognizance" under Cl. (*c*) without having the power to do so, his proceedings are, under S. 530 (*k*), void.[2] S. 190, Notes 16—17.

Under sub-S. (2), the Local Government or the District Magistrate, and under sub-S. (3) the Local Government can empower Magistrates to take cognizance of offences under the various clauses of this section. But such power can be conferred only in respect of offences which the Magistrate in question can try or commit for trial.[3] Moreover, a third class Magistrate cannot be empowered to take cognizance under Cl. (*c*) of the section.[3-a]

A power specially conferred upon a Magistrate under this section continues until it is duly withdrawn by the proper authority and remains *personal to him* irrespective of the local area wherein he may be serving for the time being.[4] In the undermentioned case[5] it was held that a power to take cognizance on *information* does not extend to taking cognizance on the Magistrate's own *knowledge or suspicion*. A special power conferred on a Magistrate to take cognizance of *offences* on complaints is sufficient to enable him to take cognizance of complaints under S. 20 of the Cattle Trespass Act. No further special authorisation is necessary in respect of such complaints in view of the definition of the word 'offence' in S. 4, Cl. (*o*).[6]

In the undermentioned case[6-a] a special Magistrate was appointed to try a case. It was held that the power to try would necessarily include the power to take cognizance.

The restrictions under this section as to the authorities by whom cognizance of offences can be taken apply only to cases in which the proceedings are initiated *under this section*. In other cases such restrictions do not apply (*see* Note 2).

As to the jurisdiction to take cognizance of offence alleged to be committed by European British Subjects, *see* the undermentioned cases.[7]

17. "May take cognizance".—It has been held in a series of decisions that the use of the word "may" does not make it optional with the Magistrate to take cognizance on a *complaint* which *prima facie* discloses an offence by a certain person. The reason given is that the expression refers to the action of the Magistrate in taking cognizance in one or other of the modes specified in

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Note 16.

(1) [See (1906) 3 Cal. L. Jour. 87 (89), *Jharu Jola* v. *Shukh Deo Singh*.]
(1-a) (1931) 1931 Bom. 517 (519), *K. R. Bhat* v. *Emperor*.
(1926) 1926 Cal. 470 (473): 53 Cal. 350, *Emperor* v. *Golin Mackenzie Mackay*.
(2) (1891) Rat. Un. Re. Cr. Cas. 554 (554), *Queen-Empress* v. *Shivram*.
[See also (1895) 22 Cal. 131 (135), *Chandi Pershad* v. *Abdur Rahman*.]
(3) (1926) 1926 Pat. 400 (400): 5 Pat. 447, *Bengali Gope* v. *Emperor*.
(3-a) [See (1902) 26 Bom. 150 (155), *Emperor* v. *Sada*.]
(4) (1931) 1931 Bom. 517 (520), *K. R. Bhat* v. *Emperor*.
(5) (1901) 1901 Pun. Re. 20, p. 51, *Piyare Lal* v. *Emperor of India*.
(6) (1920) 1920 Bom. 85 (85): 44 Bom. 42, *Emperor* v. *Viswanath Vishnu Joshi*.
(6-a) (1931) 1931 Bom. 517 (518), *K. R. Bhat* v. *Emperor*.
(7) (1911) 12 Cri. L. Jour. 42 (42): 34 Mad. 346, In re, *W. B. Lawrance* (Jurisdiction of District Magistrate of Civil and Military Station, Bangalore).
(1917) 1917 Mad. 139 (140), *Bob Dore*, In re (Do.).

S. 190, Note 17.

the section. Hence according to these decisions, when a Magistrate duly empowered to take cognizance of offences on a complaint receives a complaint the allegations in which *prima facie* show that an offence has been committed by a person, the Magistrate is *bound* to take cognizance on such complaint and proceed to examine the complainant on oath.[1] A contrary view has been expressed in the undermentioned case[1-a] by the Patna High Court. It has also been held that a Magistrate is not bound to take cognizance on the report of a Police-officer[2] or under Cl. (*c*) on his own knowledge or suspicion or on information not amounting to a complaint.[3] There does not seem to be any valid reason as to why there should be a distinction in this respect between the taking cognizance of an offence under Cl. (*a*) and Cls. (*b*) and (*c*). It is submitted that the view that the Magistrate is bound to take cognizance whenever a complaint is made is not correct.

It has been seen in Note 10 (*see* Note 10, Pts. 13 to 16) that where subsequent to the initiation of proceedings against one person in regard to a certain criminal transaction it is alleged that another person is implicated in such transaction no Court other than the one which has already *seisin* of the case relating to the transaction can proceed against such person. Similarly, it has been held that where proceedings have been started in respect of one offence alleged to be involved in a criminal transaction and subsequently it is proposed to start proceedings in respect of other offences involved in such transaction it is not regular for any Court other than the one which is already in *seisin* of the case relating to the transaction to start such proceedings.[4] In some decisions, however, it has been held that the fact that cognizance of an offence has been taken by one Court does not (by itself) preclude any other Court from taking cognizance of the same offence[5] but that multiplicity of proceedings should be avoided by suitable orders of transfer.[6]

Note 17.

(1) (1886) 13 Cal. 334 (335, 336), *Umer Ali* v. *Saffer Ali.*
(1902) 29 Cal. 410 (412), *Kuldip Sahai* v. *Budhan Magton.*
(1887) 14 Cal. 707 (711), *Queen-Empress* v. *Sham Lall.*
(1926) 1926 Cal. 470 (479): 53 Cal. 350, *Emperor* v. *Golin Mackenzie Mackay.*
(1904) 1 Cri. L. Jour. 980 (981, 982) (All.), *Bhiku Bari* v. *Emperor.*
(1923) 1923 Pat. 539 (540), *Nand Kishore Missir* v. *Kalika Missir.*
(1899) 1899 All. W. N. 201 (202), *Karim* v. *Adil.*
(1888) Rat. Un. Re. Cr. Cas. 368 (369), In re *Bai Kashi.*
(1884) Rat. Un. Re. Cr. Cas. 206 (206), In re *Chhatrasanji.*
(1891) Rat. Un. Re. Cr. Cas. 562 (563), *Queen-Empress* v. *Ramachandra.*
(1901) 4 Oudh Cas. 127 (131), *Ram Sarup* v. *Emperor.*
(1873) 7 Mad. H. C. R. App. 31 (31), *Madras High Court Proceedings* 18—12—1873.
(1867) 8 Suth. W. R. 65 (65), *Queen* v. *Nubas Mahton.*
(1870) 14 Suth. W. R. 36 (36), *Ameer Mahomed* v. *G. Brass.*
(1871) 3 N.-W.P. 272 (273), Re *Ramchurn.*

(1-a) (1929) 1929 Pat. 473 (475), *Bharat Kishore Lal Singh Deo* v. *Judhistir Modak.*

(2) (1904) 1 Cri. L. Jour. 980 (982) (All.), *Bhik Mari* v. *Emperor.*
(1913) 14 Cri. L. Jour. 218 (218, 219) (All.), *Sarfarz Khan* v. *King-Emperor.*
[But see (1888) Rat. 375 (375), *Queen-Empress* v. *Gama.*]

(3) (1914) 1914 Cal. 456 (464): 41 Cal. 350, *Romesh Chandra Banerjee* v. *Emperor* (Magistrate is not bound to take cognizance on basis of what is found on the spot).
(1899) 1899 All. W. N. 201 (202), *Karim* v. *Adil.*
(1902) 6 Cal. W. N. 926 (926, 927), *Lhaman Singh* v. *Hahuman Mandal.*
(1901) 4 Oudh Cas. 127 (131), *Ram Sarup* v. *Emperor.*
[See also (1887) 14 Cal. 707 (712), *Queen-Empress* v. *Sham Lall.*]

(4) (1929) 1929 Pat. 710 (712), *Ghana Mahapatra* v. *Emperor.*

(5) (1923) 1923 Cal. 652 (653): 50 Cal. 482, *Hari Satya Bishnu* v. *King-Emperor.*
(1931) 1931 Pat. 50 (52), *Ramji Gujrati* v. *Emperor* (There is nothing to prevent a District Magistrate, when moved to act under S. 436 from taking cognizance in his discretion of the complaint under S. 191).
(1933) 1933 Lah. 852 (853): 14 Lah. 820, *Dhanwantri Durga Das* v. *Emperor.*

(6) (1923) 1923 Cal. 652 (653): 50 Cal. 482, *Hari Satya Bishnu* v. *King-Emperor.*

Where a case pending before one Court is transferred to another Court, the latter can take cognizance of any offence involved in the case and proceed against any person implicated therein.[7]

The order of a Magistrate declining to take cognizance of an offence does not operate as *autre fois acquit* and does not preclude cognizance being taken of the same offence again.[8]

The pendency of civil proceedings concerning the matter involved is no bar to the initiation of criminal proceedings under this section.[9] Nor is it an objection to such proceedings that a civil action is maintainable in respect of the matter (unless the dispute is *purely* of a civil nature.)[10] The fact that the accused (a soldier) has been departmentally punished for his misdeed is no bar to his criminal prosecution.[11]

Illegalities or irregularities in regard to the arrest of the accused person do not affect the jurisdiction of the Court to take cognizance of the case against him.[12]

18. Limitation.—*See* S. 4 (*h*), Note 14.

19. "Upon receiving complaint of facts which constitute offence".—For definition of complaint, *see* S. 4 (*h*). As has been seen in the notes to that section, a complaint can be made by any person who is aware of the facts of the case, except in cases where there may be a special provision to the contrary. Hence a Magistrate can take cognizance of an offence on a complaint by whomsoever the complaint may be presented. It has been held by two of the judges in the undermentioned case[1] that a Magistrate can prefer a complaint *to himself* and can take cognizance of such *complaint*. The reason given is that taking cognizance does not involve any judicial act and that therefore there is nothing anomalous in a Magistrate taking cognizance of his own complaint. There is, however, a difference of opinion on the question whether 'taking cognizance' is a judicial act for which, *see* Note 14, ***ante***.

The motive of the complainant in making a complaint is immaterial. A

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(7) (1901) 5 Cal. W. N. 488 (489), *Ayen Mahamad Akand* v. *King-Emperor*.
[See also (1907) 5 Cri. L. Jour. 104 (105): 30 Mad. 228, *Public Prosecutor* v. *Manika Gramani* (Jurisdiction of appellate Court to try a case itself, instead of ordering a re-trial by Subordinate Court).]

(8) (1933) 1933 Pat. 242 (243): 12 Pat. 234, *Uma Singh* v. *Emperor*.
[But see (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Shukadeva Sahay* v. *Hamid Miyan* (After Police report stating that there is no case and the acceptance of such report by a Magistrate competent to take cognizance the District Magistrate cannot order the Police to charge sheet—Submitted of doubtful correctness).]

(9) (1868) 9 Suth. W. R. 22 (22), *Madhub Kyburto* v. *Keshub Singh*.

(10) (1868) 10 Suth. W. R. 40 (40), *Khosal* v. *Ioolsee*.

(11) (1887) Rat. 318 (319), *Queen-Empress* v. *Ramnaik*.

(12) (1903) 26 Mad. 124 (125), *Emperor* v. *Ravalu Kesigaud*.
(1891) Rat. 533 (534), *Queen-Empress* v. *Nehman*.
(1928) 1928 Sind 161 (163), *Wheeler* v. *Emperor*.
(1911) 12 Cri. L. Jour. 356 (356): 35 Bom. 225, *Emperor* v. *Vinayak Damodar Savarkar*.
(1932) 1932 Bom. 610 (612, 613), *Raghunath Lahanusa Walvekar* v. *Emperor*.
(1897-1901) 1 Upp. Bur. Rul. 182 (183), *Ah Hin* v. *Queen-Empress*.
[But compare (1925) 1925 Bom. 131 (133, 134): 49 Bom. 212, *Candri Lavoo* v. *Emperor* (Arrest held illegal and also Police report on which accused was sent up for trial—Held that the prosecution was without jurisdiction).]

Note 19.

(1) (1926) 1926 Cal. 470 (477, 479): 53 Cal. 350 (F. B.), *Emperor* v. *Colin Mackenzie Mackay* (*Per* B. B. Ghose and Cuming, JJ.—Rankin and Chakravarti, JJ.—Contra—Walmsley, J.—Such a course is irregular, not illegal).

S. 190, Notes 19—20.

Magistrate can take cognizance on a complaint though it is vindictive[2] or has been actuated by malicious feeling.[3] Provided that a complaint contains the elements mentioned in S. 4 (*h*), the *form* in which it is couched is immaterial. Moreover, any irregularity in this respect is, it has been held, curable under S. 529 (*e*).[3-a] (*See also* Notes under S. 529).

A complaint on which a Magistrate can take cognizance under this section must state the *facts* which constitute the offence charged.[4] If the facts stated in the complaint do not constitute any offence, the Magistrate cannot take cognizance on such complaint.[4-a] But the complaint need not state *all* the facts on which the accused is to be charged.[5] Further, any defect in the complaint due to the insufficiency of facts stated therein is curable under S. 529 (*e*).[6]

In taking cognizance on a complaint, a Magistrate is not confined to the sections mentioned in the complaint. He can take cognizance of any offence which, in his opinion is constituted by the facts stated in the complaint, provided that he is otherwise competent to do so.[7]

See also Notes 4, 11, 12 and 17 above.

20. Report of Police-officer—Cl. (b).—Clause (*b*) as it stood before the amendment of 1923 contained the words "upon a *police report* of such facts." These words would of course include police reports in cases which could be investigated by the police under Chap. XIV of the Code.[1] But there was a conflict of opinion as to whether the words would include reports in cases which the police had no authority to investigate under Chap. XIV. On the one hand it was held that the words "police report" referred only to reports in cases which the police could investigate under Chap. XIV, *i.e.*, in cases of (*a*) cognizable offences and (*b*) non-cognizable offences into which the police have been ordered by a Magistrate under S. 155 to investigate. According to this view, therefore, reports of the police as to non-cognizable offences which the Police had not been duly ordered by a Magistrate to investigate were not included in the expression "police report".[2] On the other hand it was held by

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(2) (1892) 15 Mad. 63 (64), *Queen-Empress* v. *Samiappa.*
(3) (1891) Rat. Un. Re. Cr. Cas. 549 (550), *Queen-Empress* v. *Manji.*
(3-a) (1935) 1935 Sind 1 (2): 28 S. L. R. 347, *Rahimbux Karimbux* v. *Emperor.*
(4) (1900) 27 Cal. 985 (988), *Durga Das* v. *Umesh.*
(1930) 1930 Bom. 372 (373), In re *Shivlingappa Bhagappa.*
(1925) 1925 Mad. 1157 (1157), *Seshayya* v. *Subbarayudu* (No prescribed form of words is necessary but the facts *prima facie* constituting an offence must be stated).
(1933) 1933 Sind 393 (394), *Bulomal* v. *Emperor.*
(1912) 13 Cri. L. Jour. 691 (692) (Cal.), *Feroja Peshakar* v. *Emperor.*
(1891) 1891 Pun. Re. No. 8, p. 21, *Sardar Dayal Singh* v. *Empress.*
(4-a) (1884) Rat. Un. Re. Cr. Cas. 206 (206), In re *Chhatrasangi.*
(5) (1909) 9 Cri. L. Jour. 108 (111): 32 Mad. 8, In re *Subramania Siva.*
(6) (1932) 1932 Bom. 610 (612), *Emperor* v. *Raghunath Lahanusa.*
(7) (1925) 1925 Lah. 266 (267): 5 Lah. 550, *Khairati Ram* v. *Malawa Ram.*
(1903) 25 All. 209 (211), *Emperor* v. *Alli.*
(1891) Rat. 584 (585), *Government of Bombay* v. *Sheikh Muhammad.*
(1899) 26 Cal. 786 (789, 790), *Jogat Chandra Mozumdar* v. *Queen-Empress.*
(1895) 1895 Pun. Re. No. 23, p. 65 (66), *Piran Ditta* v. *Queen-Empress.*

Note 20.

(1) (1913) 14 Cri. L. Jour. 218 (219) (All.), *Sareferaz Khan* v. *Emperor.*
(1900) 1900 Pun. Re. No. 22, p. 50, *Empress of India* v. *Chet Singh* (Police Chalan is a Police report of the facts constituting an offence with the further incident that the accused and witnesses accompany the report).
(1901) 1901 Pun. Re. No. 8, p. 28, *Queen-Empress* v. *Sunder Singh* (Do.).
(2) (1902) 26 Bom. 150 (156, 157, 158), *King-Emperor* v. *Sada.*
(1871) 8 Bom. H. C. 113 (115), *Reg.* v. *Jafar Ali.*

the Chief Court of Lower Burmah[3] and in certain decisions of the Patna High Court[4] and the Judicial Commissioner's Court of Upper Burmah[5] that the expression "police report" included reports as to non-cognizable offences in cases which the Police had *not* been ordered by any Magistrate to investigate under S. 155. S. 190, Note 20.

The substitution of the words "report in writing of such facts made by a Police-officer" for the words "police report of such facts" has not made matters clearer. The words "report in writing of such facts made by a Police-officer" would of course include a report by the police in any case which they can investigate under Chap. XIV, *i.e.*, the report by the Police in a cognizable case or in a non-cognizable case which they have been ordered by a Magistrate to investigate.[6] But there is still a conflict of opinion as to whether they would include the reports of the Police in a non-cognizable case which the Police have *not* been ordered to investigate. The general view is that the words as now used in the section are not technical as the words "Police report" before the amendment were held to be, and that they would include such report.[7] A contrary view, has, however, been expressed by the Bombay High Court in the undermentioned cases.[8] A similar view was held by the Lahore High Court in an earlier decision,[9] though in its later decisions that High Court also adopted the general view on the question.[10]

The question also arises whether in cases which the Police *can* investigate under Chap. XIV this clause only refers to their *final* report under S. 173 or includes also other reports. On this question, before the amendment of the

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(1921) 1921 Lah. 345 (346), *Khushal Singh* v. *Emperor.*
(1894) 1894 Pun. Re. No. 24, p. 83, *Samun* v. *Queen-Empress.*
(1909) 9 Cri. L. Jour. 108 (110, 111): 32 Mad. 3, In re *Subramania Siva.*
(1923) 1923 Oudh 4 (7): 26 Oudh Cas. 44, *Gaya Barhai* v. *King-Emperor.*
(1920) 1920 Pat. 614 (614), *Ram Lal* v. *Emperor.*
(1920) 1920 Pat. 670 (671), *Maunga Koeri* v. *Emperor.*
(1897-1901) 1 Upp. Bur. Rul 54 (54), *Queen-Empress* v. *Jargissa.*
(1892-1896) 1 Upp. Bur. Rul. 328 (329), *Queen-Empress* v. *Nga Thaung.*
(1912) 13 Cri. L. Jour. 752 (753): 6 S. L. R. 82, *Imperator* v. *Khushaldas Topandas.*
(1924) 1924 Lah. 258 (260): 4 Lah. 359, *Mehr Chiragh Din* v. *Emperor.*
(1903) 2 Oudh Cas. 1 (6), *Mohkam Singh* v. *King-Emperor* (Assumed).
(3) (1904) 1 Cri. L. Jour. 193 (197-a): 2 L. B. R. 146, *Emperor* v. *Nga Po Thin* (Overruling 1 L. B. R. 59; 1 L. B. R. 18 and 1 L. B. R. 58).
(4) (1920) 1920 Pat. 700 (702), *Abdul Ali* v. *Emperor* ('Police report' is not restricted to merely reports under Chapter XIV of the Code upon information lodging to the police but embraces all reports submitted under S. 24 of the Police Act).
(1919) 1919 Pat. 319 (320), *Eqbal Khan* v. *Emperor.*
(5) (1904) 1 Cri. L. Jour. 1047 (1049): 1904 U. B. R. 25, *King-Emperor* v. *Nga Thaung.*
(1914) 1914 Upp. Bur. Rul. 31 (31): 2 U. B. R. 19, *Nya Saw Ke* v. *Emperor.*
(6) (1930) 1930 Bom. 372 (372), In re *Shivalingoppa Bhagappa.*
(1927) 1927 Bom. 440 (443, 444): 51 Bom. 498, *Emperor* v. *Shivaswami.*
(7) (1926) 1926 Mad. 865 (870): 49 Mad. 525 (F. B.), *Public Prosecutor* v. *Rethnavelu Chetty* (Overruling 1925 Mad. 672).
(1928) 1928 All. 765 (766): 51 All. 382, *Pray Datt Tewari* v. *Emperor.*
(1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendranath Chakrabarthi* v. *King-Emperor.*
(1928) 1928 Lah. 66 (67), *Emperor* v. *Walli Mahomed.*
(1927) 1927 Lah. 702 (703), *Shankar Lal* v. *Emperor.*
(1933) 1933 Sind 188 (190), *Abdullah Khan* v. *Emperor.*
[But see (1933) 1933 Mad. W. N. 876 (878), *Mallikarjuna Prasadrao* v. *Emperor* (Submitted not correct in view of the F. B. decision of the Madras High Court cited above).]
(8) (1927) 1927 Bom. 440 (443, 444): 51 Bom. 498, *Emperor* v. *Shivaswami.*
(1925) 1925 Bom. 131 (134): 49 Bom. 212, *Chandri Bawoo* v. *Emperor.*
(1932) 1932 Bom. 610 (612, 613), *Raghunath Lahamusa Walvekar* v. *Emperor.*
(9) (1925) 1925 Lah. 237 (238), *Emperor* v. *Ghulam Hussain.*
(10) (1928) 1928 Lah. 66 (67), *Emperor* v. *Wali Muhammad.*
(1927) 1927 Lah. 702 (703), *Shankar Lal* v. *Emperor.*

S. 190, Note 20.

clause referred to above, there was a conflict of decisions. The general view was that the clause applied not only to the final report under S. 173 but also to other reports.[11] The Calcutta High Court however, held that the expression "Police report" only referred to the final report under S. 173.[12] Under the present clause, it is settled that it includes not only the final report under S. 173, but also other reports made by the Police.[13]

It is thus clear from the above discussion that the general consensus of judicial opinion since the amendment of the section is that the words, "report of a Police-officer" have a wide meaning and include any report of a Police-officer as to an offence whether the case is one which he can investigate or not and whether the report is in any particular form or not. But in order to constitute a report of a Police-officer even in this broad sense, the allegation must be made by a Police-officer *as such* and not as a private person.[14]

A report of a Police-officer on which a cognizance can be taken under this clause must give the *facts* constituting the offence charged.[15] If the facts recited in the report do not constitute any offence the Magistrate cannot take cognizance of such offence on it.[16] But the report need not state what each prosecution witness named therein is going to depose to.[17]

The offence of which cognizance is taken on a Police report need not be the same as that to which the Police investigation was originally directed. Thus, where a person, gives information to the Police of the commission of a cognizable offence and the Police after investigation find that the information is maliciously false and make a report recommending the prosecution of the informer the Magistrate can take cognizance of the offence of bringing a false charge under S. 211 of the Penal Code as on the report of the Police, provided that it is otherwise open to him to do so.[18]

If in the opinion of the Magistrate the facts stated in the report of a Police-officer amount to an offence he can take cognizance of such offence on

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(11) (1910) 11 Cri. L. Jour. 150 (151): 1910 Pun. Re. 3, *Abdullah* v. *Emperor* (Police report under S. 62 is Police report under this section).
(1878) 2 Weir 119 (119), *High Court Proceedings, 5th Feb.* 1878, *No.* 269 (Report under S. 157 of Code is Police report).
(1917) 18 Cri. L. Jour. 425 (426) (All.), *Gulab Rai* v. *Emperor* (Report of Prosecuting Inspector in course of trial, applying to add certain persons as accused included in "Police report").
(1924) 1924 Sind 71 (72): 17 S. L. R. 150, *Mehrab* v. *Emperor* (Overruling 12 Cri. L. Jour. 92 (93)—Report not recommending prosecution of certain persons—Held it was Police report as to such persons).
(12) (1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendra Nath Chakrabarty* v. *Emperory.*
(1910) 11 Cri. L. Jour. 453 (462): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor* (Assumed).
(13) (1924) 1924 Cal. 614 (616), *Bholanath Das* v. *Emperor.*
(1933) 1933 All. 399 (400), *Chunni Lal* v. *Emperor* (Application made by Prosecuting Inspector to put a prosecution witness on trial as accused is a report in writing by a Police-officer).
(1924) 1924 Pat. 597 (599), *Raghupat Narayan Singh* v. *Emperor.*
(14) (1904) 1 Cri. L. Jour. 193 (199): 2 L. B. R. 146, *King-Emperor* v. *Nga Po Thin* (*Per* Berks, J.).
(15) (1910) 11 Cri. L. Jour. 145 (146): 37 Cal. 49, *E. O. Lee* v. *H. L. Adhikary.*
(1930) 1930 Bom. 372 (372, 373), *In re Shivalingappa Bhagappa* (Mere recital of sections not enough).
(1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendra Nath Chakrabarthy* v. *Emperor* (Do.).
(16) (1922) 1922 Cal. 538 (539), *Paramananda Agarwala* v. *Emperor.*
(1875) 2 Weir 246 (246), *High Court Proceedings, 24th July*, 1875, *No.* 1552.
(1907) 6 Cri. L. Jour. 34 (36) (Cal.), *Mokimiji Das* v. *Emperor.*
(17) (1922) 1922 Pat. 294 (296), *H. Grant* v. *Emperor.*
(18) (1919) 1919 Pat. 319 (320), *Eqbal Khan* v. *Emperor.*
(1929) 1929 Pat. 514 (515, 516), *Lalbihari Singh* v. *Emperor.*

S. 190, Note 20.

such report although, in the opinion of the *Police-officer*, the facts do not amount to such offence.[19] The reason is that the section only requires a *report* of the facts constituting an offence and that the *opinion* of the reporting officer is not material.[20] Similarly, a Magistrate can take cognizance of an offence on the facts contained in the report of a Police-officer although in the opinion of such officer there is not sufficient *evidence* to justify taking further action.[21]

The clause requires that the report of a Police-officer under it must be in *writing*. Hence the view expressed before the amendment that even an oral report would come within the purview of the clause[22] is no longer good law.

It has been held that where a Magistrate takes cognizance of an offence on the statement of a Police-officer which does not amount to a "report in writing of a Police-officer" within this clause, the case is covered by the provisions of S. 529 (*e*) so that if the Magistrate has acted in good faith, the proceedings initiated by him are not affected.[23] (*See* Notes under S. 529).

It has been seen that it is settled law since the amendment of 1923 that a Magistrate can take cognizance not only on the final report of the Police under S. 173 or charge sheet but also on other reports of a preliminary nature. Suppose a Magistrate has taken cognizance with reference to certain accused persons on the basis of a preliminary report of the Police. If in the final report or charge sheet subsequently submitted by the Police, the names of some of the accused persons as to whom the Magistrate has taken cognizance are omitted, the Court is not bound to drop further proceedings against them on this ground. The omission of the names in the charge sheet or the final report in such a case is nothing more than an advice tendered by the prosecuting authority and the Magistrate is not bound to follow such advice. But as a general rule it will not be proper to disregard the opinion of the Police in such matters without giving any reasons for differing from it.[24]

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(19) (1933) 1933 Pat. 50 (51), *Basdeo Narain* v. *Emperor* (Case bearing on S. 5 of Prevention of Molestation and Boycotting Ordinance—S. 5 of 1932—Under that section Magistrate may only take cognizance of an offence punishable under S. 4 on a report in writing of facts which constitute such offence. Contention that the report in question was not such a report as the Police-officer did not recommend prosecution under this Ordinance but recommended that action should be taken under Criminal Law Amendment Act. But as the facts alleged constituted an offence under the Ordinance, the Magistrate could take cognizance of it. The opinion of the Police-officer as to whether such facts alleged constitute an offence under the Ordinance is irrelevant).

(20) (1933) 1933 Pat. 50 (51), *Basdeo Narain* v. *Emperor*.

(21) (1878) 2 Weir 119 (119), *High Court Proceedings, 5th February, 1878, No.* 269 (Police report under S. 157 (2) that there were no sufficient grounds for entering on an investigation).

(1924) 1924 Sind 71 (72): 17 S. L. R. 150, *Mehrab* v. *Emperor* (Overruling 12 Cri. L. Jour. 92).

(1907) 5 Cri. L. Jour. 275 (276) (All.), *Emperor* v. *Dalip Singh*.

[See also (1917) 18 Cri. L. Jour. 425 (426) (All.), *Gulab Rai* v. *Emperor*.

(1887) 14 Cal. 707 (712), *Queen-Empress* v. *Sham Lal* (At any rate, cognizance can be taken in such cases, on Magistrate's own suspicion).

(1904) 1 Cri. L. Jour. 539 (541): 1904 U. B. R. 4, *Lachmanan Chetty* v. *Emperor* (Do.).]

[But see (1932) 1932 Mad. 673 (674), *Venkatasubba Rao* v. *Narahari Setty Anjaneyalu* (Submitted not correct).]

(22) (1904) 1 Cri. L. Jour. 193 (197): 2 L. B. R. 146, *King-Emperor* v. *Nga Po Thein* (*Per* Fox, J.).

(23) (1928) 1928 Lah. 66 (68), *Emperor* v. *Walli Muhammad*.

(1926) 1926 Mad. 865 (871): 49 Mad. 525 (F. B.), *Public Prosecutor* v. *Rethnavelu Chetty*.

(24) (1924) 1924 Pat. 597 (602), *Raghupat Narain Singh* v. *Emperor* (If notwithstanding the opinion of the Police the Magistrate wishes to proceed against any person the proper procedure is to direct the Police to put in a supplementary charge sheet and not to himself include such names in the original charge sheet or to order the inclusion of such names therein).

S. 190, Notes 20—21.

This clause applies only to the report of a *Police-officer*. But under special statutory provisions, the report of any other officer also may be treated as the report of a Police-officer for the purposes of this section.[25]

Police reports are not in themselves *evidence* and ought not to be treated as such.[26]

See also Note 4, above.

21. Complaint by Police-officer.—S. 4 (*h*) excludes from the definition of a complainant, the report of a Police-officer. The wide meaning given to the expression "report of Police-officer" since the amendment of Cl. (*b*) of this section in 1923 (*See* Note 20 above) does not, however, deprive a Police-officer of his right to make a complaint instead of a report.[1] He can make such a complaint in respect of any offence whether he can *investigate* into it or not.[2] Moreover where the allegation of a Police-officer is held not to amount to a report of Police-officer it can be treated as a complaint if it otherwise satisfies the requirements of the definition of a complaint.[3]

Prior to the amendment of S. 200 in 1923 by the addition of Cl. (*aa*) thereto, the question whether the information laid before a Magistrate by a Police-officer was a *report* of a Police-officer or a complaint was of importance for the following reason. If the information was a complaint, then the examination of the Police-officer under S. 200 became necessary;[4] if the information was held to be a Police report, then such examination was not necessary.[5] A question also arose as to whether the absence of such examination (assuming the information only amounted to a complaint and not a Police report) was fatal to the proceedings;[6] or only an irregularity curable under S. 537.[7] In view of the amendment of S. 200 by the addition of Cl. (*aa*) such discussion has become academical so far as the question of the examination of the Police-officer is concerned. The reason is this. Section 200, Cl. (*aa*) provides *inter alia* that when a complaint in writing is made by a public servant acting or purporting to act in the discharge of his official duties, the complainant need not be examined on oath under the section. A Police-officer being clearly a public servant, his examination on oath is thus not necessary, even if it be held

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(25) (1927) 1927 Cal. 405 (406): 54 Cal. 371, *Radhika Mohan Das* v. *Hamid Ali* (Under S. 74 (4) of Bengal Excise Act V of 1909—Report of Excise Sub-Inspector is to be deemed a report of a Police-officer for the purposes of S. 190).

(26) (1900) 1900 Pun. L. R. No. 71, p. 73, *Kalandar* v. *Empress*.

Note 21.

(1) (1933) 1933 Sind 188 (190), *Abdullah Khan* v. *Emperor*.

(2) (1929) 1929 Pat. 514 (516), *Lalbihari Singh* v. *Emperor*.

(3) (1902) 26 Bom. 150 (156, 157) (F.B.), *King-Emperor* v. *Sada*.
(1927) 1927 Bom. 440 (443, 444): 51 Bom. 498, *Emperor* v. *Shivaswami*.
(1932) 1932 Bom. 610 (612), *Raghunath Lahanusa Walvekar* v. *Emperor*.
(1909) 9 Cri. L. Jour. 108 (110, 111): 32 Mad. 8, In re *Subramania Siva*.
(1919) 1919 Cal. 383 (384), *Harihar Roy* v. *Emperor*.
(1919) 1919 Cal. 433 (434): 46 Cal. 807, *Bhairab Chandra Barna* v. *Emperor*.
(1925) 1925 Lah. 237 (238), *Emperor* v. *Ghulam Hussain*.
(1927) 1927 Lah. 702 (703), *Shankar Lal* v. *Emperor*.
(1921) 1921 Lah. 345 (346), *Khushal Singh* v. *Emperor*.
(1912) 13 Cri. L. Jour. 691 (692) (Cal.), *Feroja Peshakar* v. *Emperor*.

(4) (1919) 1919 Cal. 433 (436): 46 Cal. 807, *Bhairab Chandra Barna* v. *Emperor*.

(5) (1904) 1 Cri. L. Jour. 193 (197*a*): 2 L. B. R. 146, *King-Emperor* v. *Nga Po Thin*.

(6) (1920) 1920 Pat. 670 (671), *Mangu Koeri* v. *Emperor*.
(1920) 1920 Pat. 614 (614), *Ram Lal* v. *Emperor*.

(7) (1919) 1919 Cal. 383 (384), *Harihar Roy* v. *Emperor*.
(1919) 1919 Cal. 433 (436): 46 Cal. 807, *Bhairab Chandra Barna* v. *Emperor*.

that the information which he lays before a Magistrate in his official capacity is a *complaint* and not a Police report. Hence, whether the information laid by Police-officer before a Magistrate is treated as a Police report or as a complaint, his examination on oath is not necessary.

But, the question as to whether such information amounts to a complaint or a report of a Police-officer may be material for other purposes. Thus, there are various sections of the Code which apply only to cases started on a complaint; for instance, *see* Ss. 202, 203, 247, 248 and 259. In such cases, the above question will be a material one.

22. Power of Magistrate to order Police to charge sheet any person.— There is no provision in the Code authorising a Magistrate to order the Police to *charge sheet* any person. The Code only empowers certain Magistrate to order the Police to *investigate* cases (*See* Ss. 155, 156, 196-B and 202) and the Police are required to make a report to the Magistrate as to the result of their investigation (*See* S. 173). But the Police are entitled to come to their own conclusion in making their report and the Magistrate cannot order them to put in a *charge sheet* when they are of the opinion that the case is not true.[1] The Patna High Court, however, seemed to hold that it is a proper procedure for a Magistrate who thinks it fit to proceed judicially against any person to order the Police to *charge sheet* him.[2] It is submitted that such a view is not correct. As pointed out by the Allahabad High Court in the undermentioned case[3] the proper procedure when a Magistrate proposes to take judicial action against any person is to take cognizance of the case against him and not to send the papers to the Police so as to deprive him of his right under S. 191 to have his case tried by some other Magistrate or by the Sessions Court. Moreover, when a charge sheet is filed against any person at the instance of the Magistrate, and the latter takes cognizance on such charge sheet, though apparently the case is taken cognizance of on a Police report, the Magistrate being the real originator of the proceedings is not competent to try the case (*See* S. 556, Note 20) and the accused is entitled to have the case transferred to some other Magistrate.[4]

23. "Upon information—That such offence has been committed"— Cl. (c).—The object of this clause is to enable a Magistrate to see that justice is vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute.[1] Hence, the proper use of the power conferred by the clause is when a Magistrate has reason to believe the commission of an offence but, is unable to proceed in the ordinary way owing to the absence of any complaint or Police report about it.[2] Therefore, when there *is* a complaint

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Note 22.

(1) (1932) 1932 Mad. 673 (673), *Venkata Subba Rao* v. *Naraharisetty Anjanayulu.*

(2) (1924) 1924 Pat. 597 (602), *Raghupat Narayan Singh* v. *Emperor* (See observations in the case).
[See also (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Shukadeva Sahay* v. *Hamid Miyan* (District Magistrate can call for charge-sheet from Police).]

(3) (1931) 1931 All. 273 (274, 275), *Nek Ram* v. *Emperor.*

(4) (1921) 1921 Bom. 365 (365), *Gundo Chikko Kulkarni* v. *Emperor.*
[See also (1903) Pun. L. R. No. 116, p. 488, *Crown* v. *Jumman.*]

Note 23.

(1) (1870) 13 Suth. W. R. 27 (31), *Nobin Roy* v. *Surendranath Roy.*
(1917) 1917 Pat. 611 (612), *Jhuna Lal Sahu* v. *Emperor.*

(2) (1917) 1917 Pat. 611 (612), *Jhuna Lal Sahu* v. *Emperor.*

S. 190, Note 23.

or Police report before a Magistrate he cannot ignore it and proceed under this clause.[3]

The "information" under this clause may be conveyed in any form. Thus, it may be in the form of a letter to the Magistrate.[4] Or, it may be in the form of an *order* for the prosecution of certain persons.[5] Further, the information need not be given with the object of moving the Magistrate to take steps for the *punishment of an offence*. Thus, a petition to the Magistrate praying for action under S. 107 or S. 145 may contain the information on which the Magistrate can take cognizance of an offence under this section.[6] But unless the information leads to the conclusion that an *offence* has been committed, a Magistrate cannot act on it under this clause.[6-a]

The information need not be *personally* given; it may be sent by *post*.[7] It must, however, be given to the Magistrate *directly*. Thus, suppose *A* gives certain information to *B* and the latter makes a complaint to a Magistrate on the basis of such information. The Magistrate takes cognizance on such complaint. In such cases, he cannot be held to take cognizance on the information given by *A*.[8]

The information under this clause may be received from *any* person (other than a Police-officer). Thus, a Magistrate can act on the confession of the accused himself though it is not recorded under S. 164.[9] He can also act on an anonymous communication to him.[10]

The information under this clause may be *oral*.[11] But it is most desirable that a Magistrate should record the information on which he acts[12] though he need not disclose the source of the information.[13] But the omission to make such record is only an irregularity which does not necessarily vitiate the proceedings.[14]

It is not necessary that the information on which a Magistrate acts under this clause must be received by him in his capacity as a Magistrate. It is open to him to act on information received by him otherwise than in such capacity.[15]

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(3) (1917) 1917 Pat. 611 (612), *Jhuna Lal Sahu* v. *Emperor*.
(1907) 8 Cri. L. Jour. 505 (510): 4 L. B. R. 300, *Meshidi Khan* v. *The Rangoon Municipal Committee* (*Per* Irwin, O.C.J. contra Ormond, J.).
(4) (1910) 11 Cri. L. Jour. 736 (736) (Rang.), *Maung Kye* v. *Emperor*.
(1925) 1925 Oudh 144 (144): 28 Oudh Cas. 33, *Chhote Maharaj* v. *King-Emperor*.
(1892) 1892 Pun. Re. No. 2, p. 5, *Abdul Ghani* (Informal or demi-official notes will do).
(5) (1908) 7 Cri. L. Jour. 224 (226) (Cal.), *Bansi Lal* v. *The Emperor*.
(6) (1930) 1930 Oudh 500 (502), *Sarfaraz* v. *Emperor*.
(6-a) (1923) 1923 Pat. 532 (534), *Gaju Chaudhuri* v. *Debi Chaudhuri*.
(7) (1884) 2 Weir 467 (468), Re *Lurisetti*.
(1879) 2 Weir 149 (149), *High Court Proceedings, 20th September*, 1879.
(8) (1893) 20 Cal. 481 (482), *Bharut Chunder Nath* v. *Jabed Ali Biswas*.
(9) (1932) 1932 Mad. 500 (501): 55 Mad. 717, *Arunachalla Reddi* v. *Emperor*.
(10) (1928) 1928 All. 756 (758), *Bhairon Prasad* v. *Emperor*.
(1898) 3 Cal. W. N. 65 (66), In the matter of *Hari Narain Bose*.
(11) (1909) 2 Ind. Cas. 436 (438): 36 Cal. 433, *Clarke* v. *Brajendra*.
(12) (1926) 1926 Rang. 46 (47), *Maung Nyi Bu* v. *Emperor*.
(1906) 3 Cri. L. Jour. 473 (476) (Cal.), *Thakur Prasad Singh* v. *Emperor*.
[See (1908) 8 Cri. L. Jour. 235 (241): 35 Cal. 1076, *Rash Behari Lall Mondal* v. *Emperor* (It is enough if the record shows that the Magistrate had sufficient material before him to consider that a *prima facie* case had been made out).]
(13) (1906) 3 Cri. L. Jour. 473 (476) (Cal.), *Thakur Pershad Singh* v. *Emperor*.
(1926) 1926 Rang. 46 (47), *Maung Nyi Bu* v. *Emperor*.
(14) (1926) 1926 Rang. 46 (47), *Maung Nyi Bu* v. *Emperor*.
(15) (1920) 1920 Mad. 19 (19): 43 Mad. 709, In re *Sundaresan*.
(1930) 1930 Rang. 253 (254): 8 Rang. 246, *Emperor* v. *Nga Po Win*.
(1924) 1924 Pat. 128 (130): 2 Pat. 459, *Oheta Mahto* v. *King-Emperor*.
(1910) 11 Cri. L. Jour. 305 (306): 37 Cal. 221, *Lakhai Narain Ghose* v. *The Emperor* (*Per* Carnduff, J. Contra Stephen, J.).

As said already, a Magistrate cannot take cognizance under this clause on the information received from a Police-officer.[16] If, however, such information amounts to a report of a Police-officer or a complaint, it can be the basis for taking cognizance under Cl. (*b*) or Cl. (*a*). **S. 190, Notes 23—24.**

"*His own knowledge or suspicion*".—This clause enables a Magistrate to take cognizance not only on *information* but also on his own *knowledge or suspicion*.[17] Such knowledge or suspicion may be based on facts which come under the Magistrate's notice otherwise than in his capacity as Magistrate.[18] But it cannot be based on information given by a Police-officer.[19]

See also Notes 4, 9, 10 and 22.

24. Clauses of section alternative but not mutually exclusive.—It has been seen that the expression "taking cognizance of an offence" in this section refers to the initiation of a judicial proceeding with reference to an offence at the time a Court first becomes seised of the case relating to a criminal transaction. The materials on which such action can be taken are divided by the section into three classes:—

(1) Complaints [Cl. (*a*)].
(2) Reports of Police-officers [Cl. (*b*)].
(3) Information received from any person other than a Police-officer or the Magistrate's own knowledge or suspicion [Cl. (*c*)].

Any one of the above materials is sufficient to enable a Magistrate to initiate proceedings under this section. In other words, the different clauses of the section under which cognizance can be taken are *alternative*, and not mutually exclusive. Hence, cognizance of the same offence can be taken under more than one of the above clauses. Thus, when a Magistrate has before him a complaint and a police report about the same offence he can take cognizance on *both*.[1]

Illustrations.

(1) *J* complains to a Magistrate about an offence by *B*. The Magistrate receives also a report from the police about the same offence. The Magistrate takes cognizance of the offence and proceeds against *B*. It is contended that the Magistrate must be deemed to have taken cognizance on *J's* complaint and that as he failed to examine him under S. 200 the entire proceedings are vitiated. *Held*, that the Magistrate need not be deemed to have taken cognizance on the complaint *exclusively*. He may be held to have taken cognizance on the police report also and hence his failure to examine *J* does not vitiate the proceedings.[2]

(2) *D* complains to a Magistrate about an offence and mentions *A* as having committed it. The police also send a report about the occurrence to the Magistrate in which they accuse *B* of the alleged offence. The Magistrate takes cognizance against both *A* and *B*. *B* contends that the Magistrate having

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[But see (1904) 3 Cri. L. Jour. 473 (476) (Cal.), *Thakur Pershad Sing* v. *Emperor*.]

(16) (1917) 1917 Pat. 611 (612), *Jhuna Lal Sahu* v. *Emperor*.
(1910) 11 Cri. L. Jour. 453 (462): 37 Cal. 467, *Barindra Kumar* v. *Emperor*.
(1910) 11 Cri. L. Jour. 150 (151): 1910 Pun. Re. No. 3, *Abdulla* v. *The King-Emperor of India*.

(17) (1919) 1919 Mad. 30 (31), *U. Ramamurthy Aiyar* v. *Parasaram Mangayacharyulu*.

See also cases cited in Note 4, Foot-note (20).

(18) See cases cited in Foot-note (15) above.

(19) (1929) 1929 Pat. 514 (515), *Lalbihari Singh* v. *Emperor*.

Note 24.

(1) (1929) 1929 Pat. 473 (475), *Bharat Kishore Lal Singh Deo* v. *Judhistir Modak*.
(1933) 1933 Rang. 271 (272), *U Po Yone* v. *Emperor*.

(2) (1929) 1929 Pat. 473 (475), *Bharat Kishore Lal Singh Deo* v. *Judhistir Modak*.

S. 190, Notes 24—25.

already taken cognizance on *D's* complaint under Cl. (*a*) of this section, it is not competent to the Magistrate to take cognizance of the same offence under Cl. (*b*) also. *Held*, that the contention is untenable and that a Magistrate can take cognizance of the same offence both under Cl. (*a*) and Cl. (*b*) of the section.[3]

25. **Revision.**—The proceedings of a Magistrate taking cognizance of an offence under this section is a judicial proceeding.[1] (*See* Note 14 above) and as such is subject to the revisional jurisdiction of the High Court.[2] Hence, where a Magistrate institutes proceedings against any person without there being sufficient materials for doing so, the High Court can interfere in revision and quash the proceedings.[3].

An order of a Magistrate *refusing* to take cognizance of an offence has also been dealt with by the High Court in its revisional jurisdiction in the undermentioned cases.[4] Such an order being virtually a refusal by a Court to apply its mind to an offence in its judicial capacity, cannot be treated as a *judicial* order, (*see* Note 14 above). But it is conceived that the interference by the High Court in the above cases would be justified under its general powers of superintendence over Subordinate Courts. (*See* Government of India Act, S. 107.)

In the undermentioned case[5] it was held that the order of a District Magistrate directing the police to charge sheet certain persons was a judicial order and subject to the revisional jurisdiction of the High Court. It is submitted that the view that such an order is a judicial order is open to doubt. (*See* Note 14 above).

S. 191.

191.* When a Magistrate takes cognizance of an offence under sub-section (1), clause (*c*), of the preceding section, the accused shall, *before any evidence is taken, be informed* that he

Transfer or commitment on application of accused.

***(CODE OF 1882—S. 191, last para. added by Act III of 1884.)**

191. * * * * *

When a Magistrate takes cognizance of an offence under Cl. (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Sessions.

Cognizance of offences by Magistrates.

(CODES OF 1872 and 1861—Nil.)

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(3) (1933) 1933 Rang. 271 (272), *U Po Yone* v. *Emperor*.

Note 25.

(1) (1924) 1924 Cal. 476 (479): 51 Cal. 402, *Nagendra* v. *Emperor*.
[See also (1868) Rat. Un. Re. Cr. Cas. 8 (10), *Reg.* v. *Sudasevappa*.]

(2) (1902) 4 Cal. W. N. 825 (826), *Shahiram* v. *Queen-Empress*.

(3) (1932) 1932 Pat. 72 (78), *Raghunath Puri* v. *Emperor*.
(1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deonarain Singh* v. *Emperor*.
(1902) 4 Cal. W. N. 825 (827), *Shahiram* v. *Queen-Empress*.
(1899) 3 Cal. W. N. 330, Notes (331), *Empress* v. *Hameed*.
[See also (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Shukdeva Sahay* v. *Hamid Mian*.]

(4) (1891) 1891 Rat. Un. Re. Cr. Cas. 562 (563), *Queen-Empress* v. *Ramachandra* (Complaint—Refusal to take cognizance on).
(1884) Rat. Un. Re. Cr. Cas. 206 (206), In re *Chattersingji* (Do.).
(1888) Rat. Un. Re. Cr. Cas. 368 (369), In re *Bai Kashi* (Do.).
(1902) 29 Cal. 410 (412), *Kuldip Sahai* v. *Budhan Mahton* (Do.).
(1886) 13 Cal. 334 (336), *Umer Ali* v. *Safer Ali* (Do.).
(1888) Rat. Un. Re. Cr. Cas. 375 (375), *Queen-Empress* v. *Gema* (Police report—Refusal to take cognizance on).

(5) (1928) 1928 Pat. 585 (586): 7 Pat. 561, *Sukhdeva Sahay* v. *Hamid Miyan*.

is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate. S. 191, Note 1.

SYNOPSIS.

	Note No.
SCOPE AND APPLICABILITY OF SECTION	1
NATURE OF ACCUSED'S RIGHT UNDER THIS SECTION ..	2
OBJECTION TO COMMITMENT TO SESSIONS BY MAGISTRATE TAKING COGNIZANCE	3
APPLICABILITY OF THE PROVISIONS TO APPEALS ..	4
EFFECT OF NON-COMPLIANCE WITH SECTION	5
APPLICABILITY OF SECTION TO SECURITY PROCEEDINGS.	6

Other Topics.

Accused is not entitled to select his Court. See Note 2, Pt. 1.
Objection when to be taken. See Note 2, F.N. (4).
Omission to inform accused of his rights—Effect of. See Note 5.
Principle of section. See Note 1, Pt. 1.
"Shall be informed that he is entitled to have the case tried by another Court" See Note 2.
S. 191 and S. 556 compared. See Note 1.
Trial does not include preliminary inquiry before commitment. See Note 1, Paras. 2 (3) and Note 2, Pt. 2.

1. Scope and applicability of section.—This section only applies to cases in which a Magistrate takes cognizance of an offence under S. 190, sub-S. (1), Cl. (*c*). In such cases, a Magistrate takes cognizance *suo motu* either on his own knowledge or suspicion or on information furnished by some person (not being a Police-officer) who is not prepared to take the responsibility of filing a complaint. Hence, the law (under this section) partly out of regard for the susceptibilities of the accused and partly to inspire confidence in the administration of justice, allows the accused the right to claim to be tried before another Court. But where the Court has been set in motion by a valid complaint or report of a Police-officer, such considerations do not apply and this section has no application.[1] (As to when a Magistrate may be said to have taken cognizance under Cl. (*c*) of S. 190, *see* Notes under S. 190).

This section may be compared to S. 556 below. The following points of distinction between the two sections may be noted:—

Section 191—Note 1.

(1) (1914) 1914 Sind 65 (66): 7 S. L. R. 77, *Emperor* v. *Shewakram*.
(1901) 26 Bom. 193 (196), *Emperor* v. *Malhar Martand Kulkarni*.
(1909) 10 Cri. L. Jour. 18 (19) (All.), *Jahu Lal* v. *Pir Bakhsh*.
(1902-03) 1902-03 U. B. R. Cr. P. C. 21 (22), *Nga Ba* v. *Emperor*.
(1917) 18 Cri. L. Jour. 273 (274) (Pat.), *Baldeo Lall* v. *Emperor*.
(1927) 1927 All. 101 (101, 102), *Saldeo* v. *Emperor*.

S. 191, Note 1

(1) S. 556 contemplates cases in which a Magistrate or Judge is personally interested in a case. This section applies to cases where a Magistrate has taken cognizance of an offence under Cl. (*c*) of S. 190, sub-S. (1). The two classes of cases are ***not identical***. Thus, though a Magistrate may have taken cognizance of a case under Cl. (*c*) of S. 190, he may not be personally interested in the case within S. 556 and if he complies with the provisions of this section, the bar under S. 556 may not apply to him.[2] Conversely, though a Magistrate may be personally interested in a case within S. 556 he may not have taken cognizance under Cl. (*c*) of S. 190. In such cases, though this section does not apply, the Magistrate will be disqualified from trying the case.[3] But in several instances, *both* the sections may apply. Thus, a Magistrate may both have taken cognizance under Cl. (*c*) of S. 190 and also be personally interested in the case within S. 556. In such cases, although the accused does not exercise his option of demanding a trial by a different Court under this section, the bar under S. 556 would apply and the Magistrate would be incompetent to try the case.

(2) The bar under S. 556 cannot be waived by the accused. But the accused can waive his privilege under this section. In other words, under this section, if the accused on his being asked if he has any objection to his being tried by the Magistrate who has taken cognizance under Cl. (*c*) of S. 190 does not object, the Magistrate is not precluded from trying the case. (*See* Note 2). But under S. 556, the disqualification of the Judge or Magistrate to try the case in which he is personally interested is absolute (except in cases where the Appellate Court permits such trial).

(3) Under this section the disqualification of the Magistrate applies only to the *trial* of the case. It does not apply to a commitment of the accused to sessions; so that notwithstanding the objection of the accused a Magistrate who has taken cognizance under Cl. (*c*) of S. 190 can conduct the preliminary inquiry under Ch. 18 and commit the accused to the sessions. (*See* Note 3). But under S. 556, the Magistrate or Judge who is personally interested in the case can neither try the case nor commit the accused to sessions.

(4) This section only applies to cases where cognizance of an *offence* has been taken (*see* Note 6) while S. 556 is general in its terms and applies also to cases where there is no question of any offence being taken cognizance of.

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(2) (1924) 1924 Rang. 352 (352), *Nga Chit Kyau* v. *Emperor*.
(1893) 15 All. 192 (194), In the matter of *Ganeshi*.
(3) (1921) 1921 Bom. 365 (365), *Gundo Chikko Kulkarni* v. *Emperor*.
[See also (1903) 1903 Pun. L. R. 116 (488), *Crown* v. *Jumman*.
(1913) 14 Cri. L. Jour. 425 (Cal.), *Ananta Ram Tewari* v. *Sheikh Altab Sarkar*.]

2. Nature of accused's right under this section.—The right of accused under this section is to have his case tried by another Court. For this purpose, the section provides that the accused must be *informed* before any evidence is taken that he is entitled to have his case tried by another Court and that if he objects to being tried by the Magistrate who has taken cognizance of the case the case should be transferred to another Magistrate or be committed to the sessions. But the accused is not entitled to claim that his case must be tried by a *particular* Court.[1] Thus, he cannot insist that his case must be committed to the sessions and not sent to another Magistrate. All that the accused is entitled under this section is to demand that his case should be tried by another Court. It is left to the Magistrate to decide in the exercise of his discretion whether the case should be committed to the Sessions or transferred to another Magistrate[2] (except in cases exclusively triable by a Sessions Court where the Magistrate would be bound to commit the case to Sessions). In exercising this discretion, the Magistrate will be guided by considerations similar to those which will apply when deciding the question if a case should be tried by himself or should be committed to the Sessions.[3]

Unless the accused on being informed of his right under this section makes his objection to being tried by the Magistrate who has taken cognizance of the case, such Magistrate need not transfer the case to any other Magistrate or commit it to the Sessions.[4] In other words, the right of the accused under this section is one that can be *waived* by him. But where the accused is not informed at all of his right as required by this section, he cannot be held to waive his right merely because he does not object to being tried by the Magistrate who has taken cognizance of the case.[5]

The section comes into force only after the accused appears. Where the accused has not appeared at all, an application for transfer of the case would be premature.[6]

3. Objection to commitment to sessions by Magistrate taking cognizance.—The section only entitles the accused to claim that his case should be *tried* by another Court. He is not entitled to object that the Magistrate who has taken cognizance of the case must not hold the *preliminary inquiry* under Chapter 18 in cases committed to the Sessions.[1]

Note 2.

(1) (1905) 2 Cri. L. Jour. 582 (584) (Bom.), In re *Shrinivas Krishna Shriralkar* (He is not entitled to insist that the case should be committed to sessions).

(2) (1899) 22 Mad. 148 (149), *Queen-Empress* v. *Felix* (Magistrate is not bound to transfer the case. He can elect to commit the case to the Court of Session).

(1900) 2 Weir 150 (151), In re *Beyya Reddi* (Do.).

(1905) 2 Cri. L. Jour. 582 (584) (Bom.), In re *Shrinivas Krishna Shriralkar* (Magistrate not bound to commit to sessions merely because accused asks for commitment).

(3) [See (1909) 10 Cri. L. Jour. 224 (225): 2 S. L. R. 9, *Emperor* v. *Tarumal*.

(4) (1893) 15 All. 192 (194), In re *Ganeshi*.
(1924) 1924 Rang. 352 (352), *Nga Chit Kyaw* v. *Emperor*.
[See also (1897-1901) 1 Upp. Bur. Rul. 127 (131), *Queen* v. *Nga Aung Gyi* (Option of accused to be exercised at commencement of proceedings).]

(5) (1899) 3 Cal. W. N. 279 (280) (N.), *Raghab Acharjee* v. *Empress*.

(6) (1909) 9 Cri. L. Jour. 64 (65) (Rang.), *Maung Shwe Hla* v. *Emperor*.

Note 3.

(1) (1899) 21 All. 109 (110), *Queen-Empress* v. *Abdul Razzak Khan*.
(1918) 1918 Cal. 3 (3, 4), *Azem Ali* v. *Emperor*.

S. 191, Notes 4—5.

4. **Applicability of the provisions to appeals.**—It has been held by the Calcutta High Court[1] that a Magistrate who has taken cognizance of an offence under S. 190, Cl. (*c*) cannot hear an appeal from a conviction in the case (which is tried by another Magistrate) without following the procedure laid down by this section. The reason given is that an appeal is part of the trial for an offence and as such is covered by the section. But the Allahabad High Court has taken a contrary view.[2]

5. **Effect of non-compliance with section.**—Under this section the Magistrate is bound to inform the accused of his right to have the case tried by another Court and if the accused objects to being tried by the Magistrate, the latter is bound to give effect to the objection. Non-compliance with the section in this respect is not a mere irregularity curable under S. 537 but is an illegality and renders the proceedings null and void.[1] Hence it is desirable that a Magistrate should make a note on the record that the provisions of the section were complied with.[2] But the absence of such a note need not necessarily lead to the inference that the provisions of the section were not complied with.[3]

Where the Magistrate who has taken cognizance under Cl. (*c*) of S. 190 *transfers* of his own motion, the case to another Magistrate, the proceedings are not open to attack on the ground of non-compliance with the provisions of this section.[4]

Note 4.

(1) (1908) 7 Cri. L. Jour. 224 (226), *Bansi Lall* v. *Emperor*.
(2) (1899) 1899 All. W. N. 74 (76), In the matter of *Inayat Hussain*.

Note 5.

(1) (1891) 13 All. 345 (347), *Queen-Empress* v. *Hawthorne*.
(1905) 2 Cri. L. Jour. 809 (810): 28 All. 212, *Emperor* v. *Chedi*.
(1913) 14 Cri. L. Jour. 218 (219), *Sarfaraz Khan* v. *Emperor*.
(1921) 1921 All. 286 (286), *Ram Ratan* v. *Emperor*.
(1918) 1918 All. 17 (18): 41 All. 164, *Mahadeo Sing* v. *Emperor*.
(1923) 1923 All. 383 (384), *Chandcr Sen Emperor*.
(1926) 1926 All. 325 (326), *Narain Das* v. *Emperor*.
(1934) 1934 All. 693 (693), *Sardar* v. *Emperor*.
(1902) 6 Cal. W. N. 202 (203), In the matter of *Akbar Momin*.
(1920) 1920 Lah. 203 (204), *Anandi Pershad* v. *Emperor*.
(1921) 1921 Lah. 235 (235), *Bodha* v. *Emperor*.
(1903) 4 Pun. L. R. 485 (488), *Crown* v. *Jumman*.
(1914) 1914 Lah. 165 (166), *Makhan Singh* v. *Gunner Jepson*.
(1926) 1926 Lah. 627 (628), *Samman* v. *Emperor*.
(1905) 2 Cri: L. Jour. 365 (366), *Emperor* v. *Mul Raj*.
(1905) 2 Cri. L. Jour. 45 (45): 1905 P. R. 8, *Emperor* v. *Abdul Rahim*.
(1898) 1898 Pun. Re. No. 13 (31), *Ghasi* v. *Queen-Empress*.
(1905) 2 Cri. L. Jour. 187 (188), *Kanhaya Lall* v. *Emperor*.
(1909) 10 Cri. L. Jour. 303 (304): 5 N. L. R. 113, *Emperor* v. *Sakhia*.
(1928) 1928 Notes 44 (*c*), *Suraj Din* v. *Emperor*.
(1900) 13 C. P. L. R. 191 (192), *Empress* v. *Amarsingh Patwari*.
(1897-1901) 1 Upp. Bur. R. 224 (225), *Queen-Empress* v. *Nga Ya Po*.
(1897-1901) 1 Upp. Bur. R. 56 (57), *Nga Paing* v. *Queen-Empress*.
(1912) 13 Cri. L. Jour. 52 (53), *Madar Sahib* v. *Emperor*.
(1897-1901) 1 Upp. Bur. R. 59 (59), *Queen-Empress* v. *Mi Chin Ma*.
(1906) 4 Cri. L. Jour. 374 (374), *Mohib Ali* v. *Emperor*.
(1924) 1924 Oudh 448 (448): 28 Oudh Cas. 1, *King-Emperor* v. *Naipal*.
(1933) 1933 Pat. 297 (298): 12 Pat. 758, *Baldeo Prasad* v. *Emperor*.
(1900) 2 Weir 151 (151), In re *Abdul Ally Sahib* (Omission to inform may be a ground for having the proceedings set aside, but it is no ground for making an order for transfer).
[See (1931) 1931 All. 273 (274), *Nek Ram* v. *Emperor* (A Magistrate should not try to evade the provisions of S. 191 by sending the papers to the Police and asking them to prosecute a person instead of himself taking cognizance under S. 190, cl. (*c*).]
[But see (1897-1901) 1 U. B. 127 (131), *Queen-Empress* v. *Nga Aung* (In absence of prejudice conviction not set aside).]
(2) (1905) 8 Oudh Cas. 418 (419), *Raja Bhagwan Baksh* v. *King-Emperor*.
(3) (1905) 8 Oudh Cas. 418 (419), *Raja Bhagwan Baksh* v. *King-Emperor*.
(4) (1933) 1933 Pat. 242 (244): 12 Pat. 234, *Uma Singh* v. *Emperor*.
(1904) 1 Cri. L. Jour. 539 (541): 1904 U. B. R. 4, *Lachmanan Chetty* v. *Emperor*.

S. 191, Note 6.

6. Applicability of section to security proceedings.—This section applies in terms only to cases where cognizance of an *offence* has been taken. The question has arisen whether the principle of the section applies to security proceedings under Ch. 8 of the Code where there is no question of an *offence* being taken cognizance of. In other words, the question is: where security proceedings are started against any person on the Magistrate's own knowledge, is it open to him to hear the case and pass final orders therein or should the case be transferred to some other Magistrate to be heard and disposed of by him? On this question there is a conflict of decisions. According to the Calcutta[1] and Patna[2] High Courts, the *principle* of this section applies in such cases and the case must be transferred for disposal to another Magistrate. The contrary view has been held by the High Courts of Allahabad[3] and the Sind Judicial Commissioner's Court.[4]

S. 192.

192*. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

Transfer of cases by Magistrates.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

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*(CODE OF 1882—S. 192.)

Transfer of cases by Magistrates.

Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Note 6.

(1) (1902) 29 Cal. 392 (393), *Alimuddin Howladar* v. *Emperor*.

(2) (1918) 1918 Pat. 98 (98), *Godhan Ahir* v. *Emperor*.

(3) (1904) 1 Cri. L. Jour. 807 (809): 27 All. 172, In the matter of *Mithu Khan*.

(4) (1927) 1927 Sind 77 (77): 20 Sind L. R. 291, *Mahomedally* v. *Emperor*.

S. 192.

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Procedure after transfer. See Note 3, Pt. 6.
Proceedings under S. 145. See Note 1, Pt. 9, Note 4, Pts. 8-10.
"To any Magistrate subordinate to him." See Note 1, Pt. 2.
Transfer by a High Court. See Note 4, Pts. 3, 4.
"Who is competent." See Note 1, Pt. 8.

(CODE OF 1872—S. 44, Para. 1, S. 141, Paras. 2 and 3.)

Transfer of criminal cases to Subordinate Magistrate.

44. The Magistrate of the District or any Magistrate of a division of a district may make over any criminal case taken up by him on suspicion or brought before him on complaint or on report by the police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

Who may entertain complaints.

141. * * *

Effect of reference.

Any Magistrate to whom any case is duly referred, by any Magistrate duly empowered to make such reference, may dispose of such case.

Effect of complaint or Police-report.

A complaint or a police-report gives jurisdiction to a competent Magistrate to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

(CODE OF 1861—S. 273.)

CHAPTER XVI.

OF ENQUIRIES AND TRIALS BEFORE THE SUBORDINATE MAGISTRATES.

Reference of cases to Subordinate Magistrate.

273. Criminal cases brought before the Magistrate of the district or a Magistrate in charge of a division of a district, either on complaint preferred directly to such Magistrate or on the report of a Police-officer, may be referred by such Magistrate to any Magistrate subordinate to him. The reference shall be for enquiry or for trial if the offence be triable by such Subordinate Magistrate, or with a view to commitment to the Court of Session if such Magistrate is competent to commit to the Court of Session, or with a view to commitment to the Supreme Court of Judicature if such Subordinate Magistrate is competent to commit to such Supreme Court. Provided that nothing in this section shall prevent any Subordinate Magistrate from entertaining

S. 192, Note 1.

1. Scope of the section.—The section empowers a Chief Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate, or a First Class Magistrate specially empowered, to transfer a case from his file to that of a Magistrate subordinate to him. But it is necessary that the following conditions should be fulfilled:—

(1) The Magistrate should first have *taken cognizance* of the case before he can make an order of transfer.[1]

(2) The transfer should be made to a Magistrate *subordinate* to him.[2] The section does not authorize a transfer by a Subordinate Magistrate to a superior Magistrate. Where a subordinate Magistrate wants to refer a case to a superior Magistrate for giving enhanced punishment to the accused, he should proceed under S. 349 of the Code.[3]

(3) The transfer to the subordinate Magistrate should be for inquiry or trial, *i.e.*, for *disposal* by him,[4] and not for mere investigation and report,[5] or for merely considering the report of an investigation which the transferring Magistrate has ordered under S. 202.[6] Where a Magistrate wants to keep a case on his own file and refer it for investigation and report by a subordinate Magistrate, he should proceed under S. 202 of the Code. The provisions of this section and S. 202 are distinct and separate and the powers conferred by one section do not curtail the powers conferred by the other.[7]

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either on complaint preferred directly to such Magistrate or on the report of a Police-officer (in cases in which the Subordinate Magistrate is authorized to receive such report), any case that such Magistrate is, by any law for the time being in force, competent to entertain.

Section 192—Note 1.

(1) (1902) 5 Oudh Cas. 164 (167), *Emperor* v. *Prag Baksh Singh*.
(1918) 1918 Mad. 555 (557): 41 Mad. 246, *Nagireddy Kondareddy*, In re.
(2) (1900-1902) 1 L. B. R. 59 (59), *Empress* v. *Maung Gale* (Transfer cannot be made to a village headman, who is not a *Magistrate*).
(1872) 7 Mad. H. C. App. 5.
[See (Under the Code of 1861, a Full Power Magistrate was not subordinate to a District Magistrate and hence it was held that a transfer could not be made to him.)
(1869) Rat. Un. Re. Cr. Cas. 18.
(1870) Rat. Un. Re. Cr. Cas. 32, *Reg.* v. *Babon Antone*.
(1870) Rat. Un. Re. Cr. Cas. 34.
(1871) Rat. Un. Re. Cr. Cas. 50.
(1868) 5 Bom. H. C. R. Cr. 69 (72, 78, 79) (F.B.), *Reg.* v. *Krishna Parashram*.
(1867) 4 Bom. H. C. 34 (34), *Bagu valad Oswari*.
[But see (1870) 7 Bom. H. C. Cr. 69 (70), *Reg.* v. *Mangla Bhulia*.]
[See also (1867) 4 Bom. H. C. R. Cr. 33 (33), *Reg.* v. *Visvanath Daularav*.
(1872) 9 Bom. H. C. 167 (168), *Reg.* v. *Papidio Muthoo* (A full power Magistrate who has received a complaint is not competent to refer it to a subordinate Magistrate for disposal).
(1872) 9 Bom. H. C. 168 (168), *Reg.* v. *Fakirappa Bin Ningappa* (Do.).]
[See however (1869) 4 Mad. H. C. App. 40 (41).]
(3) (1890) 12 All. 66 (68), *Empress* v. *Radhe*.
(1906) 4 Cri. L. Jour. 213 (214) (Cal.), *Fani* v. *Kemp*.
(4) (1916) 17 Cri. L. Jour. 146 (147): 43 Cal. 173: 1916 Cal. 867, *Gangadhar Pradhan* v. *Emperor*.
(1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Haricharan* v. *Srish Chandra*.
(1900) 27 Cal. 921 (924), *Mahadeo Singh* v. *Empress*.
(1920) 1920 Pat. 563 (565), *Ram Barai Singh* v. *Ram Pratap Rai*.
(5) (1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Hari Charan* v. *Srish Chandra*.
(1916) 17 Cri. L. Jour. 146 (147): 43 Cal. 173: 1916 Cal. 867, *Gangadhar Pradhan* v. *Emperor*.
(1869) 1 N.-W. P. 306 (307), In re *Kewul Singh*.
(6) (1925) 1925 Cal. 742 (743), *Mahabir Singh* v. *Giribala Dassi*.
(7) (1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor*.

S. 192, Notes 1—3.

(4) The Magistrate to whom the case is transferred should be otherwise *competent* to inquire and try the case transferred.[8] Jurisdiction and competency which is not otherwise inherent in a Magistrate cannot be conferred merely by virtue of a transfer under the section. Thus proceedings under S. 145 cannot be transferred to a Second or Third Class Magistrate.[9]

2. "**Taken cognizance**".—As already seen in Note 1, a Magistrate cannot transfer a case under the section unless he has taken cognizance of it. Thus a District Magistrate cannot pass an order for a judicial inquiry by a Subordinate Magistrate in a case taken cognizance of not by himself, but by a *Joint Magistrate* without withdrawing the case to his own file.[1]

The provisions of S. 190, *supra* prescribe as to how a Magistrate can take cognizance of a case. He can, for instance, take cognizance of a case upon a complaint preferred to him.[2] The complaint may be in the form of a report submitted by a Subordinate Magistrate.[3] It has been held by a Full Bench of the High Court of Calcutta[4] that a Chief Presidency Magistrate can prefer a complaint to *himself* against a person for giving false evidence before him, and then transfer the case for inquiry or trial by a Subordinate Magistrate under this section. By virtue of Cl. (*c*) of S. 190, a case can be taken cognizance of even without a formal complaint, and it is competent for a Magistrate acting under that section to transfer such cases also.[5]

3. **Stage at which transfer should be ordered**.—All that the section requires is that the Magistrate should have taken cognizance of the case before transferring it. He need not judicially consider the case before making the transfer.[1] Nor, is he bound to examine the complainant on oath where the complaint is in writing. or issue process before transfer.[2] (*Vide* S. 200). But he can transfer the case at *any stage* after taking cognizance. Thus, he can transfer a case after framing a charge[2-a] or after issuing processes to the wit-

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(8) (1907) 34 Cal. 926 (927), *Budhan Mahto* v. *Issur Singh*.
(1871) 6 Beng. L. R. App. 115 (116), *Gobind Chandra Biswas* v. *Hem Chandra Barder*.
(1896) Rat. 838 (838), *Empress* v. *Khandu Ganu*.

(9) (1878) 3 Cal. 754 (755), *Sufferuddin* v. *Ibrahim*.

Note 2.

(1) (1900) 27 Cal. 798 (800), *Jhumuck Jha* v. *Pathuk Mandal*.
(2) (1914) 1914 Cal. 479 (479, 480): 42 Cal. 19, *Abhoyeswari* v. *Kishori Mohan Banerjee*.
[See also (1903) 1903 Pun. Re. No. 9, p. 10, *Motan* v. *Emperor*.]
(3) (1924) 1924 All. 190 (191), *Suraj Prasad* v. *Emperor*.
(1904) 1 Cri. L. Jour. 335 (337): 26 All. 514, *Emperor* v. *Sundar Sarup*.
(4) (1926) 1926 Cal. 470 (472, 477, 478): 53 Cal. 350, *Emperor* v. *Mackay*.
(5) (1909) 8 Cri. L. Jour. 374 (376): 1 S. L. R. 119, *Emperor* v. *Allahwarayo*.
(1910) 11 Cri. L. Jour. 736 (736) (Rang.), *Maung Kye* v. *Emperor*.
Under S. 273 of the Code of 1861 a Magistrate was empowered to transfer only cases taken cognizance of on a complaint or upon a Police report and not cases taken cognizance of otherwise, as for instance, under S. 68 of the Code. These decisions are not good law under the present Code.
(1871) 3 N.-W. P. 126 (126), *Queen* v. *Syud Assuf Ali Khan*.
(1873) 19 Suth. W. R. 30 (30), In re *Dhunput Singh*.
(1869) 12 Suth. W. R. 49 (50), *Bhugoban Chunder* v. *Mohun Chunder*.
(1868) 9 Suth. W. R. 70 (70), In re *Hossain Manjee*.
(1869) 3 Beng. L. R. 67 (68), *Queen* v. *Mahim Chandra Chuckrabutty*.
(1872) 7 Mad. H. C. App. 2..

Note 3.

(1) (1926) 1926 Cal. 470 (477, 479): 53 Cal. 350 (F.B.), *Emperor* v. *Colin Mackenzie Mackay*.
(2) (1926) 1926 Pat. 358 (359), *Raja Madhu Sudan Deo* v. *Panu Parhi*.
(1926) 1926 Cal. 470 (479): 53 Cal. 350 (F.B.), *Emperor* v. *Colin Mackenzie Mackay*.
(1872) 18 Suth. W. R. 18 (20), *Bhugobutt Ghuru* v. *Siam Ali*.
(1870) 14 Suth. W. R. 1 (2), *Queen* v. *Omesh Chundar*.
[But see (1871) 4 N.-W. P. 88 (90), *Queen* v. *Bhikaree* (Submitted not correct law).]
(2-a) (1934) 1934 Mad. 435 (436): 57 Mad.

nesses for the prosecution.[3]

A transfer cannot, however, be ordered under the section by a Magistrate after *discharging* the accused. Such a procedure is not sanctioned by the Code.[4] Similarly, where after hearing the evidence in the case, the Magistrate finds that an offence triable by a Subordinate Magistrate has been committed, the case should not be transferred on that ground. The Magistrate who undertakes the trial of the case and who also hears the witnesses give their evidence should if possible finish it.[5] Where a part-heard case is however transferred it has been held that the transferee Magistrate should rehear the evidence and frame a fresh charge.[6]

4. Transfer of a transferred case.—A Magistrate has no power to transfer a case which has, itself been transferred to him for disposal under this section by a superior Magistrate. The reason is that the Magistrate cannot, in such a case, be said to have taken cognizance of the case.[1] But the effect of such a transfer is not to render the subsequent proceedings illegal on that ground; the transfer is only *irregular* and is cured by the provisions of S. 529, Cl. (*f*) of the Code.[2]

It has been held that where a case has been transferred by an order of the High Court from a Court subordinate to a District Magistrate to that of a District Magistrate, unless a contrary intention is expressed by the High Court, the District Magistrate should himself try the case, and that he has no power to transfer it to another Subordinate Magistrate under this section.[3] But where a case is transferred from the Court of one District Magistrate to another District Magistrate, the transferee Magistrate has, in the absence of any contrary direction by the High Court, power to transfer the case under this section to any Magistrate subordinate to him and who is competent to try the same.[4]

5. Transfer of a case remanded for further inquiry.—Where a case is remanded for further inquiry by a Sessions Judge to a District Magistrate or Sub-divisional Magistrate it has been held that the latter has power to transfer the proceedings to a Subordinate Magistrate.[1] Where, however, a case dismissed under S. 203 of the Code was remanded for further proceedings to be held, it was held that the case could not again be transferred under this section.[2]

827, *Public Prosecutor* v. *Shanmuga Nadar*.
(3) (1919) 1919 Pat. 319 (320), *Eqbal* v. *Emperor*.
(4) (1921) 1921 Pat. 205 (205), *Kartic Pathak* v. *Emperor*.
(5) (1900) 2 Weir 152 (153), In re *Tota Venkanna*.
(1923) 1923 Cal. 196 (197): 50 Cal. 223, *Mozahur Ali* v. *Emperor*.
(6) (1900-02) 1 L. B. R. 301 (302) (F.B.), *Crown* v. *Ta Lok*.
(1900) 2 Weir 152 (153), In re *Tota Venkanna*.

Note 4.

(1) (1914) 1914 All. 48 (48), *Dara* v. *Mukat*.
(1914) 1914 All. 150 (150): 36 All. 166, *Bashir Husain* v. *Ali Hussain*.
(1871-74) 7 Mad. H. C. App. 33 (34).
(1900-02) 1 L. B. R. 86 (87), *Crown* v. *Nga So Naung*.
(2) (1920) 1920 Pat. 518 (519), *Yusuf Ali Khan* v. *Emperor*.
(3) (1897) 19 All. 249 (251), *Empress* v. *Meta Prasad*.
(4) (1897) 19 All. 249 (251), *Empress* v. *Meta Prasad*.
(1917) 18 Cri. L. Jour. 881 (883): 1917 P. R. 30: 1917 Lah. 329, *Kisen Singh* v. *Emperor*.

Note 5.

(1) (1920) 1920 Pat. 563 (565), *Ram Barai* v. *Ram Pratap*.
(1907) 5 Cri. L. Jour. 112 (116) (Cal.), *Brij Kishore Ghose* v. *Gopal Rai*.
(1870) 2 N.-W.P. 132 (137), *Queen* v. *Lekhraj*.
[See also (1879) 2 All. 570 (572), *Empress* v. *Bhup Singh*.]
(2) (1907) 5 Cri. L. Jour. 112 (116) (Cal.), *Brij Kishore Ghose* v. *Gopal Rai*.

S. 192, Notes 5—6.

As regards the powers of a District Magistrate or a Presidency Magistrate to revive a case that has been discharged and then make a transfer *see* S. 436 and the cases cited below.[3]

6. "Case" meaning of.—

(*i*) *Proceedings under S.* 107 *of the Code.*—The word "case" has been held to be comprehensive enough to include proceedings under S. 107 of the Code, and hence it is open to a District Magistrate who has initiated proceedings under that section to transfer the same to a Subordinate Magistrate who has jurisdiction ordinarily to try such proceedings and who is otherwise qualified to complete the same.[1] Even where a District Magistrate initiates proceedings under sub-S. (2) of S. 107, it has been held that such proceedings can be transferred to a Subordinate Magistrate of the first class who is competent to complete the proceedings although the latter Magistrate is not competent to institute the same himself.[2] Before making an order of transfer it is however essential that the transferring Magistrate should have *taken cognizance* of the case. Thus where the District Magistrate to whom the Police reported for action under S. 107 without stating his opinion that there was a likelihood of a breach of the peace and without issuing the preliminary notice, merely transferred the case to the Head Quarter Magistrate within whose jurisdiction neither the accused resided nor the place where there was a likelihood of a breach of the peace situated, it was held that the District Magistrate had not taken cognizance of the case and the proceedings before the Head Quarter Magistrate were without jurisdiction.[3] Where however a District Magistrate made an order that proceedings were "sanctioned" and sent the same to a Sub-divisional Magistrate, it was held that he had taken cognizance of the case and the transfer was valid.[4]

(*ii*) *Proceedings under S.* 110 *of the Code.*—Proceedings under S. 110 of the Code can also be transferred under this section by a District Magistrate or a Sub-Divisional Magistrate, after taking cognizance of the same, to a Subordinate Magistrate who is

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(3) (1873) Rat. Un. Re. Cr. Cas. 76, *Reg.* v. *Sidya* (Held District Magistrate has power to transfer).
(1874) Rat. 89 (90), (Do.).
[See contra (1882) 6 Mad. 25 (26), *Queen* v. *Venguvayyangar*.
(1903) 7 Cal. W. N. 527 (529), *Walters* v. *Ibrahim* (Held following 5 Cal. W. N. 457 F. B. that a Presidency Magistrate has power to review and transfer).]
[But see contra (1898) 4 Cal. W. N. 46 (47), *Damini Dassi* v. *Hurry Mohan*.]

Note 6.

(1) (1904) 1 Cri. L. Jour. 344 (347): 31 Cal. 350, *Surjya Kanta Roy* v. *Emperor*.
(1902) 29 Cal. 389 (391), *Sarat Chandra Roy* v. *Bepin Chandra Roy*.
[See however (1906) 10 Cal. W. N. xlvii, In the matter of *Sheoraj Rai* (Question left open).]
(2) (1901) 24 All. 151 (152), *Emperor* v. *Munna*.
(1918) 1918 Cal. 892 (892), *Rakhal Mandal* v. *Emperor*.
[See however (1909) 9 Cri. L. Jour. 148 (149) (Cal.), *Nirbakar Chandra Mukey* v. *Emperor*.]
(3) (1917) 18 Cri. L. Jour. 878 (880): 41 Mad. 246: 1918 Mad. 555, *Nagireddy Kondareddy*, in re.
(4) (1919) 1919 Cal. 469 (470), *Ohinddin* v. *Emperor*.

otherwise competent to complete the proceedings.[5] A First Class Magistrate specially empowered under sub-S. (2), can also transfer such proceedings.[6] S. 192, Note. 6.

(*iii*) *Enquiry under S.* 122 *of the Code.*—On the question as to whether an enquiry as to the fitness of a surety under S. 122 can be transferred to a Subordinate Magistrate the two Judges who constituted the Bench in the undermentioned case[7] held conflicting views. Cox, J., holding that it can be transferred while Ryves, J., held *contra.*

(*iv*) *Proceedings under S.* 145 *of the Code.*—Proceedings under S. 145 of the Code can also be transferred under this section as they have been held to be "cases" within the meaning of the section.[8] But a transfer cannot, however, be ordered under the section unless the transferring Magistrate has *taken cognizance* of the case. Thus, where on an application being made to a District Magistrate praying for action under S. 145, he transferred it to a Sub-Divisional Magistrate under him for disposal without taking any action himself under sub-S. (1) of S. 145, and the land concerned was also not within the local jurisdiction of the Sub-Divisional Magistrate, it was held that the transfer was not valid.[9] Where, on the other hand, a petition was presented under S. 145 to a City Magistrate and he examined the petitioner on oath, ordered a Police enquiry and on receipt of the Police report came to the conclusion that there was some basis for the complaint and then transferred the complaint to a Subordinate Magistrate, it was held that the Magistrate had taken cognizance of the case and the transfer was valid.[10]

(*v*) *Proceedings under S.* 349 *of the Code.*—Proceedings referred to a superior Magistrate by a Subordinate Magistrate under S. 349 of the Code cannot be transferred under this section.[11]

(*vi*) *Proceedings under S.* 552 *of the Code.*—A complaint under S. 552 of the Code has been held to be not transferrable as that section confers exclusive jurisdiction only to a District or Presidency Magistrate.[12]

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(5) (1908) 7 Cri. L. Jour. 146 (150): 35 Cal. 243, *Chintoman Singh* v. *Emperor.*
(1922) 1922 Pat. 586 (587): 1 Pat. 621, *Hiranand Ojah* v. *Emperor.*
(1903-04) 2 L. B. R. 80 (82), *Ebrahim* v. *Emperor.*
(1909) 9 Cri. L. Jour. 246 (247): 1 S. L. R. 2, *Crown* v. *Allahyar.*
(1870) 2 N.-W. P. 401, *Queen* v. *Abdullah.*

(6) (1922) 1922 Pat. 586 (587): 1 Pat. 621, *Hiranand Ojah* v. *Emperor.*
[See also (1896) Rat. 838 (838), *Empress* v. *Khandu Ganu.*]

(7) (1910) 11 Cri. L. Jour. 23 (25, 26): 37 Cal. 91, *Kalu Mirza* v. *Emperor.*

(8) (1922) 1922 All. 99 (100), *Mahendra Singh* v. *Musammat Rajpati.*
(1933) 1933 All. 264 (266): 55 All. 301. *Kapoor Chand* v. *Suraj Prasad.*
(1906) 3 Cri. L. Jour. 83 (84) (Cal.), *Gurudas Nag* v. *Gaganendra Nath* (Following 25 Bom. 179 and 26 Mad. 188).
(1906) 4 Cri. L. Jour. 223 (226) (Cal.), *Ram Kishore Roy* v. *Dwaraka Nath Sen.*
(1895) 22 Cal. 898 (902), *Satish Chandra Pandey* v. *Rajendra Narain Bagchi.*
(1923) 1923 Pat. 366 (367), *Abdul Hamid* v. *Hasan Raza.*

(9) (1928) 1928 Mad. 1230 (1231): 52 Mad. 241, *Chellapathi Naidu* v. *Subba Naidu.*
[See also (1919) 1919 All. 311 (313), *Brahmanath* v. *Sundar.*]

(10) (1933) 1933 All. 264 (266): 55 All. 301, *Kapoor Chand* v. *Suraj Prasad.*

(11) (1869-70) 5 Mad. H. C. App. 43.

(12) (1898) Rat. 963, *Bai Dahi* v. *Jagjivan.*

S. 192, Notes 6—8.

(*vii*) *Proceedings under S.* 20 *of the Cattle Trespass Act, I of* 1871.—It has been held that though a complaint under S. 20 of the Act must be entertained by a District Magistrate or a Magistrate specially empowered under the Act, it is open to such Magistrate to transfer the case under this section, after taking cognizance of it, to a Subordinate Magistrate who is otherwise competent under the Code to try such a case. Under the Code an act in respect of which a complaint is made under S. 20 of the Cattle Trespass Act is an offence, [*Vide* S. 4, Cl. (*o*)] and under S. 260, Cl. (*m*) such an offence is triable summarily.[13]

7. **Transfer of proceedings under other Acts.**—

(*i*) *Proceedings under Ordinance II of* 1932.—Where a Special Magistrate after taking cognizance of a case under the Ordinance, transferred it to another Magistrate because he had heard the confession of the accused, it was held that the transfer was proper and valid.[1]

(*ii*) *Proceedings under the Bengal Regulation VI of* 1825.—It has been held that only the Collector can act under S. 2 of the Regulation and a case arising thereunder cannot be transferred to a Joint Magistrate.[2]

(*iii*) *Proceedings under the Bengal Tenancy Act.*—A Collector can transfer an enquiry under S. 58 of the Act to a Sub-Divisional Officer.[3]

8. **Effect of transfer under the section.**—Where once a case is transferred under the section, the case is entirely out of the hands of the transferring Magistrate and he ceases to have any jurisdiction in the case so long as the transfer is in existence. He cannot take any steps or pass any order relating to the case transferred unless and until the case is withdrawn to his file under S. 528 of the Code.[1] The transferee Magistrate is vested with full *seisin* of the case and has power to continue the enquiry up to the necessary stage of discharge, acquittal or conviction as the case may be.[2] A Magistrate to whom a case is

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(13) (1907) 6 Cri. L. Jour. 363 (365): 34 Cal. 926, *Budhan Mahto* v. *Issur Singh.*
(1879) 1879 Pun. Re. No. 26, p. 77, *Luchman Das* v. *Ala Singh.*
[But see the following cases which have been held to have been overruled by the Legislature in 6 Cri. L. Jour. 363).
(1896) 23 Cal. 300 (301), *Shama* v. *Lechhu Shekh.*
(1896) 23 Cal. 442 (445), *Raghu Singh* v. *Abdul Wahab.*]

Note 7.

(1) (1933) 1933 Cal. 124 (127): 60 Cal. 571, *Nil Ratan Ganguli* v. *Emperor.*
(2) (1910) 11 Cri. L. Jour. 476 (477): 33 All. 84, *Muhammad Alam* v. *Emperor.*
(3) (1913) 14 Cri. L. Jour. 139 (140): 40 Cal. 465, *Phanindar* v. *Emperor.*

Note 8.

(1) (1900) 27 Cal. 979 (980), *Golapdy* v. *Empress.*
(1902) 30 Cal. 449 (452), *Radhabullav Roy* v. *Benode Behari Chatterjee.*
(1907) 11 Cal. W. N. ccxviii (ccxix), *Akney Kumar* v. *Debnath.*
(1900) 4 Cal. W. N. 242 (244), *Moul Singh* v. *Mahabir Singh.*
(1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor.*
(1899) 3 Cal. W. N. 490 (491), *Sheikh Kutao Ali.*
(1871) 16 Suth. W. R. 40 (41), *Girish Chandra Ghose.*
(1869) 12 Suth. W. R. 53 (54), *Queen* v. *Baboo Umbica Churn.*
(1869) 12 Suth. W. R. 18 (19), *Queen* v. *Chunder Seekur Roy.*
(1869) 3 Beng. L. R. App. 151 (152), *S. T. Shanto Teorin* v. *Mrs. Belilias.*
(1930) 1930 Mad. 705 (706), *Appalanarasiah* v. *Emperor.*
(1922) 65 Ind. Cas. 441 (442) (All.), *Ganga Sahai* v. *Jaswant.*
(2) (1912) 15 Ind. Cas. 484 (485): 39 Cal.

S. 192, Notes 8—9.

transferred stands in the shoes of the original Magistrate and has full authority to deal with the case as if he had taken cognizance of it.[3] An order of transfer does not import any decision on any question either of law or fact arising in the case and it is open to the accused to raise any objection on the ground of jurisdiction, as for instance, the competency of the Court to try him without the sanction of the Local Government where such sanction is required by law.[4]

The transfer of a case taken cognizance of by a Magistrate means the transfer of the judicial investigation into any *offence* of which the Magistrate has taken cognizance and not merely with reference to some of the accused concerned in the offence. Thus, where a Police charge sheet contained the names of 22 persons as accused but only 9 of them were sent up for trial and the rest were not sent for trial as some of them were absconders, and the Magistrate to whom the charge sheet was submitted transferred the case under this section, it was held that the transfer was with regard to the judicial investigation into the *entire* offence and not merely with reference to the accused actually sent up for trial. Consequently it was held that the transferring Magistrate had no power to pass any order with regard to the trial of the other 13 accused not sent up for trial.[5] Similarly, where upon a complaint preferred to a Sub-Divisional Magistrate against several persons as accused, the latter examined the complainant but issued summons only against one of the accused and then transferred the complaint to a Subordinate Magistrate under this section, it was held that the *whole case* against all the accused was transferred and the transferee Magistrate was competent to issue summons against the other accused persons also.[6]

A transfer with directions to commit if the evidence was sufficient and to disallow bail has been held to be erroneous.[7]

9. Erroneous order of transfer—Effect of.—Where a Magistrate not empowered by law to transfer a case under this section, nevertheless makes an order of transfer erroneously in good faith believing that he has power to do so, the transfer is not void but only *irregular* and the subsequent proceedings are not vitiated on that ground. The irregularity is cured by the provisions of S. 529 of the Code.[1]

1041, *Emperor* v. *Bhika Hossein.*

(3) (1929) 1929 Cal. 192 (193): 55 Cal. 1274, *Hemendra Nath Sen* v. *Emperor.*
(1926) 1926 Pat. 358 (359), *Raja Madhu Sudan Dev* v. *Panu Parhi.*
(1909) 9 Cri. L. Jour. 295 (296): 36 Cal. 72, *Kanchan Garhi* v. *Ram Kishun Mundal.*

(4) (1913) 14 Cri. L. Jour. 298 (298): 6 S. L. R. 260, *Imperator* v. *Chellaram.*

(5) (1933) 1933 Pat. 244 (246): 12 Pat. 341, *Deonarain Singh* v. *Emperor.*
(1921) 1921 Pat. 474 (474), *Sheikh Maunt Husain* v. *Emperor.*
[See also (1905) 2 Cri. L. Jour. 524 (530, 532): 32 Cal. 783, *Ajab Lal Khirher* v. *Emperor.*
(1907) 11 Cal. W. N. ccxviii (ccxix), *Akhoy Kumar* v. *Deb Nath.*]
[Compare (1906) 3 Cal. L. Jour. 87 (89), *Jharu Jola* v. *Shukh Deo Singh* (The case of some accused only held transferred).]
[See also (1934) 1934 Pat. 467 (468, 469), *Mathura Singh* v. *Emperor* (Case transferred without excluding any accused—Magistrate to whom case is transferred can issue process against persons not originally included).]
[Compare (1905) 2 Cal. L. Jour. 51 (N), *Sosi Kumar Ghose* v. *Emperor* (Transferee Magistrate ceasing to exercise jurisdiction—District Magistrate can issue process against other accused).]

(6) (1908) 7 Cri. L. Jour. 318 (319) (Cal.), In re *Azim Sheikji.*
(1917) 1917 Pat. 8 (9), *Jai Pathi Mahaton* v. *Nagina Singh.*
(1934) 1934 Pat. 467 (468, 469), *Mathura Singh* v. *Emperor.*

(7) (1900) 27 Cal. 820 (825), *Durga Das* v. *Empress.*

Note 9.

(1) (1909) 10 Cri. L. Jour. 557 (559): 36.

S. 192, Note 10.

10. Notice of transfer.—The section contemplates a transfer even before the issue of process against the accused and no notice of transfer is necessary to the accused. Where however the transfer is made under S. 528, it has been held that notice is necessary.[1] *See also* S. 528.

S. 193.

Cognizance of offences by Courts of Session.

193*. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or, in the case of Assistant Sessions Judges, as the Sessions Judge of the division, by general or special order, may make over to them for trial.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or, * * * as the Sessions Judge of the division, by general or special order, may make over to them for trial.

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*(CODE OF 1882—S. 193.)

Cognizance of offence by Courts of Session.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cases to be tried by Additional and Joint Sessions Judges:

Additional Sessins Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the division makes over to them for trial.

by Assistant Sessions Judges.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the division by general or special order makes over to them for trial.

(CODE OF 1872—Ss. 17, 18, Para. 1 & S. 231.)

17. The Local Government may appoint Additional Sessions Judges or Joint

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Cal. 869, *Dasarath Rai* v. *Emperor*.

(1901) 5 Cal. W. N. 686 (689), *Raj Mohan Roy Choudhury* v. *Prosunno Chandra Chatterji*.

(1900) 4 Cal. W. N. 821 (822), *Akbar* v. *Domilal*.

(1909) 9 Cri. L. Jour. 399 (400): 36 Cal. 370, *Kishore Lal Roy* v. *Srinath Roy*.

Note 10.

(1) (1928) 1928 Mad. 560 (560): 51 Mad. 610, *Ramalinga Odayar* v. *Emperor* (In this case the transfer was under S. 528 and not under S. 192 as mentioned in the headnote of the report).

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
OBJECT OF THE SECTION	2
"EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR" ..	3
COMMITMENT BY DULY EMPOWERED MAGISTRATE ..	4
APPLICATIONS IN REFERENCE AND REVISION IF CAN BE TRANSFERRED TO ADDITIONAL SESSIONS JUDGE ..	5
"SUCH CASES"—SUB-S. (2)	6
POWERS OF A COURT OF SESSIONS TO ALTER, AMEND OR ADD CHARGES	7

S. 193, Note 1.

1. Legislative Changes.—

Difference between the Codes of 1861 *and* 1872—

Under the Code of 1861, S. 22, the Sessions Judge could delegate cases for trial to the Assistant Sessions Judge in the Presidency of Bombay.

Appointment and powers of Additional and Joint Sessions Judges.

Sessions Judges, who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try, such cases only as the Local Government directs them to try, or as the Sessions Judge of the division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order:

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CHAPTER XIX.

TRIAL BY COURT OF SESSION.

Cognizance of offences by Court of Session.

231. No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in S. 472.

(CODE OF 1861—S. 359.)

CHAPTER XXV.

TRIALS BEFORE THE COURT OF SESSION.

Cognizance of offences by the Court of Session in original jurisdiction.

359. Except in the cases referred to in S. 172 of this Act, a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence but upon a charge preferred by a Magistrate or other officer specially empowered under this Act or under any other law to make commitments to such Court.

S. 193, Notes 1—4.

Under the Code of 1872, S. 18, *Assistant* Sessions Judges could try only those cases which the Sessions Judge made over to them for trial. *Additional* Sessions Judges could try cases only as the Local Government directed or as the Sessions Judge made over to them for trial.

Difference between the Codes of 1872 *and* 1882—

There was no material difference between the Codes of 1872 and 1882 in this respect.

Difference between the Codes of 1822 *and* 1898—

Under the Code of 1898 as it stood before 1923, Additional Sessions Judges could try cases only as the Local Government directed. The Sessions Judge could not make over cases to them for trial.

Amendment in 1923.—The words "or in the case of Assistant Sessions Judges" were omitted with the result that the Sessions Judge could make over cases both to the Assistant as well as Additional Sessions Judges.

2. Object of the section.—The object of the restriction that no Court of Session shall take cognisance of an offence unless the accused has been committed by a Magistrate is twofold:—

firstly.—To secure to the person charged a preliminary enquiry which would afford him the opportunity of being acquainted with the circumstances of the offence imputed to him and enable him to make his defence[1] and

secondly.—To prevent the time of the Court of Session from being wasted over cases in which the charge is obviously not supported by such evidence as would justify a conviction.[2]

3. "Except as otherwise expressly provided for".—For instance, *see* Ss. 480, 437, 478 and 485, *infra* and the undermentioned case.[1]

4. Commitment by duly empowered Magistrate.—Before a Court of Session can take cognisance of an offence as a Court of original jurisdiction, it is essential that there must be a *proper commitment* by a *competent Magistrate.*

(1) There should be a *commitment.* The absence of a commitment is a defect which affects the *jurisdiction* or *competency* of the Sessions Court to take cognisance of the case and cannot be cured by the provisions of S. 537, *infra.*[1]

Section 193—Note 2.

(1) (1881) 3 Mad. 351 (353), *M. K. Rama Varma Raja* v. *Empress.*
(1927) 1927 Sind 28 (34): 21 Sind L. R. 55, *Emperor* v. *Stewart.*
[See also (1882) 4 Mad. 227 (227), *Empress* v. *Chinna Vedagiri.*]
(2) (1882) 5 All. 161 (162), *Lachman* v. *Juala.*
(1905) 2 Cri. L. Jour. 534 (541) (Cal.), *Sheobux* v. *Emperor.*

Note 3.

(1) (1879) 4 Cal. 570 (571), *Empress* v. *Futteh Jya.*

Note 4.

(1) (1895) 22 Cal. 50 (71), *Empress* v. *Jagat Chandra Mali.*
(1892) 15 Mad. 352 (353), *Empress* v. *Rama Tevan.*
(1913) 1913 Pun. L. R. 260, *Khanan* v. *Crown.*
(1893-1900) 2 Low. Bur. Rul. 536 (537), *Nga Aung Burn* v. *Emperor.*
(1893-1900) Low Bur. Rul. 7 (8), *Nga Thin Nu* v. *Empress.*
(1934) 1934 All. 963 (969) (F. B.), *Emperor* v. *Mohamad Mehde* (Sessions Judge can take cognizance of case only when it has been properly committed to his Court—If commitment is wholly irregular Sessions Judge has no option but to refer the case to High Court).
[See also (1881) 1881 Pun. Re. No. 22, p. 49, *Empress* v. *Aibat.*
(1884) 1884 Pun. Re. No. 42, pp. 94, 95, *Mt. Sharina* v. *Empress* (Defect is one of substance and not of form).]

(2) Such commitment must be to a Court of Session *having jurisdiction;* where the commitment is to a Court without jurisdiction, the commitment must be quashed.[2] S. 193, Notes 4—7

(3) Such commitment must be by a *competent Magistrate*.[3] But under S. 437, a Court of Session can commit an accused person itself and try him without the intervention of a Magistrate.[4]

For the provisions relating to commitment by Magistrate, *see* Ss. 206, 347, 437 and 446.

5. Applications in reference and revision if can be transferred to Additional Sessions Judge.—Applications under Chapter 32 of the Code are not cases for *trial* and cannot be transferred under the provisions of this section.[1]

6. "Such cases"—Sub-S. (2).—Under sub-S. (2) of the section it is only a "case" that can be made over by the Sessions Judge to an Additional or an Assistant Sessions Judge. The Code uses the word "case" as meaning something different from "appeal". (*See* S. 526). A Sessions Judge therefore cannot transfer an appeal under this section to an Assistant Sessions Judge.[1] Similarly, the sub-section does not enable a Sessions Judge to make over to an Additional Sessions Judge a sentence submitted for confirmation.[1-a] But independently of the provisions of this section, a Sessions Judge can, under S. 409, *infra,* transfer an appeal to an *Additional* Sessions Judge. He can also under S. 123, sub-S. 3-B, transfer a proceeding under sub-S. (2) of that section to an Additional or Assistant Sessions Judge. The said sub-section was newly added in 1923 in order to settle the conflict of opinion as to whether such proceedings were "cases" within the meaning of this section.[2]

See also, Note 4 to S. 9, *ante.*

7. Powers of a Court of Session to alter, amend or add charges.—*See* Ss. 226 and 227, *infra.*

S. 194.

Cognizance of offences by High Court.

194.* (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

***(CODE OF 1882—S. 194.)**

Cognizance of offences by High Court. 194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

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(2) (1912) 13 Cri. L. Jour. 35 (37): 36 Mad. 387, *Assistant Sessions Judge* v. *Ramammal.*
(3) (1907) 6 Cri. L. Jour. 7 (7 and 8) (All.), *Emperor* v. *Maula Khan.*
[See also (1866-67) 4 Bom. H. C. Cr. Cas. 35 (36), *Reg.* v. *Ranchoddas.*]
(4) (1886) 10 Bom. 319 (323, 324), *Empress* v. *Krishnabhat.*

Note 5.

(1) (1885) 9 Bom. 352 (354), *Reference by the Sessions Judge of Surat.*
(1885) Rat. Un. Re. Cr. Cas. 210 (210).
(1885) 9 Bom. 164 (168), *Musa Asmal.*
(1874) 25 Suth. W. R. 21 (22), *Empress* v. *Hatoo Khan.*

Note 6.

(1) (1915) 1915 All. 101 (102): 37 All. 286, *Emperor* v. *Abdul Razak.*
(1-a) (1884) 1884 Pun. Re. No. 43, *Hunar* v. *The Empress.*
(2) (1923) 1923 Cal. 649 (649): 50 Cal. 229, *Binode Bhari Nath* v. *Emperor* (Proceeding held to be a 'case').
(1895) Rat. 830, *Dayaram* (Proceeding held not to be a 'case').

S. 194, Note. 1.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Indian High Courts Act, 1861, or the Government of India Act, 1915 or any other provision of this Code.

Informations by Advocate-General.

(2) (*a*) Notwithstanding anything in this Code contained, the Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(*b*) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(*c*) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

(*d*) The High Court may make rules for carrying into effect the provisions of this section.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
COGNISANCE ON COMMITMENT	2
"IN MANNER HEREINAFTER PROVIDED"	3
SAVING OF THE LETTERS PATENT	4
"ANY OTHER PROVISIONS OF THIS CODE"	5
THE ADVOCATE-GENERAL MAY EXHIBIT INFORMATION ..	6

1. **Legislative Changes.**—

Codes of 1861 *and* 1872—

There was no section in these Codes corresponding to the present section.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the twenty-fourth and twenty-fifth of Vic. Ch. 104.

(CODES OF 1872 and 1861—Nil.)

Changes made in 1882—

The section was first introduced into the Code of 1882.

Changes made in 1898—

(1) The words 'The Indian High Courts Act 1861' in the second paragraph of sub-S. (1) were substituted for the words 'the 24th and 25th Victoria Ch. 104' which occurred in the Code of 1882.

(2) The words "or any other provisions of this Code" were added.

Subsequent changes—

The words "or the Government of India Act" were inserted by Act XIII of 1916.

2. **Cognizance on commitment.**—The High Court takes cognizance of a case, not on a complaint or police report or on information as in the case of Magistrates under S. 190, but upon a *commitment*.[1] In Calcutta and Bombay where the Coroner's Act is in force, an inquisition drawn up by the Coroner has the effect of commitment to the High Court when it has been accepted by the High Court and the officers of the Crown have drawn up a charge in accordance therewith.[2]

3. **'In manner hereinafter provided'.**—*See* Chapter XVIII, *infra*.

4. **Saving of the Letters Patent.**—The powers vested in various High Courts under their Letters Patent are not affected by any of the provisions of this section. Thus *original* criminal jurisdiction is given to the High Courts of Calcutta, Madras and Bombay by Cl. (22) of their Letters Patents,[1] to the High Court of Patna by Cls. (21) to (23) of its Letters Patent[2] and to the High Court of Lahore by Cls. (15) to (17) of its Letters Patent. This jurisdiction is not therefore affected by this section.

5. **"Any other provisions of this Code".**—S. 29 of this Code provides that an offence under any law other than the Indian Penal Code, if no Court is mentioned in such law, may be tried by the High Court. And under S. 526 the High Court may transfer any case to itself from any Criminal Court subordinate thereto and try it itself. Under S. 526-A on the application of the Advocate-General the High Court shall order that the case be transferred to it for trial. Or the Governor-General may by notification under S. 527 transfer a case from one High Court to another High Court for trial. And for contempt committed out of Court, the High Court has always got the power to try and punish a person.[1]

6. **The Advocate-General may exhibit information.**—[Sub-S. (2)]. With the previous sanction of the Local Government the Advocate-General may exhibit information against a person and the High Court can try such a case.

Section 194—Note 2.

(1) (1897) 22 Bom. 112 (124), *Empress* v. *Bal Gangadhar.*

(2) (1904) 1 Cri. L. Jour. 13 (19): 31 Cal. 1, *Emperor* v. *Jogeshwarpasi.*

Note 4.

(1) (1932) 1932 Cal. 123 (123), *Sashadhar Acharjya* v. *Charles Tegart.*

(2) (1933) 1933 Cal. 364 (364): 60 Cal. 814, *Amarchandra* v. *Emperor.*

(1933) 1933 P. C. 124 (128), *Dwarkanath Varma* v. *Emperor.*

Note 5.

(1) (1935) 1935 All. 1 (3), *An Advocate of Allahabad,* In the matter of (Where Court generally has been defamed, proceedings for contempt of Court can be taken).

S. 194, Note 6.

But such information should contain a statement of the charge as definite and detailed as an indictment.[1] Allegations as to the opinion of the Executive are out of place and should never be included in it.[2] This procedure should not be resorted to where the ordinary procedure can be adopted, as in cases of perjury and conspiracy, as it will be prejudicial to the accused.[3]

S. 195.

195. (1) No Court shall take cognizance—

Prosecution for contempt of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some other public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other

195.* (1) No Court shall take cognizance—

Prosecution for contempt of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except * * * on the complaint *in writing* of the public servant concerned or of some other public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence *is alleged to have been* committed in, or in relation to, any proceeding in any Court, except * * * on the complaint *in writ-*

***(CODE OF 1882—S. 195.)**

195. No Court shall take cognizance—

Prosecution for contempt of lawful authority of public servants.

(a) of any offence punishable under Ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned or of some public servant to whom he is subordinate;

Note 6.

(1) (1933) 1933 P. C. 124 (128), *Dwarkanath Varma* v. *Emperor.*

(2) (1933) 1933 P. C. 124 (128), *Dwarkanath Varma* v. *Emperor.*

(3) (1933) 1933 P. C. 124 (133), *Dwarkanath Varma* v. *Emperor.*

Court to which such Court is subordinate;

(*c*) of any offence described in section 463 or punishable under section 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(2) In clauses (*b*) and (*c*) of sub-section (1) the term "Court" means a Civil, Revenue or Criminal Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) *See infra.*

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused persons; but it shall so far as practicable specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

(5) When sanction is given in respect of any offence re-

ing of such Court or of some other Court to which such Court is subordinate; or

(*c*) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence *is alleged to have been* committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except * * * on the complaint *in writing* of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(2) In clauses (*b*) and (*c*) of sub-section (1) the term "Court" *includes* a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(*omitted*).

(*omitted*).

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ferred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no sanction shall remain in force for more than six months from the date on which it was given; provided that the High Court may, for good cause shown, extend the time.

(7) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say:—

(*c*) Where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first mentioned Court is situate.

(*a*) Where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate.

(*omitted*).

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the *appealable decrees or sentences of* such former Court, or in the case of a *Civil Court* from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original *civil* jurisdiction within the local limits of whose jurisdiction such *Civil* Court is situate:

Provided that—

(*a*) where appeals lie to more than one Court, the Appellate Court of inferior jurisdicton shall be the Court to which such Court shall be deemed to be subordinate; and

(*b*) Where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed.

(3) The provisions of sub-section (1), with reference to the offences named therein apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

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(*b*) Where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case *or proceeding* in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(5) *Where a complaint has been made under sub-section* (1) *clause* (*a*), *by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.*

(*b*) of any offence punishable under Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate; or,

Prosecution for certain offences against public justice.

(*c*) of any offence described in S. 463, or punishable under S. 471, 475 or S. 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

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SYNOPSIS.

		Note No.
I.	LEGISLATIVE CHANGES IN 1923	1
II.	AMENDING ACT XVIII OF 1923, HOW FAR RETROSPECTIVE	2
III.	SCOPE AND OBJECT OF THE SECTION	3
IV.	OFFENCES CONCERNING PUBLIC SERVANTS, SUB-S. (1), CL. (*a*)	4
	(1) SUBORDINATION OF PUBLIC SERVANTS	5

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

(CODE OF 1872—Ss. 467-470.)

Prosecution for contempts of the lawful authority of public servants.

467. A complaint of any offence described in Chapter X of the Indian Penal Code, not falling within S. 435 or S. 436, of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in Ss. 189 and 190 of the Indian Penal Code.

Prosecution for certain offence against public justice.

468. A complaint of an offence against public justice, described in Ss. 193, 194, 195, 196, 199, 200, 205, 206; 207, 208, 209, 210, 211 or 228, of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

469. A complaint of an offence relating to documents, described in Ss. 463, 471, 475, or 476, of the Indian Penal Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.

Nature of sanction necessary.

470. The sanction referred to in Ss. 467, 468 and 469, may be expressed in general terms and need not name the accused person.

Such sanction may be given at any time and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

Explanation:—In cases under this chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.

(CODE OF 1861—Ss. 168, 169, 170.)

Prosecution for certain offences under Chapter X of the Penal Code not to be instituted, but with the sanction of the public servants concerned.

168. A charge of a contempt of the lawful authority of any Court or public servant, or of any other offence against a public servant as such, described in Chapter X of the Indian Penal Code, not falling within S. 163 of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior. The prohibition contained in this section shall not apply to the offence described in Ss. 189 and 190 of the Indian Penal Code.

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(2) COMPLAINT IN CASES OF OFFENCES MENTIONED IN CL. (*a*) 6
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(4) SUBORDINATION OF CIVIL COURTS FROM WHOSE DECREES NO APPEAL ORDINARILY LIES 22
X. ABETMENT, CONSPIRACY AND ATTEMPT TO COMMIT OFFENCE—SUB-S. (*a*) 23
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Prosecution for certain offences against public justice not to be instituted but with sanction of the authority before which the offence was committed.

169. A charge of an offence against public justice, described in Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts, except with the sanction of the Civil or Criminal Court before or against which the offence was committed, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

Prosecution for certain offences relating to documents, not to be instituted but with sanction of the Court in which such documents were given in evidence.

170. A charge of an offence relating to documents described in Ss. 463, 471, 475 or 476 of the Indian Penal Code, when the document shall have been given in evidence in any proceedings in any Court, Civil or Criminal, shall not be entertained in any Criminal Court against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate. Such sanction may be given at any time.

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(1) "AUTHORITY TO WHICH SUCH PUBLIC SERVANT IS SUBORDINATE"—CL. (5) 25
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Absence of complaint is fatal. See Note 3, Pts. 6-8.
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What are Courts. See Note 7, Pts. 4-10 and Note 17, Pts. 8-28.
What are not Courts. See Note 17, Pts. 29-41.

1. Legislative Changes in 1923.—The following changes were introduced by the Amending Act XVIII of 1923:—

(1) *Sanction abolished.*—The words "with the previous sanction" which occurred in the Code before the amendments of 1923 before the words "on complaint in writing" in Cls. (*a*), (*b*) and (*c*) of sub-S. (1) have been omitted. Prior to the amendment of 1923, prosecutions in respect of offences mentioned in the section could be launched either upon the complaint of, or upon *sanction* granted to, a *private person* by the Court or the public servant concerned. The effect of a sanction was that the responsibility of the prosecution rested upon the private person to whom it was granted.[1] The sanction so granted was often utilised against the opponent as a weapon of extortion and blackmail and for the gratification of private ends, and

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Section 195—Note 1.

(1) (1909) 9 Cri. L. Jour. 219 (223) (All.), *Girwar Prasad* v. *Emperor.*
(1893-1900) 1893-1900 Low. Bur. Rul. 388 (390), *Krishnaswami Naidu* v. *Queen-Empress.*

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with that object in view persons obtaining the sanction usually resorted to dilatory tactics in conducting the prosecution with the result that in some cases at least there was no vindication of *public justice*, and thus the very object of the grant of sanction was frustrated.[2] The Legislature with a view to remedy this evil, has abolished the grant of sanction to private persons altogether, thereby doing away with the agency of a private prosecution. Under the Code as amended, the responsibility of a prosecution rests with the Court or the public servant, without whose *complaint* in writing the Criminal Court has no jurisdiction to take cognizance of the offences referred to in the section.[3]

(2) Sub-Ss. (4), (5) and (6) have been omitted in consequence of the abolition of sanction. The undermentioned cases which related to the procedure and form of sanction[4] are now no longer law and are only of academic interest.

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(2) (1907) 2 Mad. L. T. 518 (518).
(1926) 1926 Lah. 305 (306): 7 Lah. 108, *Behram* v. *Emperor.*
(1923) 1923 Nag. 180 (181), *Ganga Prasad* v. *Shyamlal.*
(1894) 16 All. 80 (83), In re *Mathura Das.*
(1913) 14 Cri. L. Jour. 127 (128) (All.), *Bhagwati Misir* v. *Ram Dayal.*
(1907) 6 Cri. L. Jour. 356 (357) (Cal.), *Kali Charan Lal* v. *Basudeo Narain Singh.*

See the following cases in which the Court refused sanction on the ground that the applicant was actuated by malice or ill will.

(1923) 1923 Mad. 136 (139, 141): 45 Mad. 928, *Muniswami* v. *Raja Ratanam.*
(1913) 14 Cri. L. Jour. 107 (108) (Lah.), *Abdul Jamal* v. *Emperor.*
(1919) 1919 All. 78 (79), *Sheikh Sahaoo* v. *Emperor.*
(1887) 1887 All. W. N. 142 (143), *Empress* v. *Mahadeo Singh.*
(1915) 1915 Oudh 120 (120), *Patan Din* v. *Bhagwan Din.*
(1914) 1914 Cal. 597 (599): 41 Cal. 446, *Mr. Hume* v. *Foresh Chunder Ghose.*
(1918) 1918 Cal. 120 (121), *Prem Chand* v. *Sonatam Saha.*
(1913) 14 Cri. L. Jour. 389 (389) (All.), *Darshan Das* v. *Atma Ram.*
(1888) 3 Cal. W. N. 3 (4), In re *Chandra Kanth Ghose.*
(1912) 13 Cri. L. Jour. 533 (534): 5 Sind L. R. 237, *Donald Graham and Co.* v. *Ghansham Das Kewalram.*
(1921) 1921 Lah. 144 (145), *Fazal Din* v. *Emperor.*
(1917) 1917 Nag. 69 (70), *Amolak Chand Hermaj* v. *Ishnaji.*
(1919) 1919 Pat. 215 (217, 219), *Bachan Ram* v. *Mobit Ahir.*
(1919) 1919 Pat. 547 (549), *Kalwa Gope* v. *Antonini.*
(1912) 13 Cri. L. Jour. 4 (5) (Cal.), *Raghunandan Prosad Singh* v. *Ram Narain Singh.*
(1924) 1924 Lah. 680 (680), *Bikram Singh* v. *Nihal Chand.*
(1922) 1922 Oudh 225 (227): 26 Oudh Cas. 104, *Nazir Hassan* v. *Mohammad Yamin.*
(1921) 1921 Pat. 422 (425), *Darogajha* v. *Babujan Mandal.*
(1904) 1 Cri. L. Jour. 120 (121): 26 All. 1, *Nazir Hasan* v. *Dost Mohammad.*
(1922) 1922 Lah. 403 (403), *Hari Chand* v. *Aya Ram.*

(3) (1926) 1926 Lah. 305 (306): 7 Lah. 108, *Behram* v. *Emperor.*
(1925) 1925 Lah. 312 (314): 6 Lah. 34, *Emperor* v. *Quadir Baksh.*

(4) *Application necessary for sanction.*
(1896) 18 All. 213 (215), In re *Banarsi Das.*
(1880) 3 All. 62 (63), *Empress* v. *Gobardhan Das.*
(1902) 1902 All. W. N. 195 (195), *Emperor* v. *Amta Dube.*
(1912) 13 Cri. L. Jour. 4 (5) (Cal.), *Raghunandan Prosad Singh* v. *Ram Narain Singh.*
(1913) 14 Cri. L. Jour. 572 (573): 40 Cal. 423, *Thaddeus* v. *Janaki Nath Saha.*
(1916) 17 Cri. L. Jour. 464 (464): 1916 Cal. 69, *Chandra Kanta Kanji Lal* v. *Emperor.*
(1906) 3 Cri. L. Jour. 112 (113) (Cal.), *Malfat Ali Sheikh* v. *King-Emperor.*
(1900) 27 Cal. 820 (824, 826), *Durga Das Kuskhit* v. *Queen-Empress.*
(1892) 20 Cal. 349 (350), *Chaudhari Mohammad Isharul Huq* v. *Queen-Empress.*
(1892) 20 Cal. 474 (475, 476), *Baperam Sarma* v. *Gouri Nath Dutt.*
(1899) 4 Cal. W. N. 347 (348), *Thakur Tewary* v. *Queen-Empress.*
(1869) 11 Suth. W. R. 171 (172), In re *Koonj Beharee Ghur.*
(1915) 16 Cri. L. Jour. 251 (251): 1915 Lah. 259: 1915 Pun. Re. No. 13, *Ladha Singh* v. *Emperor.*
(1894) 2 Weir 589 (589), In re *Nageswara Aiyan.*
(1907) 6 Cri. L. Jour. 25 (26): 1907 Upp. Bur. Rul. 1, *Nga Paw U* v. *Emperor.*
(1916) 17 Cri. L. Jour. 82 (83): 1916 Upp. Bur. 13: 2 Upp. Bur. Rul. 83, *Nga San Chin* v. *So Okaram.*
(1909) 10 Cri. L. Jour. 12 (13): 1908 Upp. Bur. Rul. 13, *Nga Lai Po* v. *Emperor.*
(1914) 1914 Sind 159 (159): 8 Sind L. R. 21, *Crown* v. *Nathu Wd. Mahar.*
(1914) 1914 Cal. 136 (136): 41 Cal. 14, *Panchu Mandal* v. *Emperor.*

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(3) The words "in writing" have been newly added after the word "complaint" in Cls. (*a*), (*b*) and (*c*) of sub-S. (1). The

(*Held*, the police report was *a sufficient application*).
(1918) 1918 Mad. 992 (994), *Nataraja Pathan*, In re (Letter from Sub-Inspector of Police to Magistrate—*Held*, application under S. 195).
(1922) 1922 Lah. 194 (194), *Prabhu Dial* v. *Gurdit Singh* (A person not a party to the suit cannot make an application for sanction).
(1923) 1923 Mad. 206 (206): 46 Mad. 88, *Ghulam Mohideen Quraishi Sahib* v. *Ahamedulla Begam Sahiba* (An applicant for sanction dying during the pendency of the application—His legal representatives cannot continue the application. They may file a fresh application if necessary).
[But see following (1914) 1914 Bom. 230 (231), In re *Sangappa Gadigeppa*.
(1893) Rat. 683 (683), In re *Khemchand*.
(1881) 10 Cal. L. R. 4 (5), *Jagut Mohoni Dassi* v. *Modhu Sudhan Dutt*.]

As to who can apply for sanction.

(1897) 2 Cal. W. N. lx, *Akshoy Coomar Ghosh* v. *Dharami* (Government Solicitor can apply).
(1908) 5 All. L. Jour. 232 (232) (N.), Re *Ram Adhar* (Public Prosecutor can apply).
(1908) 8 Cri. L. Jour. 157 (158) (All.), *Emperor* v. *Ram Adhar Rai* (Government pleader can be given sanction).
(1909) 10 Cri. L. Jour. 454 (459, 460). 37 Cal. 13, *Ram Prasad Mulla Raghubar Mulla* (Or a public officer).
(1910) 11 Cri. L. Jour. 327 (329) (Cal.). *Rajendra Nath Das* v. *Mukta Rani Dasi* (Minor can apply but only through a next friend).
(1888) 10 All. 350 (353), *Queen-Empress* v. *Ajudhia Singh* (No limitation for application).

Application to be made in the first instance to Court in or in relation to whose proceeding offence is committed.

(1893) 16 All. 80 (82), In re *Mathura Das*.
(1884) 1884 All. W. N. 276 (276), *Pargan Singh* v. *Thakurdin*.
(1872) 17 Suth. W. R. 46 (46), Re *Shceb Pershad Chackerbuty*.
(1917) 18 Cri. L. Jour. 97 (98): 1917 Low. Bur. 24, *Nga Aung Gyi* v. *King-Emperor*.
(1874) Weir, 3rd Edn., 840 (841), *H. C. Proceedings 18th August*, 1874, *No.* 1384.
(1871) 6 Mad. H. C. R. 92 (92), In re *Rajah of Venkatagiri*.

Application can also be made to the Appellate or Superior Court.

(1920) 1920 Cal. 916 (917), *Norendra Lal Khan* v. *Akhoy Kandar*.
(1871) 15 Suth. W. R. 352 (352), In re *Ishan Chunder Ghose*.
(1865) 5 Suth. W. R. Mis. 6 (8), Re *Dinobundhoo*.
(1880) 6 Cal. 440 (442), In re *Kasi Chunder Mozumdar*.
(1876) 1 Bom. 82 (86), In re *Jagjivan Nanabhai*.
(1902) 25 All. 126 (127), *Harbans Rai* v. *Chunni Lal* (Where trial Court has refused sanction fresh application to superior Court without cancelling order of refusal not competent).

Application should be made promptly. Delay is a ground for refusing sanction.

(1914) 1914 All. 486 (487), *Sagarman* v. *Emperor*.
(1914) 1914 All. 486 (487), *Sagarman* v. *Emperor*.
(1910) 11 Cri. L. Jour. 140 (140) (All.), *Yad Ram* v. *Risal*.
(1922) 67 Ind. Cas. 204 (205) (Cal.), *Trilokya Nath* v. *Radharanjan*.
(1906) 4 Cri. L. Jour. 454 (456) (Cal.), *Dharamdas Kumar* v. *Sagore Santra*.
(1920) 1920 Cal. 394 (394): 47 Cal. 741, *Makhan Lal Saha* v. *Sarogendra Nath Saha Chowdhury*.
(1896) 1 Cal. W. N. 529 (529), *Ram Nath Chamar* v. *Ram Saran Lal*.
(1872) 18 Suth. W. R. 62 (62), *Seetaram Sahoo* v. *Shevgolam Sahoo*.
(1924) 1924 Lah. 569 (569), *Abdul Quadir* v. *Mohammad Ibrahim Khan*.
(1911) 12 Cri. L. Jour. 434 (434) (Lah.), *Pirthi Mal* v. *Crown*.
(1923) 1923 Mad. 504 (505), *Narayanan Chettiyar* v. *Kadiraya Goundan*.
(1897) 2 Weir 154 (155), *Koppolu Venkatarayadu* v. *Sri Venkata Krishna Yachendra*.
(1914) 1914 Oudh 148 (149), *Ram Baksh* v. *Chhote*.
(1919) 1919 Oudh 181 (181): 22 Oudh Cas. 189, *Hubdar Khan* v. *Sajjad Ali*.
(1918) 1918 Pat. 621 (622), *Krishnadayal Singh* v. *Jaglal Mandal*.
(1918) 1918 Pat. 195 (196), *The Government Advocate and the Public Prosecutor* v. *Maharaj Singh*.
(1918) 1918 Pat. 190 (191), *Jugeshwar Pershad* v. *Ragho Miser*.
(1921) 1921 Pat. 422 (425), *Daroga Jha* v. *Babujan Mandal*.

Form of sanction. Offence should be specified.

(1923) 1923 All. 84 (85): 45 All. 140, *Ram Bilas* v. *Lachmi Narain*.
(1883) 6 All. 101 (102), *Parsotham Lal* v. *Bijai*.
(1884) 1884 All. W. N. 87 (87), In re *Sheoraj Singh*.
(1871) 3 N.-W. P. 314 (314), *Queen* v. *Sheo Churun*.
(1870) 2 N.-W. P. 132 (136), *Queen* v. *Lekhraj*.
(1895) 2 Weir 172, *Parvathi Ammal* v. *Hassan Ahamad*.
(1919) 1919 Pat. 416 (417), *Sheo Ghulam Sahu* v. *Khevali Thakur*.
(1902) 25 Mad. 671 (672), *John Martin Sequeira* v. *Luja Bai* (The offender should be named).
(1871) 8 Bom. H. C. R. 24 (27), *Reg.* v. *Tai* (*Held*, particular section need not be specified).

The particulars of the offence should be specified.

(1917) 1917 All. 329: 39 All. 367, *Chotey Lal* v. *Emperor* (Not a material irregularity).
(1896) 18 All. 203 (205), *Balwant Singh* v. *Umed Singh*.
(1884) 1884 All. W. N. 56 (56), In re *Dwarka Das*.
(1895) 19 Bom. 362 (363), In re *Jivan Ambaidas*.
(1868) 10 Suth. W. R. 41 (41), *Gobind Chunder Ghose*.
(1870) 13 Suth. W. R. 25 (25), *Queen* v. *Ooma Mayee Debea*.
(1898) 1898 Pun. Re. No. 8, p. 20 (20), *Sojan Singh* v. *Faujdar Singh*.

object of this amendment as also the addition of Cl. (*a*) in

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Sanction under S. 193, *I. P. Code—Alleged false statements should be mentioned.*
(1924) 1924 Cal. 104 (106), *Oates* v. *King-Emperor.*
(1909) 10 Cri. L. Jour. 150 (153): 36 Cal. 808, *Rakhal Chandra Laha* v. *Emperor.*
(1872) 17 Suth. W. R. 32 (32), *Queen* v. *Bhohay Pramanick.*
(1868) 9 Suth. W. R. 58 (61), *Queen* v. *Kartik Chunder Holder.*
(1869) 11 Suth. W. R. 17 (18), *Queen* v. *Kadir Bux.*
(1922) 1922 Bom. 38 (39), *Danappa Narasappa*, In re.
(1917) 18 Cri. L. Jour. 98 (98): 1917 L. B. 82, *Nga Po Yin* v. *King-Emperor.*
(1924) 1924 All. 563 (564), *Kashmiri Lal* v. *Mt. Kishanlal* (*Held*, that it is enough if application for sanction contains the statements).
(1922) 1922 Cal. 412 (412): 49 Cal. 551, *Dulloo Singh* v. *The Deputy Inspector-General of Police* (Do.).
(1924) 1924 Cal. 53 (54): 50 Cal. 461, *Kali Singh* v. *Emperor* (Do.).

Place and time of offence to be specified.
(1884) 6 All. 105 (106), In the matter of *Hardial.*
(1883) 1883 All. W. N. 228 (228), In re *Chimman.*
(1905) 2 Cri. L. Jour. 656 (657) (Cal.), *Niyamut Miah* v. *Emperor.*
(1899) 3 Cal. W. N. 35 (36), *Goberdhone Chowkidar* v. *Habibullah.*
(1899) 3 Cal. W. N. ccxcviii, *Kalidas Chandur Paramanik* v. *Mansidar.*
(1925) 1925 Lah. 139 (140), *Jaswant Singh* v. *Emperor.*

Omission to specify particulars vitiates sanction.
(1906) 3 Cri. L. Jour. 81 (83) (Cal.), *Saroda Charan Haldar* v. *King-Emperor.*
(1908) 7 Cri. L. Jour. 389 (391): 30 All. 243, *Serh Mal* v. *Bhairon Parasad.*
(1910) 11 Cri. L. Jour. 438 (439) (All.), *Bhola* v. *King-Emperor.*
(1919) 1919 Lah. 310 (311): 1919 Pun. Re. No. 18, *Basheshar Nath* v. *Crown.*
(1908) 9 Cri. L. Jour. 190 (191) (Lah.), *Kala Khan* v. *Crown.*
(1889) 1889 Pun. Re. No. 35, p. 133 (134), *Imam Buksh* v. *Crown.*
(1901) 1901 Pun. Re. No. 23, p. 58 (59), *Atma Ram* v. *Emperor.*
(1907) 5 Cri. L. Jour. 188 (189) (Cal.), *Girjja Sankar Roy* v. *Binode Seikh.*
(1881) 2 Weir 171 (171), *H. C. Proceedings, 3rd March*, 1881.
(1915) 16 Cri. L. Jour. 289 (291): 1915 Nag. 58: 17 Nag. L. R. 36, *Gopal* v. *Emperor.*
(1920) 1920 Oudh 304 (305): 23 Oudh Cas. 382, *Lalta Prasad* v. *Emperor.*
(1902) 5 Oudh Cas. 164 (167), *King-Emperor* v. *Prag Baksh Singh.*
(1920) 1920 Pat. 168 (168), *Ramani Mohan Ghose* v. *The Public Prosecutor, Bhagalpure.*

Form of Sanction.
(1903) 25 All. 234 (236), *Hasan Shah* v. *Hardeo Sahai* (Opinion is not sanction).
(1916) 17 Cri. L. Jour. 59 (60): 1916 Upp. Bur. 15: 2 Upp. Bur. Rul. 91, *Nga Kyaw Zan* v. *Nga Kyi Zan* (Do.).
(1917) 1917 Bom. 60 (61), In re *Edduljt Limjibhai* (Do.).
(1882) 11 Cal. W. R. 53 (54), *Jadhunath* v. *Ananda* (Do.).
(1870) 7 Bom. H. C. 87 (88), *Reg.* v. *Ladu* (Report is not sanctioned).
(1870) Rat. 32 (32), *Reg.* v. *Narayan Ramachandra* (Sanction in the form of letter. Held, sufficient).
(1914) 15 Cri. L. Jour. 43 (43): 36 Mad. 471, In re *Muneyya* (Sanction should not be provisional).
(1882) 8 Cal. 435 (439), *Giridhari Mundul* v. *Uchit Jha* (Should not be general and indefinite).
(1902) 6 Cal. W. N. 37 (38), *Abu Sarkar* v. *Chengu Sarkar* (Do.).
(1907) 5 Cri. L. Jour. 202 (203) (Bom.), *Emperor* v. *Rashid Karmalli* (Do.).
(1912) 13 Cri. L. Jour. 855 (856) (Bom.), *Emperor* v. *Lallubhai Jaychand Gujar* (Do.).
(1916) 17 Cri. L. Jour. 305 (306): 1916 Sind 94: 10 Sind L. R. 65, *Dodumal* v. *Crown* (Do.).
(1904) 1 Cri. L. Jour. 640 (641) (All.), *Maula Bakhsh* v. *Niazo* (Reasons should be given).

Sanction can be implied.
(1924) 1924 Rang. 35 (36): 1 Rang. 549, *J. R. Das* v. *Emperor.*
(1868) 5 Bom. H. C. R. 38 (39), *Reg.* v. *Ganu.*
(1867) 4 Bom. H. C. R. 28 (30), *Reg.* v. *Khushal Hiraman.*
(1869) 6 Bom. H. C. R. 54 (54), *Reg.* v. *Muhammad Khan.*
(1871) 16 Suth. W. R. 57 (57), In re *Ashruff Hossein.*
(1873) 19 Suth. W. R. 33 (34), *Queen* v. *Girish Chunder Sirkar.*
(1870) 1870 Pun. Re. No. 8, p. 14 (15), *Crown* v. *Suzawar.*
(1873) 1873 Pun. Re. No. 10 (11), *Crown* v. *Bishana.*
[See (1872) 17 Suth. W. R. 54 (55), *Bapooram Aham* v. *Gungaram Kacharee.*]
[But see (1907) 5 Cri. L. Jour. 29 (31) (Cal.), *Habibur Rahman* v. *Munshi Khodabux.*
(1895) 2 Weir 172 (172), *Vasudeva Pillai*, In re.]

Procedure—Notice not essential.
(1923) 1923 All. 35 (40, 41): 45 All. 109, *Emperor* v. *Angnu Singh.*
(1896) 18 All. 358 (359), *Mangar Ram* v. *Behari.*
(1892) 1892 All. W. N. 31 (32), In re *Sheo Prasad.*
(1890) 1890 All. W. N. 168 (169), *Queen-Empress* v. *Zorawar.*
(1888) Rat. 404 (404), In re *Umarbhai Valad Nabibhai.*
(1886) 12 Cal. 58 (60), *Krishnanund* v. *Hari Bera.*
(1918) 1918 Lah. 140 (140), *Jumal-ud-din* v. *Mohammad Ismail.*
(1917) 18 Cri. L. Jour. 121 (124): 1917 Lah. 277: 1916 Pun. Re. No. 23, *Maula Bakhsh* v. *Lal Chand.*
(1898) 1898 Pun. Re. No. 18, p. 44 (46), *Gobind Ram* v. *Empress.*
(1903) 26 Mad. 592 (593), In re *Govindu.*
(1921) 1921 Nag. 81 (83): 17 Nag. L. R. 98, *Nathuram* v. *Barey.*
(1916) 17 Cri. L. Jour. 82 (84): 1916 Upp. Bur. 13: 2 Upp. Bur. Rul. 83, *Nga Sen Chein* v. *So Okaram.*
[See however (1917) 18 Cri. L. Jour. 759 (760): 1917 Pat. 342, *Uchit Jha* v. *Barhmo Singh.*
(1923) 1923 Lah. 36 (37), *Charn Dass* v. *Rodu* (Absence of notice—Held in the circumstances sanction should be revoked).

S. 195, Note 1.

S. 200 is to remove the inconvenience which would be caused to

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(1884) 10 Cal. 1100 (1102), *Avvilakh* v. *Kjub Lall.*
(1889) 16 Cal. 661 (666, 667), *Kedarnath Das* v. *Chander Chakerbutty.*
(1906) 10 Cal. W. N. 74 (N.), *Emperor* v. *Kalu Patra.*
(1917) 18 Cri. L. Jour. 97 (98): 1917 Low. Bur. 24, *Nga Aung Gyi* v. *Emperor.*
(1920) 1920 Oudh 58 (60): 23 Oudh Cas. 222, *Mohammad Usuf Ali* v. *Mohammad Yakub Ali.*]

Held notice desirable though not legally essential.

(1905) 2 Cri. L. Jour. 598 (600): 28 All. 142, *Imayat Ali* v. *Mohar Singh.*
(1899) 23 Mad. 210 (212), *Pampapati Sastri* v. *Subba Sastri.*
(1919) 1919 Pat. 522 (522), *Sukhdoo Misser* v. *Moneelal Sahu.*
(1917) 1917 Pat. 89 (91, 92), *Barhma Dutta Thakur* v. *Nanoo Lal Thakur.*

Application cannot be dismissed for default.

(1914) 1914 Lah. 576 (577): 1915 Pun Re. No. 4, *Rup Narain* v. *Maha Dayal.*
(1916) 1916 Lah. 104 (104), *Dhanpat* v. *Kasho Ram.*
(1914) 1914 Mad. 159 (160), *Marudappa Goundan* v. *Bommanna Goundan.*
(1889) 2 Weir 596 (596), Re *Chinna Meeran* (On application sanction must be given or refused).
(1895) 2 Weir 194 (195), *Moolchand* v. *Ramakrishna Ayyar* (*Ex parte* order can be reconsidered).

Enquiry not obligatory.

(1882) 1882 All. W. N. 21 (21), In re *Harsukh.*
(1877) Rat. 132 (132), *Queen-Empress* v. *Nabi Natha.*
(1869) 3 Beng. L. R. 9 (10), *Queen* v. *Nawab Singh.*
(1904) 1 Cri. L. Jour. 746 (748) (Bom.), In re *Sitaram Shivarambhat.*
(1884) 7 Mad. 537 (538), *Queen-Empress* v. *Palani.*
(1883) 7 Mad. 224 (225), In re *Govindan Nair.*
(1897) 20 Mad. 339 (341), *Queen-Empress* v. *Motha.*
(1883) 6 Mad. 29 (31, 32), *Zamindar of Sivagiri* v. *Queen.*
(1915) 16 Cri. L. Jour. 289 (290): 1915 Nag. 58: 11 Nag. L. R. 36, *Gopal* v. *Emperor.*

But Court can take evidence.

(1912) 13 Cri. L. Jour. 689 (690) (Bom.), In re *Karvirappa.*
(1892) Rat. 629 (630), In re *Kadar Bhai.*
(1922) 1922 Cal. 412 (412): 49 Cal 551, *Dulloo Singh* v. *Deputy Inspector-General of Police, C. I. D., Bengal.*
(1904) 8 Cal. W. N. xl, *Dinobundhu Nundy* v. *Hurrymutty Dassee.*
(1897) 20 Mad. 339 (340), *Queen-Empress* v. *Motha.*
(1924) 1924 Nag. 35 (36), *Parmanand Parwar* v. *Kartar Nath.*
(1919) 1919 Pat. 547 (548), *Kalwa Gope* v. *Antonini.*
(1923) 1923 Pat. 542 (544), *Chote Lal Modi* v. *Emperor.*
(1923) 1923 Rang. 225 (226), *Abdul Aziz* v. *Maung Tin.*
(1918) 1918 Nag. 181 (183), *Wazirali* v. *Mohammad Azimulla* (An agreement to withdraw an application for sanction to prosecute under S. 195, Cr. P. Code is opposed to public policy).
(1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah* (Proceedings are judicial).
(1910) 11 Cri. L. Jour. 527 (528) (Mad.), *Sessions Judge* v. *Kalagara Bapiah* (Do.).
(1921) 1921 All. 211 (212): 43 All. 409, *Ram Charan* v. *Mewa Ram* (Sanction proceedings by Civil Courts are Civil in nature).

But costs cannot be awarded.

(1921) 1921 Cal. 548 (549), *Bholanath Khanra* v. *Purnachandra.*
(1912) 13 Cri. L. Jour. 6 (7, 8) (Cal.), *Krishna Proshad Mandal* v. *Rabindra Nath Dinda.*
(1915) 16 Cri. L. Jour. 281 (281): 1915 Lah. 440: 1915 Pun. Re. No. 5, *Bishen Das* v. *Rahmat Khan.*
(1916) 17 Cri. L. Jour. 184 (184): 1917 Mad. 158, *Venkataramana Raju* v. *Achayya.*
(1894) 2 Weir 196 (196), *Mohammad Dustagir* v. *Mohammad.*
(1923) 1923 Rang. 12 (13): 11 Low. Bur. Rul. 418, *Karupiah Naidu* v. *Muthuswami.*

[See however (1923) 1923 Oudh 119 (121), *Feroza Jan* v. *Amir Ali.*
(1922) 1922 Cal. 145 (146): 49 Cal. 1035, *Narendra Nath Dey* v. *Jyotisheh Pal* (Proceedings can be basis for action for malicious prosecution).
(1928) 1928 Cal. 691 (693, 694), *Ravindra Nath Das* v. *Jogendra Chandra Deb* (Do.).]

[But see (1886) 9 All. 59 (61), *Ezid Baksh* v. *Harsukh Rai.*]

Who can avail of the sanction.

(1919) 1919 Bom. 174 (175): 43 Bom. 538, *Vithal Bhimrao Kulkarani,* In re (Transferee in interest).
(1904) 1 Cri. L. Jour. 845 (846): 32 Cal. 469, *Kali Kinker Sett* v. *Nritya Gopal Roy* (Person expressly authorised).
(1905) 2 Cri. L. Jour. 78 (82): 32 Cal. 351, *Jogendra Nath Mukerjee* v. *Sarat Chandra Banarjee* (Heir).
(1912) 13 Cri. L. Jour. 206 (207) (Mad.), In re *Mallipaddi Gopya* (Relation).
(1922) 1922 Lah. 221 (222), *Gopal Singh* v. *Crown* (Legal Representative).
(1917) 18 Cri. L. Jour. 334 (334): 1917 All. 313, *Behari* v. *Kure* (Do.).
(1889) 12 Mad. 47 (49), In re *Thathaya.*
(1879) 4 Cal. 712 (713), *Empress* v. *Nipcha* (District Magistrate).

[See also (1909) 10 Cri. L. Jour. 431 (432): 34 Bom. 88, *Emperor* v. *Nagji Ghelabhai.*
(1902) 1902 Pun. Re. No. 27, p. 76 (77), *Lakhi* v. *Emperor of India.*]

Effect of sanction—Magistrate bound to take cognizance of offence sanctioned.

(1887) 1887 Pun. Re. No. 55, p. 148 (149), *Jamaluddin* v. *Ali Gohar.*
(1882) 1882 All. W. N. 84 (84), *Jograj Dei* v. *Mehndi Khan.*
(1906) 3 Cri. L. Jour. 227 (228, 229) (Bom.), *Mowjee Liladar.*
(1894) Rat. 718 (718), *Queen-Empress* v. *Kila Vrindavan.*
(1876) 25 Suth. W. R. 14 (14), *Keerut Singh* v. *Narain Parsee.*
(1867) 8 Suth. W. R. 9 (10), *Queen* v. *Doorga Nath.*
(1866) 6 Suth. W. R. 20 (21), *Queen* v. *Mokesh Chunder Acharjee.*
(1893-1900) 1893-1900 Low. Bur. Rul. 83 (84), *Dhurmalingam Mudali* v. *Kupamah.*
Oudh 49, *Yamni Begam.*

a public servant or to a presiding officer of the Court by being compelled to appear in person before the Magistrate to lodge a complaint.[5]

(4) In sub-S. (2) the word "includes" has been substituted for the word "means" which occurred in the Old Code. (As to the effect of this change, *see* Note 17).

(5) The old sub-S. (7) has been renumbered as sub-S. (3) with certain modifications. (*See* Notes 19 to 22).

(6) Sub-S. (5) has been newly added. (*See* Note 24).

2. Amending Act 18 of 1923, how far retrospective.—The amending Act came into force on the 1st of September, 1923, since which date sanction has been abolished. But does the amendment affect retrospectively the validity of a sanction granted prior to it? The answer to this question depends upon whether or not a *prosecution has been launched on the basis of such sanction prior to the amendment.* Where a complaint filed on the basis of a sanction has been taken cognizance of by the Court even prior to the amendment, the legality of the complaint is not affected by the amendment, nor is the subsequent trial barred under the present Code. The reason is that the Court being properly seised of the case nothing short of a specific withdrawal of the jurisdiction of the Court to try the offences can affect its authority to go on with the trial

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(1871) 8 Bom. H. C. R. 28 (30), *Reg.* v. *Subi Sani* (But not of another offence requiring sanction and not sanctioned).

(1870) 13 Suth. W. R. 67 (68), *Rajkumar* v. *Kirti Ojha* (Do.).

[See also (1871) 8 Bom. H. C. R. 31 (note), In re *Jaya Singh Haribai*.

[See also (1868) 10 Suth. W. R. 24 (24), *Queen* v. *Woodurumul Singh* (Nor try another offender against whom there is no sanction).

(1871) 15 Suth. W. R. 55 (56), *Queen* v. *Rajkishore Roy* (Do.).

(1914) 1914 Oudh 264 (264): 17 Oudh Cas. 18, *Ramphal* v. *Emperor* (Held sanction covers only one complaint).

(1888) 13 Bom. 384 (387), *Queen-Empress* v. *Shankar* (Sanction no bar to proceeding under S. 478).

(1871) 6 Mad. H. C. App. 15, *High Court Proceedings, 9th January,* 1871 (*Held* a complaint can be dismissed by Magistrate under S. 203).

(1871) Rat. 45 (45), *Reg.* v. *Jeejabhai Nathubhai* (Complaint can be withdrawn by person getting sanction).]

Trying Magistrate cannot question legality or propriety of sanction.

(1893) 1893 All. W. N. 177 (177), *Muzzafar Ali Khan* v. *Totaram.*

(1879) 4 Cal. 869 (870), *Nusibunnissa* v. *Sheikh Iradally.*

Cr. Rg. 27—6—1889, In re *Husan Begum.*

(1918) 1918 Lah. 188 (188): 1918 Pun. Re. No. 8, *Crown* v. *Thamman.*

(1887) 1887 Pun. Re. No. 18, p. 36 (37), *Natha* v. *Ali Bakhsh.*

(1888) 1888 Pun. Re. No. 2, p. 2 (3), *Empress* v. *Bhola.*

(1902) 26 Mad. 189 (190), In re *Pachi Ammal.*

Court granting sanction cannot try the offence.

(1918) 1918 All. 320 (320), *Deo Saran Tewari* v. *Emperor.*

(1882) 6 Bom. 479 (481, 482), *Empress* v. *Gaspar D'Silva.*

(1897) Rat. 904 (905), *Queen-Empress* v. *Langadaya Balukoli.*

(1919) 1919 Cal. 336 (337), *Mritunjoy Gon.* v. *King-Emperor.*

(1868) 9 Suth. W. R. 13 (13), In re *Nihal Mahtee.*

(1896) 20 Mad. 383 (384), *Queen-Empress* v. *Seshadri Ayyangar.*

(1877) 1877 Pun. Re. No. 3, p. 11 (12), *Crown* v. *Hassan Ali.*

(1917) 1917 Oudh 372 (373), *Fateh Singh* v. *Emperor.*

(1893-1900) 1893-1900 Low. Bur. Rul. 190 (191), *Rungaswami* v. *Queen-Empress.*

[See however (1874) 22 Suth. W. R. 16 (16), *The Queen* v. *Subal Chunder Gangooly.*

(1889) 16 Cal. 766 (770, 771), *Queen-Empress* v. *Sarat Chandra Rahit* (Sanction granted in a different capacity).

(1897-1901) 1897-1901 Uuu. Bur. Rul. 61 (62), *Queen-Empress* v. *Nga Pyu* (Do.).]

Court granting sanction is competent to hear appeal.

(1913) 14 Cri. L. Jour. 190 (190) (Bom.), *Emperor* v. *Gulam Ahmed Ali Sahib.*

(1895) 1895 All. W. N. 225 (226), *Queen-Empress* v. *Ude Ram.*

(1896) 1896 All. W. N. 181 (181), *Queen-Empress* v. *Khoji Ram.*

(1884) 1884 Pun. Re. No. 39, p. 76 (77), *Bostan Khan* v. *Empress.*

(1924) 1924 Nag. 23 (24), *Sessions Judge, Bhandara* v. *Pandia.*

Sanction as well as compensation under S. 250 ought not to be ordered.

(1899) 26 Cal. 181 (183, 184), *Bachu Lal* v. *Jagadam Sahai.*

(1895) 22 Cal. 586 (588), *Shib Nath Chong* v. *Sarat Chunder Sarkar.*

(1901) 28 Cal. 251 (253), *Parai* v. *Bandhi.*

[But see (1898) 21 Mad. 237 (239), *Adikkan* v. *Alagan.*]

(5) (1924) 1924 Pat. 691 (692), *Lachmi Singh* v. *Emperor.*

S. 195, Note 2.

according to law.[1] In such a case, however, the accused person has a right to apply for the *revocation* of the sanction to the superior Court under the repealed sub-S. (6) and the superior Court is competent to revoke the sanction and withdraw the prosecution even after the amendment. The right to apply for such revocation is "a real right to invoke the aid of a higher tribunal" and being a statutory substantive right of an aggrieved person is not affected by the amendment having regard to the provisions of S. 6 of the General Clauses Act.[2] Where, however, sanction has merely been granted prior to the amendment but no prosecution has been launched on the basis of such sanction, the provisions of the present Code would apply to the case, and no complaint can be filed in pursuance thereof by the private person to whom it was granted. The reason is the grant of sanction does not give any *vested right* to the person to whom it is granted but is merely a part of the *processual law*, being only one method of setting the criminal law in motion and it is a fundamental principle that rules of procedure are always retrospective in operation.[3] On the same principle, it has been held that the pendency of an application in the *trial* Court for sanction on the date of the amendment does not give any right to the person applying for it to have the sanction granted after the amendment.[4] The proper remedy in such a case would be to move the Court under S. 476 or S. 476-A of the Code for making a complaint.[5]

Where on the date of the amendment an application for sanction is pending before the superior Court under the old sub-S. (6), the subordinate Court having refused to grant sanction, there is a conflict of judicial opinion as to whether the superior Court can exercise its power to grant sanction after the amendment. The High Court of Allahabad[6] has held that the right to apply under sub-S. (6) is a right given by law which remains unaffected by the amendment by virtue of S. 6, Cl. (*e*) of the General Clauses Act, and that therefore the superior Court can grant sanction. The High Court of Madras[7] has taken a contrary view and held that the superior Court cannot grant sanction after the amendment. But the question as to the power of the superior Court to grant sanction under sub-S. (6) is now only of academic importance because, even assuming that it has the power, such sanction if granted after the amendment would be futile and ineffective as no valid prosecution can be launched in pursuance thereof under the present Code.[8] This aspect has not been considered

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Note 2.

(1) (1925) 1925 Mad. 1122 (1124, 1125), *Appaswami Ayyar*, In re.
(1924) 1924 Mad. 615 (616), *Muthiah Goundan* v. *Chinna Nallappa Goundan*.
(1926) 1926 All. 421 (422), *Kewal Ram* v. *Emperor*.
(1926) 1926 Lah. 131 (131): 7 Lah. 99, *Emperor* v. *Akbar Ali Shah*.
(1927) 1927 Nag. 71 (72), *Wasudeo* v. *King-Emperor*.

(2) (1925) 1925 Mad. 911 (913, 914): 48 Mad. 620, *Ramakrishna Ayyar* v. *Sithai Ammal*.
[See (1924) 1924 Mad. 585 (586), *Sesha Ayyar* v. *Public Prosecutor* (Held in 1925 Mad. 911 F. B. that this case was decided on a misapprehension as to facts).]

(3) (1925) 1925 Lah. 330 (331): 6 Lah. 41, *Jawahar Lal* v. *Jaggu Mal*.
(1925) 1925 All. 306 (307), *Ameraj Singh* v. *Emperor*.
(1924) 1924 Rang. 211 (211), *Ani* v. *Ah Yone*.
(1924) 1924 Mad. 657 (661): 47 Mad. 384, *Nataraja Pillai* v. *Rangaswami Pillai*.

(4) (1924) 1924 Cal. 826 (826): 51 Cal. 652, *Baldeo Misser* v. *D. I. G. of Police, C. I. D., Bengal*.
(1925) 1925 Bom. 151 (151), *Gafur Daud Saheb*, In re.

(5) (1924) 1924 Bom. 511 (512), *Ramdas Vishnudas* v. *Emperor*.

(6) (1924) 1924 All. 563 (563), *Kashmiri Lal* v. *Mt. Kishen Den*.

(7) (1924) 1924 Mad. 657 (659, 661): 47 Mad. 384, *Nataraja Pillai* v. *Rangaswami Pillai*.

(8) (1925) 1925 Nag. 358 (360), *Bhudabai* v. *Alibhai*.
[See also (1924) 1924 Mad. 657 (661): 47

by the Allahabad High Court and in this view, it is submitted, that the Madras decision is correct in principle.

S. 195, Notes 2--3.

3. **Scope and object of the section.**—As a general rule, any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not a person interested in, or affected by, the offence. To this general rule this section provides an exception, for it forbids cognizance being taken of the offences referred to therein except where there is a complaint in writing by the *Court* or by the *public servant* concerned.[1] The object of the section is to prevent improper or reckless prosecutions by private persons of offences in connection with the administration of public justice and of the contempt of lawful authority of a public servant.[2] It is aimed at giving protection to parties and witnesses, against vexatious or frivolous prosecutions for their resorting to Courts and giving evidence therein, and such protection is afforded by prescribing the necessity of a complaint by the Court in or in relation to whose proceedings the offence is alleged to have been committed.[3]

The provisions of this section are *mandatory* and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required by the section.[4] It has been held that where the complaint is not in confirmity with the provisions of this section the Court has no power even to examine the complainant on oath because such examination could be made only where the Court has taken *cognizance of the case*.[5] The absence of a complaint as required by the section is *fatal* to the

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Mad. 384, *Nataraja Pillai* v. *Rangaswami Pillai* (*Per* Wallace, J.).]

Note 3.

(1) (1921) 1921 Cal. 627 (629), *Rayaz Singh* v. *Mrs. Morgan.*
(1928) 1928 Lah. 510 (513): 9 Lah. 678, *Emperor* v. *Balmukund.*
(1928) 1928 Lah. 787 (791), *Fakir Singh* v. *Emperor.*
(1921) 1921 Mad. 278 (278): 44 Mad. 417, *Muhammad Ibrahim* v. *Sheik Davood.*
(1935) 1935 Pat. 214 (216), *S. B. Ram Singh* v. *Emperor* (Mere information given to the officer in charge of an outpost does not amount to a "complaint" within the meaning of S. 195).
[Compare (1902) 29 Cal. 417 (419), *Lal Chowdhuri* v. *Emperor* (Resistance to a public officer in the discharge of his duty—Magistrate ordering Police Inspector to take a statement from him and forward it to him (Magistrate) for taking proceedings—*Held*, proceedings legally instituted).]
(2) (1921) 1921 Mad. 453 (455): 44 Mad. 47, In re *Subbasari.*
(1932) 1932 Mad. 290 (291): 55 Mad. 531, *Subbarayudu* v. *Gopayya.*
(1917) 1917 Mad. 56 (57), *Palaniappa Chettiar* v. *Ramaswami Chettiar.*
(1934) 1934 Pat. 536 (537), *Jamuna Singh* v. *Ladhari Singh.*
(3) (1903) 26 Mad. 116 (117), In re *Paree Kunhammed.*
(1916) 1916 Mad. 72 (73): 39 Mad. 677, In re *Parameswara Nambudri.*
(1917) 1917 Nag. 198 (199), *Zumberlal* v. *Mt. Malobi.*
(4) (1932) 1932 Mad. 253 (254): 55 Mad. 343, In re *Ravanappa Reddy.*
(1927) 1927 Mad. 199 (201), *Kunju* v. *Emperor.*
(1925) 1925 Mad. 400 (400), *Muthu Goundan* v. *Emperor.*
(1875) 8 Mad. H. C. R. App. 2 (2), *Madras High Court Proceedings, 16th February*, 1875.
(1930) 1930 Rang. 153 (155), *Sathi Reddy* v. *Emperor.*
(1930) 1930 Pat. 346 (346), *Emperor* v. *Lalchand Tebi.*
(1932) 1932 Pat. 152 (155): 11 Pat. 155, *Subhay Ahir* v. *Emperor.*
(1928) 1928 Lah. 827 (828), *Mt. Darkan* v. *Emperor.*
(1901) 1901 Pun. Re. No. 23, p. 58 (59), *Atma Ram* v. *Reg.*
(1933) 1933 Cal. 481 (481), *Moulajaddi* v. *Emperor.*
(1899) 26 Cal. 359 (360), *Chandra Mohan Benerjee* v. *Balfour.*
(1865) 4 Suth. W. R. 7 (8), In re *Indro Chunder Bose.*
(1874) 22 Suth. W. R. 10 (11), In re *Sardharee Lal.*
(1902) 4 Bom. L. R. 750 (752), In re *Balgangadhar Tilak.*
(1865) 2 Suth. W. R. 31 (31), *Queen* v. *Dwarkanath Bose.*
(1888) 13 Bom. 109 (113), *Queen-Empress* v. *Rachappa.*
(1933) 1933 Cal. 481 (481), *Montajaddin Choukidar* v. *Emperor* (In absence of complaint as provided, conviction to be set aside).
(5) (1932) 1932 Mad. 253 (254): 55 Mad. 343, *Ravanappa Reddy* v. *Emperor.*

S. 195, Note 3.

prosecution and is an *illegality* which vitiates the trial and conviction.[6] Under S. 537, Cl. (*b*) of the Code as it stood before 1923 the want of, or any irregularity in, any *sanction* required by S. 195, or any irregularity in proceeding taken under S. 476 did not *per se* vitiate the trial and conviction unless it had in fact occasioned a failure of justice.[7] Clause (*b*) has now been omitted in S. 537, and it has been held that the effect of the omission also shows that the intention of the Legislature is that non-compliance with the provisions of the section vitiates the proceedings; such proceedings have been held to be *void* under S. 530, Cl. (*p*).[8]

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(6) (1925) 1925 All. 306 (307), *Ameraj Singh* v. *Emperor*.
(1926) 1926 All. 30 (32): 48 All. 60, *Kanhaiya Lal* v. *Bhagwan Dass*.
(1926) 1926 All. 700 (701), *Janki Prasad* v. *Emperor*.
(1932) 1932 All. 190 (191), *Abdul Rahman* v. *Emperor*.
(1929) 1929 All. 374 (375), *Mcharban Ali Khan* v. *Sita Ram*.
(1931) 1931 Bom. 520 (521, 523): 55 Bom. 725, *Ramachandra Narayan Sastri* v. *Emperor*.
(1929) 1929 Cal. 172 (174): 56 Cal. 824, *Mohim Chandra Nath* v. *Emperor*.
(1932) 1932 Mad. 253 (254): 55 Mad. 343, *Ravanappa Reddy* v. *Emperor*.
(1927) 1927 Nag. 184 (188, 189), *Tularam Marwadi* v. *Emperor*.
(1918) 1918 Nag. 59 (61), *Nanakram* v. *Emperor*.
(1926) 1926 Oudh 485 (486), *Ram Samujh* v. *Emperor*.
(1934) 1934 Oudh 186 (187), *Kali Charan* v. *Emperor*.
(1926) 1926 Pat. 368 (368): 5 Pat. 450, *Ambika Singh* v. *Emperor*.
(1932) 1932 Pat. 152 (155): 11 Pat. 155, *Subhag Ahir* v. *Emperor*.
(1930) 1930 Rang. 153 (155), *Sathi Reday* v. *Emperor*.
(1927) 1927 Sind 10 (15): 21 S. L. R. 1, *Fakir Mohammad* v. *Emperor*.
See also the following cases under the old Code:—
(1879) 2 All. 533 (537, 539), *Empress of India* v. *Subsukh*.
(1904) 1 Cri. L. Jour. 1046 (1047) (All.), *Emperor* v. *Mathura Singh*.
(1915) 1915 All. 110 (111): 37 All. 283, *Zahir Singh* v. *Emperor*.
(1915) 1915 Bom. 203 (204): 40 Bom. 97, *Emperor* v. *Jivram Dankarji*.
(1896) 22 Bom. 711 (713), In re *Shamsuddin*.
(1906) 4 Cri. L. Jour. 375 (379): 16 Kathiawad L. R. 195, *Bhugat Jethsuk Jiva* v. *Sha Amratlal*.
(1907) 5 Cri. L. Jour. 396 (397) (All.), *Naiz Ali* v. *Emperor*.
(1902) 4 Bom. L. R. 750 (752), In re *Bal Gangadhar Tilak*.
(1870) 7 Bom. H. C. R. 61 (62), *Reg.* v. *Parshram Keshav*.
(1873) Rat. 78 (78), *Reg.* v. *Pirtappa*.
(1903) 30 Cal. 285 (287), *Kailas Kurmi* v. *Emperor*.
(1865) 3 Suth. W. R. 68 (69), *Dukheo Pein* v. *Chandrakant Chowdry*.
(1871) 15 Suth. W. R. 45 (46), *Queen* v. *Mohima Chunder*.
(1872) 18 Suth. W. R. 32 (32), In re *Dinanath Burooa*.
(1925) 1925 Lah. 139 (140), *Jaswant Singh* v. *Emperor*.
(1916) 1916 Lah. 22 (22), *Raja Ram* v. *Crown*.
(1875) 2 Weir 153 (153), *High Court Proceedings, 16th February, No.* 365.
(1917) 1917 Oudh 372, *Fateh Singh* v. *Emperor*.
(1901) 5 Oudh Cas. 240 (241), *Jagadei* v. *Sri Charan*.
(1914) 1914 Low. Bur. 30 (31), *Ismail* v. *Emperor*.
[But see (1924) 1924 Pat. 691 (692), *Lachmi Singh* v. *King-Emperor*.]

(7) *Cases under S. 537 (b) of the Old Code.—*
[See (1893) 15 All. 392 (393), *Queen-Empress* v. *Matabdal*.]
(1906) 3 Cri. L. Jour. 419 (420): 29 Mad. 419, *Ismail Rowther* v. *Shunmughavelu Nadan*.
(1913) 14 Cri. L. Jour. 607 (608) (All.), *Ochan* v. *Emperor*.
(1915) 1915 All. 119 (119): 37 All. 110, *Gur Baksh Singh* v. *Kashi Ram*.
(1901) 1901 All. W. N. 151 (152, 153), *King-Emperor* v. *Pancham*.
(1922) 1922 Bom. 368 (369): 47 Bom. 31, *Emperor* v. *Shankar Balkrishna*.
(1900) 27 Cal. 452 (454), *Ramasory Lall* v. *Queen-Empress*.
(1901) 28 Cal. 217 (220), *Sunder Dosadh* v. *Sital Mahto*.
(1921) 1921 Cal. 38 (39): 48 Cal. 867, *Khetra Mohan Das* v. *Emperor*.
(1912) 13 Cri. L. Jour. 826 (827): 40 Cal. 360, *Dilan Singh* v. *Emperor*.
(1883) 13 Cal. L. R. 117 (118), *Kali Mohan Mookerjee* v. *Empress*.
(1919) 1919 Mad. 190 (190), *Sessions Judge of Tanjore*, In re.
(1911) 12 Cri. L. Jour. 406 (407) (Mad.), *Abdul Razack Sahib*, In re.
(1907) 6 Cri. L. Jour. 382 (383): 31 Mad. 380, In re *Perumal Nayadu*.
(1892) 15 Mad. 131 (132), *Queen-Empress* v. *Venkataswami*.
(1923) 1923 Oudh 4 (7): 26 Oudh Cas. 44, *Gaya Barhai* v. *Emperor*.
(1886) 1886 Pun. Re. No. 28, p. 61 (69), *Manga Ram* v. *Empress*.
(1913) 14 Cri. L. Jour. 183 (186, 187): 1913 Pun. Re. No. 4, *Pirbhu Dial* v. *Emperor*.
(1909) 10 Cri. L. Jour. 150 (153): 36 Cal. 808, *Rakhal Chandra* v. *Emperor*.
(1923) 1923 Rang. 135 (136), *Nagappan* v. *Emperor*.
(1904) 1 Cri. L. Jour. 370 (374) (Rang.), *Ahmed Esoof Bhaymeah* v. *Crown*.

(8) (1926) 1926 All. 700 (701), *Janki Prasad* v. *Emperor*.
(1925) 1925 All. 306 (307), *Ameraj Singh* v. *Emperor*.
(1927) 1927 Oudh 326 (327), *Dore Sah* v. *Emperor*.
(1934) 1934 Oudh 186 (187), *Kali Charan* v. *Emperor*.

S. 195, Note 3.

The section, being one in the nature of a prohibition to Courts to take cognizance of offences, should be construed strictly. It applies only to the offences mentioned therein and not to any other offences.[9] But it is not open to a Magistrate to ignore the provisions of the section by the device of instituting the case under another section of the Penal Code to which this section does not apply, and then convict the accused of the offence prohibited under this section with the aid of S. 238 of the Code without the requisite complaint. The provisions of S. 238 must yield in such a case to this section.[10] Nor can the provisions of this section be *avoided* by reducing a charge in respect of the offence mentioned in the section to some other offence and thus avoid the necessity of a complaint by the Court or the public servant.[11] Where the facts disclosed by a complaint are sufficient to constitute any of the offences mentioned in the section such a complaint cannot be taken cognizance of unless it is in conformity with the section.[12] Thus where the facts stated in a complaint amount to an offence under S. 193, I.P.C. to which sub-S. (1) (*b*) would apply, no Court can take cognizance of it otherwise than in the manner prescribed in the section; and it makes no difference that the complainant, evidently with a view to *evade* the section, has elected to name the offence as forgery to which sub-S. (1) (*c*) does not apply because the offender is not a *party* to the proceeding in Court. In such a case it has been held that the specific offence of fabricating false evidence should be given preference to the more general charge of forgery.[13] Where however a complainant combines a complaint of an offence to which the section applies with a complaint of an offence to which the section does not apply, the Court must investigate the latter complaint but refuse to investigate the former if it is not in accordance with the section.[14]

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(9) *The section does not apply to the following offences:—*
(1929) 1929 Bom. 433 (439), *Emperor* v. *Balachandra Ranadive* (S. 143, I. P. Code).
(1918) 1918 Cal. 967 (967), *Taru Bahu* v. *Emperor* (S. 225-B, I. P. Code).
(1932) 1932 Sind 53 (54, 55): 25 S.L.R. 471, *Jethmal* v. *Emperor* (S. 477-A, I. P. Code).
(1904) 1 Cri. L. Jour. 525 (526): 31 Cal. 664, *The Deputy Legal Remembrancer* v. *Arjun Pramanick* (Ss. 352 and 353, I. P. Code).
(1892-1896) 1 Upp. Bur. Rul. 172 (172), *Queen-Empress* v. *Nga Auing Zan* (S. 220, I. P. Code).
(1895) 23 Cal. 621 (624), *Rai Ishri* v. *Queen-Empress* (Proceedings under S. 110 of the Code).
(1928) 1928 Bom. 493 (495): 52 Bom. 898, *Khimchand Narottam Bhavsar*, In re (Prosecuting a Receiver appointed by a Court, for offences alleged to have been committed by acts in excess of his authority).
(1935) 1935 Oudh 331 (332), *Raghubar Dayal Gupta* v. *Khusehar Prasad* (Complaint under Ss. 323, 352 and 504, Penal Code, in course of execution of decree—Complainant need not move Court which passed decree).
(1925) 1925 All. 318 (319): 47 All. 409, *Emperor* v. *Mahdo Singh* (Escape from lawful custody of servant of Civil Court—Proper course is for the servant to file complaint).
[See also (1872) 17 Suth. W. R. 10 (10), In re *Doolar Pandev*.]

(10) (1925) 1925 All. 129 (130): 47 All. 114, *Sri Narain Singh* v. *Emperor*.
(1930) 1930 Pat. 98 (102), *Kantir Misser* v. *Emperor*.
(11) (1928) 29 Cri. L. Jour. 849 (850), *Ibrahim* v. *Emperor* (Offence under S. 471, I. P. Code—Complaint under S. 471, I. P. Code).
(1925) 1925 All. 230 (232): 47 All. 268, *Ram Nath* v. *Emperor*.
(1917) 1917 Cal. 708 (709): 44 Cal. 970, *Profulla Kumar Ghose* v. *Harendranath Chatterjee* (Where facts disclosed in a complaint amount to an offence under S. 211, I. P. Code—Prosecution on the same facts for an offence under S. 500, I. P. Code, cannot be permitted).
(1897-1901) 1 Upp. Bur. Rul. 279 (279), *Queen-Empress* v. *Mi Gywet* (Do.).
(1889) 2 C. P. L. R. 198 (199), *Empress* v. *Chedi Lal* (Do.).
(1935) 1935 Sind 81 (83), *Kalumal Gelomal* v. *Kissumal Issardas*.
(12) (1933) 1933 Mad. W. N. 722 (723), *Subbayya Hegde* v. *Siddhu Shetty*.
(13) (1929) 1929 Mad. 21 (23, 25), *Perianna Muttiriyan* v. *Vengu Aiyar*.
(1932) 1932 Mad. 253 (254): 55 Mad. 343, *Ravanappa Reddy* v. *Emperor*.
(1933) 1933 Mad. 413 (415), *Subramania Ayyar* v. *Swamikannu Chetty*.
(14) (1924) 1924 All. 296 (297), *Tarsubeg* v. *Muhammad Yar Khan*.
(1929) 1929 Cal. 633 (635): 56 Cal. 1041, *Superintendent and Remembrancer, Legal Affairs, Bengal* v. *Biswambhar Brahmin*.

S. 195, Notes 3—4.

This section creates a bar and says that unless some requirements are complied with cognizance should not be taken of any of the offences mentioned therein; S. 476 of the Code enacts the procedure to be followed for removing the bar.[15] It prescribes the proceedure to be followed by the Court in making a complaint; the two sections should be read together.[16] Proceedings by a Court under S. 476 are taken only in the *interests of justice* when the Court thinks fit, and although it is open to a private person to move the Court under that section it is for the Court to decide to take action and institute the prosecution.[17]

4. Offences concerning public servants, Sub-S. (1), Cl. (a).—In respect of the offences mentioned in Cl. (*a*) of sub-S. (1), it is the public servant *concerned* or some other authority to which he is subordinate that is competent to make a complaint.[1] A complaint by a private person in respect of any of the offences is barred;[2] nor can the Court take cognizance of any such offence *suo motu*.[3] The word "concerned" means concerned in the offence. Thus in the case of an offence under S. 182, Penal Code, the complaint that is necessary is that of the public servant to whom the false information was given, and not that of the public servant sought to be injured by such information.[4] Where an offence under S. 182, Penal Code, is alleged to have been committed in respect of a letter written to the Collector of the District, the Sub-divisional Magistrate who is not concerned in the offence is not competent to prefer a complaint.[5] Similarly, where a complaint is filed before the Sub-divisional Magistrate, the Sub-Inspector of Police to whom the complaint is sent by the Magistrate for enquiry and report cannot make a complaint under S. 182, Penal Code.[6] In the case of an offence under S. 188, Penal Code, the complaint that is necessary is that of the public servant whose order has been disobeyed.[7]

Where no public servant is concerned in the offence the clause does not apply.[8] Thus where false information is not given to a public servant, neither S. 182, Penal Code, nor this section applies to the case.[9] Similarly where an order for the disobedience of which a prosecution under S. 188, Penal Code, was launched was not promulgated by any public servant but by the Government;

[See also (1908) 7 Cri. L. Jour. 6 (7): 31 Mad. 43, *Krishna Pillai* v. *Krishna Konan*.]

(15) (1931) 1931 All. 443 (446): 53 All. 804, *Emperor* v. *Raja Kushal Pal Singh*.

(16) (1926) 1926 All. 21 (22), *Dwaraka Prasad* v. *Makund Sarup*.

(17) (1930) 1930 Lah. 873 (874), *Ram Sarup* v. *Muhammad Mehr Dil Khan*.

Note 4.

(1) (1928) 1928 All. 342 (342), *Jang Bahadur Singh* v. *Emperor*.
(1886) 8 All. 382 (383), *Queen-Empress* v. *Jugal Kishore*.
(1928) 1928 Lah. 827 (828), *Mt. Darkaa* v. *Emperor*.
(1924) 1924 Mad. 730 (730), *Public Prosecutor* v. *Mari Mudali* (Complaint by Village Munsiff).
(1916) 1916 Mad. 639 (639), *Solaimuthu Pillai* v. *Murugiah Moopan*.
(1889) 2 Weir 157 (157), *Subbuswami Rao*.
(1922) 1922 Pat. 532 (534): 1 Pat. 423, *Government Advocate, Behar and Orissa* v. *Ganga Prasad*.
(1886) 13 Cal. 270 (271), *Poonit Singh* v. *Madho Bhot*.
(1887) Rat. Un. Re. Cr. Cas. 342 (343), *Manckchand Lalchand*, In re.
(1906) 7 Cri. L. Jour. 6 (7): 31 Mad. 43, *Kristna Pillai* v. *Krishna Konan*.
(1914) 1914 Sind 19 (19): 8 S. L. R. 41, *Muso* v. *Emperor*.

(2) (1927) 1927 Rang. 61 (66): 4 Rang. 437, *Maung Pan Gaing* v. *Emperor*.

(3) (1925) 1925 Mad. 400 (400), *Muthu Goundan* v. *Emperor*.
(1935) 1935 Pat. 356 (356), *Mosafir Singh* v. *Emperor* (Though Magistrate himself was public servant concerned complaint by him is necessary and he cannot take cognizance under S. 190, cl. (*c*)).

(4) (1916) 1916 U. B. 15 (15): 2 U. B. R. 91, *Nga Kyaw Zan* v. *Nga Kyin Dan*.
(1916) 1916 Mad. 639 (639), *Solamuthu Pillai* v. *Murugia Moopan*.

(5) (1919) 1919 All. 175 (175), *Emperor* v. *Mohamed Naqi Husain*.

(6) (1929) 1929 Pat. 92 (92), *Jokhi Mian* v. *Mahmud Dafadar*.

(7) (1921) 63 Ind. Cas. 865 (866) (Rang.), *Emperor* v. *Abdullah*.

(8) *See cases cited in Foot-notes* (9) *and* (10) below.

(9) (1887) Rat. Un. Re. Cr. Cas. 315 (316), *Queen-Empress* v. *Santaram*.

it was held that the section did not apply to the case and that the Chairman of a Municipality who merely republished the order in his limits could not be said to have promulgated the order so as to require his complaint.[10]

Public Servant—Meaning of.—The term public servant has not been defined in the Code. It has, however, been defined in S. 21 of the Penal Code, which by virtue of S. 4, sub-S. (2), *ante*, applies to this Code. *See also* S. 197, *infra*.

The following have been held to be public servants in connection with the offences mentioned in this clause:—

(1) A *peon* of a Court of Justice whose duty is to execute any judicial process.[11]

(2) The *Collector* acting in management of a Khas Mahal and a *surveyor* employed by him in such department.[12]

(3) A Municipal *sanitary inspector.*[13]

The following have been held not to be public servants:—

(1) A person nominated by the Collector under S. 69 of the Bengal Tenancy Act for making a division of the crops between the landlord and the tenant.[14]

(2) A Local Board *Sircar.*[15]

(3) A Municipal water-tax collector.[16]

The public servant may also be the *presiding officer of a Court.* Thus, a District Judge to whom false information is given in respect of an insolvency proceeding pending before him, can make a complaint in his capacity as public servant.[17] In such a case the public servant though he is the presiding officer of a Court does not exercise any *quasi* judicial function but acts only as an ordinary public servant.[18]

5. **Subordination of public servants.**—The subordination of one public servant to another may arise either from express enactment or from the fact that both belong to the same department one being superior in rank to another.[1] The following have been held to be subordinate to the authority mentioned:—

(1) *Police officers* of the District including the District Superintendent of Police, have been generally held to be subordinate to the District Magistrate having regard to the provisions of S. (4) of

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(10) (1901) 24 Mad. 70 (72), *Queen-Empress v. South.*

(11) (1895) 22 Cal. 759 (761), *Sheo Progash Tewari* v. *Bhoop Narain Prasad.*

(12) (1898) 26 Cal. 158 (160), *Bajoo Singh* v. *Empress.*

(13) (1898) 21 Mad. 428 (429), *Queen-Empress* v. *Thiruvengada Mudali.*

(14) (1891) 18 Cal. 518 (519), *Chatter Lal* v. *Thacoor Pershad.*

(15) (1907) 6 Cri. L. Jour. 393 (394) (Cal.), *Additya Bhuia* v. *Kali Das De.*

(16) (1904) 1 All. L. Jour. 125 (125), *Gulab* v. *King-Emperor.*

(17) (1914) 1914 All. 397 (398): 36 All. 213, *Muhammad Fakhruddin* v. *Bhikhi Ram.*

[See also (1908) 7 Cri. L. Jour. 203 (210) (Rang.), *Nga Pyo* v. *King-Emperor.*]

(18) (1927) 1927 Oudh 326 (327), *Dore Sah* v. *Emperor.*

[See also (1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor.*]

Note 5.

(1) (1908) 8 Cri. L. Jour. 400 (401) (Mad.), *Venkatasami* v. *Narasimhayya of Nidamannur.*

(1871) 7 Mad. H. C. 58 (59), *B. Krishna Rav.*

(1868) 9 Suth. W. R. 31 (32), In re *Moulvy Abdool Lateef.*

(1869) 11 Suth. W. R. 22 (23), *Ram Golam Singh* v. *Queen.*

S. 195, Note 5.

the Police Act, XV of 1861.[2] In the cases cited below[3] it has however been held that the subordination contemplated by this section has reference to some superior officer of the *Police* and not to the District Magistrate.

(2) The *Registrar* of the Presidency Small Cause Courts acting under S. 32 of Act XV of 1882, has been held to be a public servant subordinate to the Chief Judge of that Court.[4]

(3) A *bailiff* executing a warrant issued by the Judge of the Court of Small Causes has been held to be subordinate to the Additional Judge of the Court to whom the proceedings had been transferred for disposal by the former.[5]

(4) A *process-server* in Central Provinces is subordinate to a Nazir, District Judge, or the Judicial Commissioner, but not to a Subordinate Judge or Additional Judicial Commissioner.[6]

(5) A *Commissioner* appointed by the Court to examine accounts is a public servant subordinate to the Court appointing him and the Court can make a complaint against a person refusing to take oath and answer the questions put by the commissioner, for an offence under S. 179, I.P.Code.[7]

(6) An *Election Returning Officer* is subordinate to the District Magistrate under the rules framed by the Local Government in the United Provinces.[8]

(7) A *kulkarni* in the Bombay Presidency is subordinate to a Mamlatdar or Patil.[9]

(8) A *kurkamin* is subordinate to a Thasildar.[10]

(9) A *Sub-Deputy Collector* deputed by a Sub-Divisional Officer to make a local inquiry into an objection as to the preparation of an electoral roll is subordinate to the latter officer.[11]

The following public servants have been held not to be subordinate to the authority mentioned:—

(1) *Assistant Superintendent* is not subordinate to the District Superintendent of Police.[12]

(2) A *Police Head-Constable* is not subordinate to the Sub-Inspector of Police.[13]

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(2) (1923) 1923 All. 149 (149, 150): 45 All. 135, *Chhote Lal* v. *Chhedi Lal*.
(1904) 1 Cri. L. Jour. 899 (899, 900): 27 All. 292, *Emperor* v. *Shib Singh*.
(1890) 1890 All. W. N. 167 (168), *Empress* v. *Ram Khilawan*.
(1910) 11 Cri. L. Jour. 252 (253): 1910 P. R. 6, *Shibbu* v. *Crown through Chajju*.
(1903) 6 Oudh Cas. 1 (7), *Mohkham Singh* v. *King-Emperor*.
(1905) 2 Cri. L. Jour. 171 (174): 32 Cal. 180, *Emperor* v. *Saroda Prosad Chatterjee*.
(1930) 1930 Pat. 98 (101), *Kantir Missir* v. *Emperor*.

(3) (1923) 1923 Lah. 341 (342): 4 Lah. 130, *Khazan Singh* v. *Kirpa Singh*.
(1900) 27 Cal. 452 (454), *Ramasory Lall* v. *Empress*.
(1900-1902) 1 L. B. R. 101 (104), *Crown* v. *Mi Zan*.

(4) (1903) 27 Bom. 130 (134), In re *Govardhan Das*.

(5) (1931) 1931 Lah. 530 (532), *Gulam Muhamed* v. *Emperor*.

(6) (1926) 1926 Nag. 485 (486), *Mritunjay Prasad* v. *Ram Rao*.

(7) (1927) 1927 Bom. 647 (648), *Nana Khanderao Ghadge* v. *Emperor*.

(8) (1929) 1929 All. 931 (932), *Madusudan Lal* v. *Emperor*.

(9) (1870) 7 Bom. H. C. R. Cr. 64 (66), *Reg.* v. *Malhav Ramachandra*.

(10) (1933) 1933 Oudh 281 (282), *Lachuman Singh* v. *Emperor*.

(11) (1928) 1928 Pat. 56 (57), *Biswanath Singh* v. *Emperor*.

(12) (1870) 2 N.-W. P. 287 (288), *Queen* v. *Ootum Chand*.

(13) (1928) 1928 Pat. 102 (103), In the matter of *Barhamdeo Singh* v. *Emperor*.

(3) A *Village Magistrate* is not subordinate to a Second Class Sub-Magistrate.[14]

(4) The *Police of the district* are not subordinate to a Bench of Honorary Magistrates[15] or a Joint Magistrate First Class[16] or a Second Class Magistrate.[17]

6. Complaint in cases of offences mentioned in Cl. (a).—

(1) *Offence under S. 182, Penal Code.*—Where a complaint or information lodged with the Police is found to be false but before the Police report of the investigation the complaint or information is repeated before the Court either in the form of a complaint,[1] or in the form of a petition impugning the Police investigation and asking for an inquiry by the Court which also amounts to a complaint in law,[2] a prosecution under S. 182, Penal Code, should not be launched before the complaint is judicially disposed of by the Court. After the complaint is judicially disposed of, there is no bar to a complaint by the Police for the offence of *giving false information to the Police*.[3] The High Court of Rangoon[4] has, however, held that, in such a case the complaint of the Court which disposed of the subsequent complaint is necessary. This last mentioned view is, it is submitted, not in consonance with the provisions of sub-S. (1) (*a*).

Where a person is charged by the Police for an offence under S. 182, Penal Code, and, in answer to that charge, he files what is familiarly called *Narazi* petition impugning the result of the Police investigation and asking for an inquiry into the truth of his original information to the Police, is it necessary that such petition should be disposed of and the accused person be given an opportunity to prove his case before proceeding with the trial for an offence under S. 182, Penal Code? It has been held that where the objection is taken and pressed before trial, he can be given an opportunity to prove his case and the High Court has interfered in the early stages of the trial (*i.e.*, before

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(14) (1924) 1924 Mad. 387 (388): 47 Mad. 229, *Pallikuduthan* v. *Buddu Goundan*.
(1908) 8 Cri. L. Jour. 400 (401) (Mad.), *Venkatasamy* v. *Narasimhayya*.
[See however (1881) 4 Mad. 241 (243), *Queen* v. *Periannan*.]

(15) (1895) 1895 All. W. N. 152 (152), *Queen-Empress* v. *Baldeo Prasad*.

(16) (1884) 2 Weir 156 (157), Re *Gaparazu*.

(17) (1883) 6 Mad. 146 (147): 6 Ind. Jur. 576, *Queen* v. *Velayudam Pillai*.
(1900-1902) 1 L. B. R. 101 (104), *Crown* v. *Mizan* (Police Sergeant not subordinate to Township Magistrate).

Note 6.

(1) (1883) 5 All. 387 (389), *Empress* v. *Jami*.
(1920) 1920 All. 303 (304), *Sheo Balak* v. *Emperor*.
(1928) 1928 Mad. W. N. 673 (673, 674), *Thangappa Pallavarayan* v. *Emperor*.
[See also (1915) 1915 Cal. 733 (734), *Emperor* v. *Raffi* (Order for prosecution without examining the petitioners in support of their complaint to the Court set aside by High Court).]

(2) (1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor*.
(1932) 1932 Cal. 550 (551), *Charles John* v. *Emperor*.
(1910) 11 Cri. L. Jour. 354 (355) (Cal.), *Isser* v. *Emperor*.
(1929) 1929 Pat. 92 (92), *Jokhi Mian* v. *Muhammad Dafadar*.
(1919) 1919 All. 159 (159), *Mula* v. *Emperor*.

(3) (1924) 1924 All. 187 (187): 46 All. 43, *Bakshi* v. *Emperor*.
(1932) 1932 Cal. 511 (511): 59 Cal. 334, *Abdul Hakim Khan Chaudhuri* v. *Emperor*.
[See also (1930) 1930 Oudh 414 (415), *Ganga Prasad* v. *Emperor*.]

(4) (1923) 1923 Rang. 135 (136), *Nagappan Mudaliar* v. *King-Emperor* (Following 6 L. B. R. 50).

S. 195, Notes 6—7.

the conviction) and quashed the proceedings on the ground of omission to give such opportunity.[5] But after trial and conviction for the offence under S. 182, Penal Code, the trial will not be considered to be vitiated on the ground of failure to give such an opportunity. The reason is that the Court having properly taken cognizance of the complaint under S. 182, it has jurisdiction to proceed with the trial, and the accused cannot be said to be prejudiced by such omission as he has ample opportunity to prove the truth of his information in defence.[6]

A complaint under S. 182, Penal Code, should not be made in the absence of anything to show that the information given by the accused is *false* to his *knowledge*, in other words *intentionally* false.[7] Thus, a complaint ought not to be made on the basis of statements made in a petition presented to the Court under S. 144, sub-S. (4), which the petitioner later on failed to substantiate[8] or in respect of statements made in answer to questions put by the Magistrate during an examination on oath.[9]

(2) *Offence under S.* 188, *Penal Code.*—The requirement of this section as to the necessity of a complaint in the case of an offence under S. 188, Penal Code, is not superseded or dispensed with by the provisions of S. 11 of the Prevention of Intimidation Ordinance, V of 1930, the notification under which makes the offence under S. 188, cognizable and non-bailable.[10]

A prosecution under this section should not be launched unless the necessary elements prescribed for the offence are present.[11] Thus where an order under S. 144 of the Code is *ultra vires*, no prosecution should be launched.[12]

(3) *Offence under S.* 174, *Penal Code.*—In the case cited below[13] it was held that where a commissioner appointed by the Court did not give sufficient time to the alleged offender to appear before him, the order for prosecution was improper.

7. **"Any proceeding"—Clauses (b) and (c).**—Before the amendment of 1923, a private person complaining of an offence specified in Cl. (*b*) of sub-

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(5) (1932) 1932 Cal. 287 (288), *Sheikh Abdulla* v. *Emperor.*
(1933) 1933 Cal. 532 (533): 60 Cal. 656, *Nashikanta Chatterjee* v. *Behari Kahar.*
[See also (1893) 7 C. P. L. R. 6 (7), In re *Gangaram Sonar.*]

(6) (1930) 1930 Pat. 505 (506), *Gonour Singh* v. *Emperor.*
(1931) 1931 Cal. 634 (635): 58 Cal. 1065, *Emperor* v. *Baharali Biswas.*
(1933) 1933 Cal. 532 (533): 60 Cal. 656, *Nashi Kanta Chatterji* v. *Emperor.*
(1933) 1933 Cal. 532 (533): 60 Cal. 656, *Nishi Kanta Chatterjee* v. *Behari Kahar.*
[See also (1896) 22 Bom. 596 (599, 600), *Imperatrix* v. *Jijibhai Govind.*
(1893) 15 All. 336 (337, 338), *Queen-Empress* v. *Raghu Tiwari.*]
[See however (1933) 1933 Cal. 614 (615): 55 All. 862, *Shekandarmia* v. *Emperor.*]

(7) (1919) 1919 Pat. 511 (514), *Sunder* v. *Emperor.*

(8) (1928) 1928 Pat. 574 (577), *Amir Ali* v. *Dukhan Momin.*

(9) (1910) 11 Cri. L. Jour. 537 (537) (All.), *Mattan* v. *Emperor.*

(10) (1931) 1931 Bom. 135 (137): 55 Bom. 322, *Emperor* v. *Ganesh Vasudev.*
(1931) 1931 Cal. 122 (127), *Lachimi Devi* v. *Emperor.*

(11) (1910) 11 Cri. L. Jour. 49 (50) (Cal.), *Projapat Jha* v. *Emperor.*
(1920) 1920 Cal. 520 (521), *Kumud Nath Chakravarthi* v. *Ajoo Bramanick.*
[See also (1919) 1919 Cal. 108 (109), *Nagendra Nath Biswas* v. *Rakhal Das Sinha.*]

(12) (1905) 2 Cri. L. Jour. 166 (168) (Cal.), *Prem Chand* v. *Dharmadas.*

(13) (1918) 1918 Cal. 240 (241), *George Burgh Ma Nair* v. *Campbell.*

S. (1) of this section had to obtain the sanction of the Court where such offence was committed in, or in relation to, *any proceeding* in such Court.[1-a] The Court itself could also under S. 476 of the Code, without any application by any party, make a complaint in respect of such offence when it was committed before, or brought to the notice of the Court in the course of a *judicial* proceedings before such Court.[1] S. 195, Note 7.

Under the present Code both under this section and S. 476 the complaint can only be by a Court in respect of such offence, when it is committed in or in relation to *any* proceeding before such Court. Thus the proceeding need not be a *judicial* one[2] provided it is that of a *Court*. An officer who has been appointed as a Court and has also an executive capacity, and also acts in his *executive capacity* is not a "Court" at all and this section or S. 476 does not apply to an offence committed in, or in relation to, a proceeding before him in such capacity.[3]

The following have been held to be proceedings in Court within the meaning of this section and of S. 476:—

(1) Proceedings in execution of a decree.[4]

Note 7.

(1-a) (1923) 1923 Rang. 225 (225), *Abdul Aziz* v. *Maung Tin* (It does not matter whether a proceeding was a judicial proceeding or not).

(1) (1909) 10 Cri. L. Jour. 12 (13) (Rang.), *Nga Lu Po* v. *Emperor*.
(1920) 1920 Sind 121 (121), *Shafi Mahommad* v. *Emperor*.
(1884) 1884 All. W. N. 290 (291), *Thakur Kandu* v. *Bilar*.
(1910) 11 Cri. L. Jour. 147 (147): 37 Cal. 72, *Daya Nath Thakur* v. *Emperor* (Held proceedings under S. 125 not judicial).
[See also (1917) 1917 Lah. 305 (306), *Khuda Baksh* v. *Emperor*.
(1915) 1915 All. 457 (458), *Bhole Singh* v. *Emperor*.
(1917) 1917 Low Bur. 86 (87), *Maung Ba Hla* v. *Emperor*.
(1900) 4 Cal. W. N. 366 (367), *Asamatulla* v. *The Empress*.]
District Magistrate calling for records from Subordinate Magistrate in his executive capacity.
(1901) 25 Mad. 659 (661), *Sangilia Pillai* v. *The District Magistrate of Trichinopoly*.
(1906) 3 Cri. L. Jour. 118 (119) (Mad.), In re *Subbaraya Vathiyar*.
(1884) 7 Mad. 560 (562), *The Queen-Empress* v. *Kuppu*.

(2) (1925) 1925 Pat. 330 (333): 4 Pat. 24, *Chamari Singh* v. *Public Prosecutor of Gaya*.
(1935) 1935 All. 341 (341), *Har Narain* v. *Hoshiar Singh*.
In the following cases there are however, observations tending to show that the proceeding must be a judicial one. The decisions can themselves be supported on other grounds, and the observations are merely casual.
(1934) 1934 Mad. 175 (176), *Rengaswamy Goundan* v. *Emperor* (Offence not *in relation* to any proceeding).
(1932) 1932 Mad. 290 (292): 55 Mad. 531, *Subbarayadu* v. *Gopaya* (Do.).
(1930) 1930 Cal. 671 (672), *Akhala Kulla Choudhury* v. *Emperor* (Do.).
(1923) 1923 Pat. 410 (411): 2 Pat. 257, *Jharu Lal* v. *Mahanath Madan Das* (No person acting in capacity of Court and *no proceeding* at all).
(1919) 1919 All. 79 (1) (79): 42 All. 130, *Santi Lal* v. *Emperor*.

(3) [See also (1910) 11 Cri. L. Jour. 212 (212, 213), *Elahi Bux* v. *King-Emperor*.
(1906) 3 Cri. L. Jour. 112 (114) (Cal.), *Mufat Ali Sheikh* v. *Emperor*.
(1906) 3 Cri. L. Jour. 376 (378): 29 Mad. 100, *Suryanarayana Rao and Bala Ramayya*, In re.
(1928) 1928 Lah. 759 (761), *Faqir Singh* v. *Emperor* (Proceedings arising out of an application for copies of the judgment and decree in a case, must however, be deemed to be proceedings pending in the Court which passed the decree for the purposes of Ss. 195 and 476, Criminal Procedure Code).]
See also Note 10 *to S.* 435, *ante*.

(4) (1910) 11 Cri. L. Jour. 407 (410): 37 Cal. 642, *Shaikh Bahadur* v. *Shaikh Eradatullah*.
(1911) 12 Cri. L. Jour. 21 (21) (Cal.), *Abdul Basir* v. *Panchkowre*.
(1906) 3 Cri. L. Jour. 142 (143) (Cal.), *Bhola Nath Dey* v. *Emperor*.
(1910) 10 Cri. L. Jour. 564 (566) (Cal)., *Dhakshinesewar Misra* v. *Haris Chundra*.
(1910) 11 Cri. L. Jour. 90 (94): 1910 P. R. 1, *Chanan* v. *Emperor*.
(1913) 14 Cri. L. Jour. 624 (624) (Mad.), *Ponnusamy Pillai* v. *Chokkalingam Pillai*.
(1917) 1917 Pat. 101 (102), *Barhamdeo Singh* v. *Emperor*.
(1914) 1914 Oudh 407 (408): 17 Oudh Cas. 109, *Shahamat Khan* v. *Gulab Khan*.
(1914) 1914 Nag. 40 (42), *Shiosankarpuri* v. *Emperor*.
[But see (1908) 7 Cri. L. Jour. 159 (162): 35 Cal. 133, *Kanto Ram Das* v. *Gobardan Das* (Not good law in *view of* 11 Cri. L. Jour. 407 F. B.).]
[See however (1905) 2 Cri. L. Jour. 110

S. 195, Note 7.

(2) Proceedings under S. 83 of the Transfer of Property Act, 1882.[5]

(3) Further evidence taken by a Subordinate Court in a case remitted by the appellate Court.[6]

(4) Proceedings before an arbitrator appointed in a pending suit.[7]

(5) Proceedings directing the return of the plaint for presentation to the proper Court.[8]

(6) A Magistrate acting under S. 350 of the Code.[9]

(7) A Sessions Judge making an inquiry into the conduct of the jury during the progress of a trial upon certain allegations made against the jury.[10]

Where there are no proceedings in *Court*, the provisions of Cls. (*b*) and (*c*) do not apply. Thus the clause does not apply to the offence of giving false evidence before a Police-officer[11] or the fabrication of evidence merely for the purpose of influencing a police investigation[12] where there are no proceedings in Court. But where the offence is committed in a proceeding in Court, the fact that it is brought to the notice of the Court in a subsequent stage of the proceeding or in a different proceeding does not affect the applicability of the clause to the offence. Thus, where the offence of perjury is committed at the time of passing an *ex parte* decree in a suit, the Court trying the suit after setting aside the *ex parte* decree is competent to order his prosecution.[13] Similarly where in support of an application for adjournment in a suit before the Munsif a particular statement was made by the plaintiff and after the dismissal of the application it was verified by the Munsif that the statement was false, it was held that the Munsif was competent to complain for perjury as the offence was committed in, or in relation to, the proceeding of the Court.[14]

Where the offence is committed in a proceeding in Court it is not necessary that the Court should have tried the proceedings on the merits. Thus, where the Court merely passes a decree on the statement upon oath by a referee in pursuance of the agreement of the parties to abide by his statement[15] or simply passes a decree on the basis of an award by an arbitrator,[16] it has been held that the complaint of the Court is necessary with reference to an offence committed in the proceeding in Court.

(112, 115): 32 Cal. 367, *Chadra Mookerjee* v. *King-Emperor* (Nazir delivering possession in execution—*Held* proceedings not judicial).]

(5) (1925) 1925 Pat. 330 (333): 4 Pat. 24, *Chamari Singh* v. *Public Prosecutor of Gaya.*
[See however (1895) 1895 All. W. N. 145 (146, 147), *Adhar Singh* v. *Ablakh Singh.*]

(6) (1871) 15 Suth. W. R. 64 (66), *The Queen* v. *Buktear Maifaraz.*

(7) (1931) 1931 Cal. 436 (437): 58 Cal. 215, *Ganti* v. *Harcourt.*

(8) (1929) 1929 Cal. 203 (204), *Jabhar Ali* v. *Emperor.*

(9) (1917) 1917 Cal. 310 (311), *Chandra Kishore Ray* v. *King-Emperor.*

(10) (1927) 1927 Cal. 628 (629), *Bhuban Chandra Prodhan* v. *Emperor.*

(11) (1899) 26 Cal. 786 (790), *Jagat Chandra Mozumdar* v. *Queen-Empress.*
(1880) 4 Bom. 479 (481), *Imperatrix* v. *Irbusapa.*
(1887) 11 Bom. 659 (660, 661), *Queen-Empress* v. *Ismal Walad Fataru.*
(1883) 2 Weir 162 (163), *Manikkavasagam Pillai*, In re.
(1917) 1917 Lah. 267 (268), *Ajaib Singh* v. *Emperor.*

(12) (1928) 1928 Bom. 130 (133): 52 Bom. 385, *Emperor* v. *Ismail Khadirsab.*
(1898-99) 3 Cal. W. N. 490 (494), *Sheikh Kutab Ali* v. *Empress.*

(13) (1924) 1924 Mad. 86 (87), *Arumugam Pillai*, In re.

(14) (1933) 1933 All. 318 (319, 320), *Durga Prasad* v. *Emperor.*

(15) (1927) 1927 All. 555 (557): 45 All. 792, *Narain Das* v. *Emperor.*

(16) (1911) 12 Cri. L. Jour. 93 (94): 33 All. 396, *Kamta Prasad* v. *Emperor.*

S. 195, Note 8.

8. "In relation to any proceeding".—To attract the applicability of Cl. (*b*) an offence if not alleged to be committed *in* a proceeding in Court must at least be *in relation to* the proceeding in Court. In order to appreciate properly whether and when an offence can be considered to have been committed in relation to a proceeding in Court, regard must be had to the various stages when an offence can be committed with reference to a proceeding in Court. An offence may be committed either (*a*) *prior* to a proceeding in Court or (*b*) *subsequent* to the termination of the proceeding in Court or (*c*) committed during the *pendency* of the proceeding in Court. Where an offence is committed prior to the commencement of proceedings in Court, can it be said that it is not committed in relation to the subsequent proceedings simply because the proceedings are not pending on the date of the commission of the offence? The High Court of Bombay in the cases mentioned below[1] held that proceedings in Court should be *pending* on the date of the offence and that otherwise Cl. (*b*) did not apply. But this view has not been followed even by that High Court in later decisions; the crucial date for the purpose of determining the applicability of the clause, according to these decisions, is not the date of the commission of the offence mentioned in the clause, but the *date on which the criminal Court is invited to take cognizance of the offence.*[2] Where on such date, no proceedings have been started in Court but merely *contemplated*, the clause does not apply. It cannot be said with certainty in such a case as to which is the Court in which the proceedings are contemplated, and a Court cannot be called upon to give a complaint with reference to a supposed prospective proceeding. Thus, where *A* files a complaint to a Magistrate alleging that *B* has fabricated false accounts for the purpose of filing false suits in Court but no suits are actually filed on the date of the complaint, this section does not apply.[3] The fact that subsequent to the entertainment of the complaint the accused files a suit in the Civil Court will not deprive the jurisdiction of the Criminal Court to try the complaint in accordance with law.[3-a] Where however on the date when the Criminal Court takes cognizance of a complaint, proceedings with reference to the offence disclosed therein, have been started in another Court, then Cl. (*b*) applies and the complaint of the latter Court is necessary although the proceedings in Court are subsequent to the *commission of the offence*. On such date the proceedings may be pending or disposed of in that Court and in either case the clause applies. The mere fact that the proceedings in the Court are *withdrawn* by the parties without being heard by the Court is no ground for holding that the clause does not apply.[4] Thus, where a person charges another before the police accusing him of theft and the police put up the accused for trial before the Court of Session which tries and finds the case to be false, a subsequent complaint under S. 211, Penal Code, cannot be entertained unless it is by the

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Note 8.

(1) (1921) 1921 Bom. 366 (366): 45 Bom. 668, In re *Govind Pandurung.*
(1930) 1930 Bom. 337 (339): 54 Bom. 273, *Mohiniraj Krishna Korhalkar,* In re.
(2) (1932) 1932 Bom. 185 (186, 187): 56 Bom. 213, *Indrachand Bacharaj,* In re.
(1923) 1923 Bom. 105 (106, 107), *Vasudeo Ram Chandra Joshi,* In re.
(1916) 1916 Mad. 72 (73): 39 Mad. 677, In re *Parameswara Nambudri.*
(3) (1932) 1932 Bom. 185 (187): 56 Bom. 213, In re *Indra Chand.*
(1916) 1916 Mad. 72 (73, 75): 39 Mad. 677, In re *Parameswara Nambudri.*
(3-a) (1916) 1916 Mad. 72 (73, 75): 39 Mad. 677, In re *Parameswara Nambudri.*
(4) (1932) 1932 Bom. 185 (186, 187): 56 Bom. 213, In re *Indrachand Bachraj.*
(1913) 14 Cri. L. Jour. 289 (290) (Cal.), *Abdul Majid Khan* v. *Norol Haque.*
[See also (1902) 5 Oudh Cas. 46 (47, 48), *Dina Nath* v. *King-Emperor.*]

S. 195, Note 8.

Court of Session or by the Court to which it is subordinate.[5] Similarly, a statement recorded under S. 164 of the Code,[6] or a statement made in the enquiry before a committing Magistrate[7] are all statements made in relation to the trial in the Court of Session, and therefore it is that Court that is competent to make a complaint for perjury. The complaint of the committing Magistrate was held to be not necessary in the above cases.

Where the offence itself is committed after the termination of the proceedings in Court, it cannot ordinarily be said to have been committed in relation to the previous proceeding. It is indispensable under Cl. (*b*) that the offence must have in some manner affected the proceedings in Court or designed to affect them or come to light in the course of such proceedings, and an offence committed long after the termination of the proceedings is outside the scope of the clause.[8] Thus, where a judgment-debtor's application for certifying a certain payment alleged to be made to the decree-holder but not admitted by the latter in his petition for execution, is dismissed as time-barred, it has been held that the executing Court has no jurisdiction to take notice of a receipt produced by the judgment-debtor subsequent to the dismissal of the application, and order a prosecution under Ss. 209 and 210, Penal Code.[9]

As already seen in the previous Note, an offence, if committed in a proceeding *in* Court, requires the complaint of the Court. But where the offence is committed during the pendency of the proceeding in Court but *outside* Court, it is necessary that the offence should be committed in *relation* to the proceeding in Court, for, otherwise the section does not apply. Thus, where in a trial in a Court of Session, a document is exhibited on behalf of the defence but the executant of the document is neither a party nor a witness in the case, nor is there anything to suggest that he intended to use that document in Court, it has been held that the section does not apply and the Court cannot order his prosecution for perjury or forgery.[10]

An offence committed in the trial Court is committed in relation to the proceeding of the Appellate Court.[11] Even otherwise the section authorises the Appellate Court as the Court to which the trial Court is subordinate to make a complaint. As to when the Appellate Court can make a complaint, *see* S. 476-A.

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(5) (1927) 1927 Cal. 478 (479), *Nazir Ahmed* v. *Emperor.*
(1924) 1924 Rang. 211 (211), *Ani* v. *Ah Yone.*

(6) (1934) 1934 Lah. 981 (982), *Braham Dutt* v. *Emperor.*
(1933) 1933 Mad. 767 (768), *Krishnamachari* v. *Emperor.*
(1933) 1933 Mad. W. N. 896 (899), *Ponnusamy Naidu*, In re.
(1933) 1933 Mad. 125 (126), *Maromma* v. *Emperor.*
[See also (1912) 13 Cri. L. Jour. 751 (752) (Bom.), In re *Mahadev Yadneshwar Joshi.*]

(7) (1932) 1932 Mad. 494 (494, 495): 55 Mad. 536, *Athi Ambalagaran* v. *Emperor.*
(1931) 1931 Mad. 778 (779), *Ganesh Mull Marvadi* v. *Emperor.*
(1918) 1918 Mad. 1200 (1201), *Narayana Nadan* v. *Palaniappa Nadan.*
(1877) 2 Weir 160 (160), *High Court Proceedings, 17th Jan.* 1877, *No.* 120.
(1917) 1917 Lah. 303 (303), *Attar Singh* v. *Emperor.*
[See however (1869) 3 Beng. L. R. A. Cri. 35 (36), *Queen* v. *Hardayal.*]

(8) (1932) 1932 Mad. 290 (291): 55 Mad. 531, *Subbarayadu* v. *Gopayya.*

(9) (1931) 1931 Lah. 105 (106), *Luchman Singh* v. *Emperor.*

(10) (1924) 1924 Cal. 986 (987), *Baharuddy Sikdar* v. *Emperor.*

(11) (1931) 1931 All. 706 (707): 53 All. 799, *Ketki Kunwar* v. *Sheo Narayan Jafa.*
(1913) 14 Cri. L. Jour. 47 (47): 35 All. 90, *Bhadesar Tewari* v. *Kamta Prasad.*
(1913) 14 Cri. L. Jour. 32 (32) (Cal.), *Lachman Ojah* v. *Anup Rai.*
(1916) 1916 Pat. 97 (98), *Rajkumar Singh* v. *King-Emperor.*
(1919) 1919 Pat. 189 (191), *Rup Narain Singh* v. *Emperor.*
(1881) 2 Weir 160 (161), *High Court Proceedings, 13th April*, 1881, *No.* 789.
[See however (1919) 1919 Mad. 1132 (1134): 41 Mad. 787, *Kompella Anantaramayya* v. *Chikkatla Tukkadu.*]

S. 195, Note 9.

9. Offence under S. 211, Penal Code, when committed in relation to proceeding in Court.—An offence under S. 211, Penal Code, consists of laying a false charge with the police as well as of instituting proceedings in Court with the necessary intention mentioned in the section. But sub-S. (1) Cl. (*b*) applies only where the offence is committed in or in relation to a proceeding *in Court*.

(1) *Where there is only a charge of complaint to the police but there are no further proceedings in Court, then Cl. (b) does not apply.*[1]—The police can in such case complain under S. 211, Penal Code.[2] The fact that subsequent to the institution of the prosecution by the police, the accused repeats his charge to the police before a Magistrate, cannot make the provisions of this section applicable so as to require the complaint of the Magistrate. The reason is that the Court having properly taken cognizance of the complaint by the police under S. 211, Penal Code, nothing that happens subsequently can deprive the Court of its jurisdiction to proceed with the complaint in accordance with law.[3] The contrary view which appears to have been taken by the High Court of Calcutta[4] is, it is submitted, not correct in principle.

Where a person charges several persons before the police, but the police put up for trial before the Court only some of them, is the complaint of the Court necessary for prosecuting the complainants under section 211, Penal Code, in respect of the other persons not sent up for trial? Upon this point there is a conflict of judicial opinion. In *Hardwar Pal* v. *Emperor*[5] the High Court of Allahabad has held that the *offence* is committed in relation to the proceeding in Court although all the offenders concerned in the offence are not parties to such proceeding and

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Note 9.

(1) (1930) 1930 All. 818 (819), *Emperor* v. *Gaya Teli.*
(1907) 6 Cri. L. Jour. 396 (397): 30 All. 52, *Tabarak Zaman Khan* v. *King-Emperor.*
(1912) 13 Cri. L. Jour. 855 (855) (All.), *Barakatullah* v. *Sadho Kalwar.*
(1876) 1 All. 497 (498), *Empress of India* v. *Abdul Hasan.*
(1885) 1885 All. W. N. 95 (95, 96), *Jai Narain* v. *Ram Krishna.*
(1908) 7 Cri. L. Jour. 340 (341) (Cal.), *Dharmadas Kawar* v. *Emperor.*
(1910) 11 Cri. L. Jour. 37 (39): 37 Cal. 250, *Jadu Nandan Singh* v. *Emperor.*
(1887) 14 Cal. 633 (635), *Queen-Empress* v. *Karim Buksh.*
(1880) 5 Cal. 184 (185), *Bhokteram* v. *Heera Kolita.*
(1880) 5 Cal. 281 (282), *Ashrof Ali* v. *Empress.*
(1881) 6 Cal. 582 (584), *Empress* v. *Salik Roy.*
(1875) 24 Suth. W. R. Cr. 41 (42, 43), *The Government of Bengal* v. *Gokul Chunder Chowdhry.*
Colm. Dig. Cri. XXVIII of 1875, *Police* v. *Narayan Guzarati.*
(1905) 2 Cri. L. Jour. 66 (69): 1905 P. R. 12, *Karim Baksh* v. *King-Emperor.*
(1882) 1882 Pun. Re. No. 14, p. 17 (18), *Todur Mal* v. *Mussammat Bholi.*
(1870) 1870 Pun. Re. No. Cri. 16, p. 30 (31) (F. B.), *Muthra* v. *Roora.*
(1928) 1928 Nag. 17 (19): 23 Nag. L. R. 136, *Bholu* v. *Punaji.*
(1908) 8 Cri. L. Jour. 349 (350): 4 Nag L. R. 136, *Emperor* v. *Ghansram.*
(1897) 1 Weir 120 (120), *The Public Prosecutor* v. *Venkata Reddi.*
(1917) 1917 L. B. 65 (66): 8 L. B. R. 534, *Emperor* v. *Miwa.*
(1934) 1934 Rang. 40 (41), *U Sein Ywet* v. *Maung Gyi.*
(2) (1930) 1930 Pat. 98 (102), *Kantir Missir* v. *Emperor.*
(3) (1928) 1928 Bom. 22 (23), *Ukha Mahadu* v. *Emperor.*
(1930) 1930 Pat. 30 (32), *Paramanand Brahmachary* v. *Emperor.*
(1930) 1930 Pat. 98 (102), *Kantir Missir* v. *Emperor.*
(1934) 1934 Pat. 573 (574): 13 Pat. 789, *Daroga Mahton* v. *Emperor.*
(1932) 1932 Pat. 152 (154): 11 Pat. 155, *Subhag Ahir* v. *Emperor.*
(1934) 1934 Rang. 21 (23), *Nga Ba Shein* v. *Emperor.*
(4) (1927) 1927 Cal. 95 (96): 53 Cal. 824, *Sheikh Samir* v. *Saji Dar Rahman.*
(5) (1912) 13 Cri. L. Jour. 702 (703): 34 All. 522, *Hardwar Pal* v. *King-Emperor.*

S. 195, Note 9.

therefore the complaint of the Court trying the offence is necessary. This view has however been doubted in a later decision of the same High Court.[6] A Full Bench of the High Court of Madras,[7] and the High Court of Lahore,[8] have, on the other hand, held that the complaint of the Court is not necessary in such a case. The reasoning advanced for the latter view is that the fact that the trial is the result of the complaint does not *ipso facto* bring all matters mentioned in it in relation to the charge tried at the trial.

(2) *Where a complaint preferred to the police is investigated and brought to the notice of the Magistrate by the police who report it to be false, under S. 173 of the Code, Cl. (b) does not apply.*[9] —Where the police find on investigation that an information or complaint made to it is false and bring it to the notice of the Magistrate, who thereupon orders the police to stop further investigation,[10] or to remove the case from file,[11] or, makes an enquiry into the truth of the police-report either himself or through another Magistrate[12] it has been held that it is not necessary that the complaint under S. 211, need be filed only by the Magistrate under Cl. (*b*). The reason is that it cannot be said in such a case that complainant intended to commit or has committed the offence in relation to any proceeding in Court.

In the case cited below[13] the High Court of Patna has held that where the Magistrate takes cognizance of the offence (in respect of which a complaint was preferred to the police) upon a police-report he should not order the prosecution of the complainant under S. 211, Penal Code, without giving him an opportunity to substantiate the charge. But an objection on the ground of failure to give such an opportunity should be taken before trial; after trial, the *conviction* will not be considered to be vitiated on that ground.[14] The reason is the accused person has ample opportunity of proving his original charge in his defence.

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(6) (1924) 1924 All. 779 (780): 46 All. 906, *Kashi Ram* v. *King-Emperor.*

(7) (1932) 1932 Mad. 363 (368): 55 Mad. 611, *Registrar, High Court, Madras* v. *Kodangi.*

(8) (1928) 1928 Lah. 259 (262): 9 Lah. 403, *Muhammada* v. *Emperor.*
[See however (1917) 1917 Lah. 338 (341): 1917 P. R. 19, *Emperor* v. *Gurditta.*]

(9) (1934) 1934 Mad. 175 (176), *Rengaswamy Goundan* v. *Emperor.*
(1884) 7 Mad. 292 (294), *Ramasamy* v. *The Queen-Empress.*
(1881) 3 All. 322 (327), *Empress of India* v. *Baldeo.*
(1900) 4 Cal. W. N. 351 (352), *Mouli Durzi* v. *Nauranji.*

(10) (1934) 1934 Mad. 175 (176), *Rengaswamy Goundan* v. *Emperor.*

(11) (1912) 13 Cri. L. Jour. 480 (480) (Mad.), *Bhimaraja Venkateswarlu* v. *Moova Bapulu.*
(1912) 13 Cri. L. Jour. 904 (905) (Bom.); *Emperor* v. *Chandabhai Amar Sang* (Magistrate granting *B Summary. Held,* order administrative and not judicial).

(12) (1917) 1917 Cal. 593 (594): 43 Cal. 1152, *Tayab Ullah* v. *Emperor.*
(1906) 3 Cri. L. Jour. 125 (126): 33 Cal. 30, *Habut Khan* v. *Emperor.*
(1908) 7 Cri. L. Jour. 338 (339) (Cal.), *Abdul Rahman* v. *Emperor.*
(1913) 14 Cri. L. Jour. 387 (Cal.), *Sarba Mahton* v. *Emperor.*
(1924) 1924 Pat. 789 (790), *Nand Kishore Lal* v. *Emperor* (Following 1921 Pat. 302 and 43 Cal. 1152).

(13) (1925) 1925 Pat. 708 (710), *Jadu Dhanuk* v. *Emperor.*

(14) (1929) 1929 Pat. 650 (651): 8 Pat. 734, *Emperor* v. *Sobarati Sain.*
(1930) 1930 Pat. 622 (623): 9 Pat. 126, *Suchit Raut* v. *Emperor.*
(1934) 1934 Rang. 21 (24), *Nga Ba Shein* v. *Emperor.*

(3) *Where a person complains to the police but also repeats the complaint in Court before the police take action under S. 211, Penal Code, Cl. (b) applies.*[15]—The repetition of complaint to the Court may be in the form of an original complaint or in the shape of a petition impugning the result of the police investigation and asking for an inquiry, which in law amounts to a complaint. In either case Cl. (*b*) applies and a prosecution under S. 211, cannot be instituted without the complaint of the Court.[16] No complaint should, however, be made without disposing of the complaint of the person charged, in accordance with law[17] and giving him an opportunity to substantiate the complaint.[18]

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Where a complaint made to the police is repeated before the Court, then, according to the High Court of Allahabad[19] and the Chief Court of Rangoon,[20] there is no bar to a prosecution for giving false information to the police under S. 182, Penal Code or for laying a false charge before the police. The High Court of Madras[21], and Bombay,[22] have, however, held that in such a case the prosecution should be for the graver offence under S. 211, Penal Code, and that complaint under S. 182 alone

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(15) (1917) 1917 Cal. 596 (597): 44 Cal. 650, *Brown, F. A.* v. *Ananda Lal Mullick.*
(1917) 1917 Cal. 593 (594): 43 Cal. 1152, *Tayabullah* v. *Emperor.*
(1927) 1927 Mad. 851 (852), *Murugan* v. *Gutha Rami Naidu.*
(1925) 1925 Pat. 483 (484): 4 Pat. 323, *Sheikh Muhammad Yassin* v. *Emperor.*
(1916) 1916 Pat. 103 (104), *Lal Behary Singh* v. *Emperor.*
(1925) 1925 Pat. 717 (718, 719): 5 Pat. 33, *Daroga Gope* v. *Emperor.*
(1894) Rat. 704 (705), *Queen-Empress* v. *Ganpat.*
(1928) 1928 Rang. 254 (255): 6 Rang. 578, *Rambrose* v. *Emperor.*
(1912) 13 Cri. L. Jour. 565 (566): 6 L. B. R. 50, *Po Hlaing* v. *Ba E.*
(1916) 1916 U. B. 18 (19): 2 U. B. R. 95, *Jaggu* v. *Pala.*
(1929) 1929 Sind 115 (117): 23 S.L.R. 225, *Ramchand* v. *Emperor.*
(1929) 1929 Sind 132 (134, 135): 23 S. L. R. 285, *Chuhermal Nihalmal* v. *Emperor.*
[See however (1912) 13 Cri. L. Jour. 576 (577): 1 U. B. R. 134, *Mi Ngwe* v. *Mi Chit.*
(1916) 1916 Cal. 867 (869): 43 Cal. 173, *Gangadhar Pradhan* v. *Emperor* (In such case cognizance can be taken on Police report).]

(16) (1925) 1925 Pat. 483 (484): 4 Pat. 323, *Sheikh Muhammad Yassin* v. *Emperor.*
(1932) 1932 Pat. 152 (154): 11 Pat. 155, *Subhah Ahir* v. *Emperor.*
(1917) 1917 Cal. 593 (594): 43 Cal. 1152, *Tayab Ullah* v. *Emperor.*
(1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor.*

(17) (1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor.*
(1887) 14 Cal. 707 (711, 712, 716, 717, 721) (F.B.), *Queen-Empress* v. *Sham Lall.*
(1901) 5 Cal. W. N. 254 (255), *Sahiram Agarwalla* v. *Jibun Kamar.*
(1880) 7 Cal. L. R. 382 (384), In the matter of *Russick Lall Mullick.*
(1871) 16 Suth. W. R. Cr. 67 (67), In re *Bishoo Barik.*
(1905) 2 Cri. L. Jour. 615 (618): 33 Cal. 1, *Johendra Lal Mukerjee* v. *Babu Ballabar Hor.*
(1919) 1919 Pat. 530 (531), *Emperor* v. *Makund Patel.*
(1916) 1916 Cal. 867 (869): 43 Cal. 173, *Gangadhar Pradhan* v. *Emperor* (However it is a matter of discretion and not a statutory provision).

(18) (1887) 14 Cal. 707 (711, 716), *Queen-Empress* v. *Sham Lall.*
(1881) 6 Cal. 584 (585), *Empress* v. *Shibo Behara.*
(1902) 2 Weir 167 (168), *Velu Nair* v. *Gnana Prakasam Pillai.*

(19) (1928) 1928 All. 765 (766), *Prag Datt Tiwari* v. *Emperor.*
(1924) 1924 All. 779 (780, 781): 46 All. 906, *Kashi Ram* v. *Emperor.*

(20) (1912) 13 Cri. L. Jour. 578 (579) (Rang.), *Emperor* v. *Sheikh Ahmad.*
(1931) 1931 Rang. 12 (14): 8 Rang. 499, *Ma Paw* v. *Emperor* (*Held*, conviction under S. 182, I. P. Code not vitiated).
(1921) 1921 Low. Bur. 43 (43, 44): 11 L. B. R. 43, *Ma Saw Yin* v. *King-Emperor.*
(1918) 1918 L. B. 7 (7), *Gnanakannu* v. *Veeravagu.*
[But see (1928) 1928 Rang. 254 (255): 6 Rang. 578, *Rambrose* v. *Emperor.*
(1928) 1928 Rang. 243 (243), *Maung Pe* v. *Maung Chaw.*
(1912) 13 Cri. L. Jour. 576 (577): 1 U. B. R. 134, *Mi Ngwe* v. *Mi Chit.*

(21) (1931) 1931 Mad. 702 (703, 704): 54 Mad. 1018, *Dholliah* v. *Sub-Inspector of Police, Wellington Station.*

(22) (1913) 14 Cri. L. Jour. 491 (493) (Bom.),

S. 195, Note 9.

cannot be taken cognizance of as it amounts to an evasion of the provisions of Cl. (*b*) of this section.

(4) *Where a complaint is made to the Court, Cl. (b) applies although the complaint is subsequently investigated by the police.*[23]— Where there is a complaint preferred to the Court, an order for prosecution under S. 211, Penal Code, should not be passed without disposing of the complaint in accordance with law.[24] Thus where a Magistrate dismissed the complaint without examining the complainant and then ordered his prosecution for making a false complaint, it was held that the order for prosecution was illegal.[25] The Court should not also dismiss the complaint merely on the basis of the police report of investigation without giving the complainant an opportunity to substantiate his complaint,[26] especially where he impugns the police investigation.[27] But the Court is not bound to examine all the

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(23) (1926) 1926 All. 613 (614), *Ghaslwan Singh* v. *Emperor*.
[See also (1935) 1935 Rang. 163 (164), *Swee Ing* v. *Koon Han* (Provisions of section should not be evaded by treating case as one of defamation).

(24) (1899) 3 Cal. W. N. 758 (759, 760), *Gunamony Sapui* v. *Queen-Empress*.
(1906) 4 Cri. L. Jour. 68 (69) (Cal.), *Gate Mandal* v. *Emperor*.
(1896-97) 1 Cal. W. N. 452 (453), *Mukunda Behari* v. *Bhikari Charan*.
(1898-99) 3 Cal. W. N. 33 (34, 35), *Putiram Ruidas* v. *Mahomed Kasim*.
(1926) 24 Cal. W. N. c, *Taranath De* v. *King-Emperor*.
(1881) 7 Cal. 208 (209, 212), *Gyan Chunder* v. *Protap Chunder*.
(1900) 27 Cal. 921 (924, 925), *Mahadeo Singh* v. *Queen-Empress*.
(1871) 16 Suth. W. R. Cr. 67 (67), In re *Bishoo Barik*.
(1912) 13 Cri. L. Jour. 482 (483): 40 Cal. 41, *Maniruddin Sarkar* v. *Abdul Rauf*.
(1926) 1926 Bom. 284 (285, 286), *Pampappa Ballalrao Desai*, In re.
(1910) 11 Cri. L. Jour. 338 (338) (Bom.), In re *Rachappa Thippana*.
(1886) 1886 Pun. Re. No. 28, Cr. p. 61 (68), *Manga Ram* v. *Empress*.
(1909) 9 Cri. L. Jour. 152 (154) (Lah.), *Jain-Ul-Abdin* v. *Nawab Din*.
(1862) 1 Mad. H. C. 30 (31), *Queen* v. *Subbanna Goundan*.
(1919) 1919 Pat. 495 (495), *Narain Singh* v. *Emperor*.
(1910) 11 Cri. L. Jour. 199 (200): 3 Sind L. R. 189, *Crown* v. *Topan Chatomal*.
(1900) 1900 All. W. N. 189 (190), *Queen-Empress* v. *Jettu Mull*.
(1932) 1932 Sind 7 (8): 25 S. L. R. 341, *Abdul Jabar* v. *Emperor*.
(1907) 6 Cri. L. Jour. 340 (341) (All.), *Emperor* v. *Sheo Ghulam*.

(25) (1924) 1924 Bom. 321 (321): 48 Bom. 360, In re *Ningappa Rayappa*.
(1882) 8 Cal. 435 (438), *Girdhari Mondal* v. *Uchit Tha*.
(1879) 4 Cal. L. R. 134 (136), In the matter of *Biyogi Bhagut*.
(1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Aly Muhammad* v. *Emperor*.
(1887) 1 Weir 188 (188), In re *Gubala Rami Reddi*.
(1924) 1924 Nag. 115 (115), *Mahadu* v. *Emperor*.
(1901) 4 Oudh Cas. 127 (132), *Ram Sarup* v. *King-Emperor*.
(1926) 1926 Pat. 400 (400): 5 Pat. 447, *Bengali Gope* v. *King-Emperor*.

(26) (1901) 5 Cal. W. N. 106 (107, 108), *Lalji Gope* v. *Gridhari Chowdury*.
(1881) 6 Cal. 496 (498), *The Government* v. *Karimdad*.
(1881) 7 Cal. 87 (88), *Empress* v. *Girish Chunder Nundi*.
(1882) 8 Cal. 435 (438, 439), *Giridhari Mundul* v. *Uchit Jha*.
(1881) 8 Cal. L. R. 289 (290, 291), In the matter of *Ghuckrodhur Potti*.
(1878) 2 Cal. L. R. 389 (390), In the matter of *Gangoo Singh*.
(1876) 25 Suth. W. R. Cr. 10 (10), *Syed Nissar Hossein* v. *Ramgolam Singh*.
(1882) 5 All. 36 (38, 39), *Empress of India* v. *Radha Kishen*.
(1886) 8 All. 38 (40), *Queen-Empress* v. *Ganga Ram*.
(1907) 6 Cri. L. Jour. 42 (42): 29 All. 587, *Emperor* v. *Tula*.
(1920) 1920 All. 125 (125), *Mevalal* v. *Emperor*.
(1887) 10 Mad. 232 (235, 236) (F.B.), *Queen-Empress* v. *Sheikh Behari*.
(1884) 7 Mad. 189 (190), *The Queen* v. *Gendava Chandramma*.
(1927) 1927 Pat. 402 (403), *Tenhu Dhanuk* v. *Emperor*.
(1920) 1920 Pat. 720 (720), *Gopal Singh* v. *Emperor*.
(1893-1900) 1893-1900 L. B. R. 377 (377), *Queen-Empress* v. *Sit Law*.
(1893-1900) 1893-1900 L. B. R. 542 (542), *Ma Saw Kin* v. *Maung Tun Lin*.
S. C. Oudh 94, *Queen* v. *Abbas Ali*.
[See also (1903) 30 Cal. 415 (417), *Jagobundhoo Karmakar* v. *Emperor*.
(1927) 1927 Cal. 175 (176), *Akshoy Kumar Chakrabury* v. *King-Emperor*.]
[But see (1882) 1882 All. W. N. 1 (1), *Queen-Empress* v. *Goli* (Fact that accused had no opportunity to substantiate complaint is no bar to his commitment for trial).]

(27) (1899) 4 Cal. W. N. 305 (306), *Budhanath* v. *The Empress*.
(1878) 2 Cal. L. R. 315 (317), In the matter of *Choolahia Tule*.
(1871) 16 Suth. W. R. 44 (44), *The Queen* v. *Gour Mohun Singh*.

witnesses of the complainant; it is competent to dismiss the complaint under S. 203 of the Code.[28]

S. 195, Notes 9—12.

10. Offences under Cl. (b)—Whether the offender should be a party to the proceeding in Court.—Unlike Cl. (*c*) of sub-S. (1), Cl. (*b*) does not require that the offender should be a *party* to the proceeding in Court. Provided the offence is committed in or in relation to a proceeding in Court, Cl. (*b*) will apply although the offender is not himself a party to the proceeding. Thus a complaint of the Court is necessary for the prosecution of a person who is alleged to have caused or instigated the filing of a false complaint in Court.[1]

11. Offences committed by a party to a proceeding in respect of a document produced or given in evidence—sub-S. (1), Cl. (c).—With regard to the offences mentioned in Cl. (*c*) of sub-S. (1), the following conditions are necessary for the applicability of the section:—

(1) the offence mentioned should be committed by a *party* to the proceeding in Court;

(2) such offence should be in respect of a document *produced or given in evidence* in such proceeding.

It is essential that both the conditions should be satisfied. Thus where a document alleged to be forged is produced into Court, but the offender is not a party to the proceeding in Court, the provisions of the section do not apply.[1]

See also Note 12, *infra*.

12. "By a party to any proceeding in Court".—As has been seen in Note 11, *supra*, where any of the offences mentioned in Cl. (*c*) is committed by a person who is not a *party* to a proceeding in Court, the section does not apply and the complaint of the Court is not necessary for taking cognizance of the offence.[1] Thus where the offence is committed by a *witness*,[2] or the recog-

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(1869) 3 Beng. L. R. App. 151 (152), *S. T. Shanto Teorni* v. *Mrs. Belilias*.
(1920) 1920 All. 125 (125), *Mewa Lal* v. *Emperor*.
(1928) 1928 Notes 16 (*f*), *Ramdhari Gope* v. *Emperor* (Following 1925 Pat. 483).
(1929) 1929 Pat. 92 (92), *Jokhi Mian* v. *Mahomed Dafedar*.
[See (1882) 4 All. 182 (183), *Empress of India* v. *Bhawani Prasad* (Omission to give opportunity does not vitiate conviction).]

(28) (1930) 1930 Cal. 515 (518), *Fazlar Rahman* v. *Emperor*.
(1905) 2 Cal. L. Jour. 65 (*n*), *Ambica Roy* v. *Emperor*.
(1901-02) 6 Cal. W. N. 295 (296, 297), *Surja Hariani* v. *King-Emperor*.
(1907) 6 Cri. L. Jour. 258 (259) (Lah.), *Chiragh-ud-din* v. *Emperor*.
(1915) 1915 Mad. 229 (233): 38 Mad. 1044, In re *Narayana Nadar*.
(1884) 7 Mad. 292 (294), *Ramasamy* v. *Queen-Empress*.
(1907) 5 Cri. L. Jour. 491 (492): 1907 P. R. 2, *Chiragh-ud-din* v. *Emperor*.
(1919) 1919 Pat. 530 (531), *Emperor* v. *Makund Patel*.
[See also (1931) 1931 Pat. 302 (303), *Mahabir Baitha* v. *Emperor*.]

Note 10.

(1) (1925) 1925 Rang. 321 (321): 3 Rang. 303 (F.B.), *Emperor* v. *Syed Khan*.
(1924) 1924 Rang. 369 (370), *P. N. S. M. Syed Khan* v. *P. K. C. Nagoor*.
(1912) 13 Cri. L. Jour. 527 (528) (Bom.), In re *Khanderao Yeshwant*.
(1930) 1930 Cal. 671 (672), *Akhla Kulla Chaudhury* v. *Emperor*.
(1930) 1930 Cal. 515 (520), *Fazlar Rahman* v. *Emperor*.
(1916) 1916 Pat. 103 (104), *Lal Behari Singh* v. *Emperor*.
[See however (1898) 2 Cal. W. N. cliv (Notes), In re *Shama Churn Sen* v. *Abinash Chandra Sen*.]

Note 11.

(1) (1917) 1917 All. 354 (354), *Misri Lal* v. *Sham Sundar Lal*.

Note 12.

(1) (1914) 1914 Mad. 622 (623), *Sessions Judge of Cuddapah* v. *Obalesu*.
(1907) 6 Cri. L. Jour. 131 (132): 30 Mad. 226, *Anna Ayyar* v. *Emperor*.
(1902) 25 Mad. 671 (672), *John Martin Sequeira* v. *Lujabai*.
(1915) 1915 Mad. 1033 (1033): 40 Mad. 100, In re *Kalappu Ramalingam*.
(1909) 10 Cri. L. Jour. 497 (498): 32 All. 74, *Ghansham Singh* v. *Emperor*.
(1920) 1920 Lah. 89 (90), *Nanak Chand* v. *Crown*.
(1935) 1935 Nag. 190 (191), *Emperor* v. *Krishnarao*.

(2) (1917) 1917 Lah. 333 (334): 1917 P. R.

S. 195. Note 12.

nised agent of the party as for instance the *pleader* of the party,[3] or by a *receiver* appointed by the Court,[4] the provisions of the section do not apply. Similarly, where the offender is not a party to the proceeding but *abets* the commission of the offence by the party[5] as for instance by being an *attestor* or *writer* of a document alleged to be forged,[6] no complaint of the Court is necessary.

Where the offence mentioned in Cl. (*c*) is committed by several persons but only one of them is a party to the proceeding in Court, is a complaint of the Court necessary for taking cognizance of the offence against the other offenders who are not parties to the proceeding? The answer to this question depends primarily upon the construction to be placed upon the term '*offence*' in sub-S. (1) (*c*) whether it denotes the transaction of the offence as a whole so that the Court is debarred from taking cognizance of the transaction including the shares taken in it by non-parties as well as parties, or whether it refers only to the share taken in the transaction by the party so that the power to proceed against non-parties is not affected by the section. The High Court of Bombay[7] has adopted the former construction, and held that it is the cognizance of the *offence as a whole* and not a particular offender's offence that is prohibited by the section. There is however a consensus of judicial opinion practically among all the other High Courts[8] favouring the latter construction; and they have held that there is no bar to the Court taking cognizance of the offence against non-parties otherwise than in the matter prescribed by this section.

It has been held by the High Court of Allahabad[9] that in order that this clause may apply, the offence should have been committed by a *party as such* to the proceeding, in other words that the section does not apply where the offence has been committed *prior* to the offender becoming a party to the proceeding

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10, *Emperor* v. *Jiwan Mal*.
(1894) 16 All. 80 (83), In the matter of the petition of *Mathura Das*.
(1893) 18 Bom. 581 (585), *Dobji* v. *Queen*.
(1922) 1922 Lah. 401 (401), *Bhaj Singh* v. *Emperor*.
(1929) 1929 Cal. 539 (541), *Ambar Ali* v. *Emperor*.
(1929) 1929 Lah. 125 (126), *Ganda Singh Kochar* v. *Emperor*.
(1921) 1921 Sind 48 (49): 15 S. L. R. 149, *Bassarmal Awatmal* v. *Emperor*.
(1917) 1917 Cal. 35 (35), *Digambar Chakrabarti* v. *Ram Taran Mitter*.
(1881) 3 Mad. 400 (401), *Eadara Virana* v. *Queen*.

(3) (1898) 22 Bom. 317 (320), In the matter of the petition of *Ranchhoddas Nagardas*.
(1911) 12 Cri. L. Jour. 87 (88) (Rang.), *Fatima Bee Bee* v. *Raman Chetty*.
(1929) 1929 Lah. 125 (126), *Ganda Singh* v. *Emperor*.

(4) (1934) 1934 Bom. 306 (306), *Lukmanji* v. *Valibhai*.

(5) (1928) 1928 Lah. 787 (791): 10 Lah. 442, *Fakir Singh* v. *Emperor*.
(1934) 1934 Sind 78 (78), *Assudomal Ramanmal* v. *Isardas Kishnomal*.

(6) (1934) 1934 Mad. 316 (317): 57 Mad. 682, *Tulasi Ammal* v. *Dhanalakshimi Ammal*.

(7) (1910) 11 Cri. L. Jour. 368 (369, 370) (Bom.), In re *Narayan Dhonddev Risbud*.

(8) (1928) 1928 All. 21 (22), *Sahabbir Hasan* v. *Emperor*.
(1917) 1917 Cal. 121 (122), *Girdhari Lal Serowgee* v. *King-Emperor*.
(1911) 12 Cri. L. Jour. 101 (101) (Cal.), *Debilal* v. *Dhajadhari Ghosami*.
(1928) 1928 Lah. 787 (791): 10 Lah. 442, *Fakir Singh* v. *Emperor*.
(1929) 1929 Lah. 785 (786), *Bishambardas* v. *Emperor*.
(1929) 1929 Mad. 115 (116, 117), *Ponnusamy Udayar* v. *Emperor*.
(1907) 30 Mad. 226 (227), *Anna Ayyar* v. *Emperor*.
(1929) 1929 Mad. 21 (25), *Perianna Muthirian* v. *Vengu Iyer*.
(1925) 1925 Rang. 28 (28): 2 Rang. 374, *Guruswamy* v. *D. K. S. Ebrahim*.
(1925) 1925 Rang. 195 (196): 3 Rang. 48, *Shew Phwe* v. *Me Hmoke*.
(1925) 1925 Rang. 296 (298, 299): 3 Rang. 95, *Abdul Rahman* v. *Emperor*.
(1934) 1934 Sind 78 (78), *Assudomal Ramanmal* v. *Isardas Kishnomal*.

(9) (1931) 1931 All. 443 (447) (S.B.), *Emperor* v. *Koshal Pal Singh*.
(1912) 13 Cri. L. Jour. 863 (864): 34 All. 654, *Lalta Prasad* v. *King-Emperor*.
(1916) 1916 All. 299 (302): 38 All. 169, *Bhawani Das* v. *Emperor*.
[But see (1926) 1926 All. 30 (31, 32): 48 All. 60, *Kanhaiya Lal* v. *Bhagwan Das*.]

in Court. The High Court of Bombay[10] has also held that Cl. (*c*) does not apply to a case where there is an user of a forged document outside Court prior to its production in Court. The High Courts of Calcutta,[11] Lahore,[12] Madras,[13] Rangoon[14] and the Judicial Commissioner's Court of Sind[15] have all, on the other hand, taken a contrary view and held that the clause applies also to a case where the commission of the offence is anterior to the offender becoming a party to a proceeding in Court. According to the last mentioned view the proper test to be applied for the purpose of determining the applicability of the clause is to see whether the offender is or has been a party to a proceeding in any Court not *on the date of the commission of the offence but on the date when the Criminal Court is invited to take cognizance of the offence*. **S. 195, Note 1**

The foregoing discussion leads to the further question as to whether a complaint of the Court is necessary where the offence has been committed *subsequent to the termination of the proceedings in Court* in which the offender has been a party. It has been held that the clause does not apply to such a case.[16] The reason is that the offence committed after the termination of the proceedings cannot be considered to have, in any manner, affected the prior proceedings or in any way designed to affect them or come to light in the course of the proceedings, and this clause read with S. 476, shows that the Court has no power to make a complaint unless the offence is committed *in or in relation to a proceeding in Court*. Thus where a document which is in the custody of the Court is alleged to be forged after the termination of the proceedings in which it was filed, it has been held that a complaint can neither be given nor is necessary. The fact that the document has been in the custody of the Court merely imposes upon the presiding officer as the *executive* head of his establishment certain responsibilities which are different from that of a Court acting judicially.[17]

Party to the proceeding—Meaning of.—A *complainant* in a criminal case being a prosecutor has been held to be a party to the proceeding in Court, and a complaint of the Court disposing of the case is necessary for prosecuting him for the offence of forgery under S. 471, I.P.Code.[18] A *claimant*, who files a claim in insolvency before the Official Assignee is a party to the insolvency proceedings, and the complaint of the Insolvency *Court* is necessary for taking cognizance of any of the offences referred to in the section.[19] A complaint by the Official Assignee is not enough.[20]

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(10) (1902) 4 Bom. L. R. 268 (270), *Noor Muhammad* v. *Kaikhosuru*.

(11) (1918) 1918 Cal. 792 (793): 44 Cal. 1002, *Nani Kanta Laka* v. *Anukul Chandra Laha*.

(1910) 11 Cri. L. Jour. 280 (280) (Cal.), *Zeni Shah* v. *Bolahi Shah*.

(1916) 1916 Cal. 711 (712), *Abdul Goani* v. *Emperor*.

(12) (1925) 1925 Lah. 266 (266): 5 Lah. 550, *Khanlati Ram* v. *Malava Ram*.

(13) (1930) 1930 Mad. 869 (870), *Subbi Reddi*, In re.

(1912) 13 Cri. L. Jour. 241 (243) (Mad.), *Beardsell and Co.* v. *Abdul Ganni Saheb*.

(14) (1932) 1932 Rang. 139 (140, 141), *Maung Po Thin* v. *Ma Ma*.

(15) (1932) 1932 Sind 90 (91): 26 S. L. R. 73, *Hayat Khan* v. *Emperor*.

[See also (1917) 1917 Nag. 198 (199), *Zumberlal* v. *Mt. Malobi*.]

(16) (1932) 1932 Mad. 290 (291): 55 Mad. 531, *Subbarayudu* v. *Gopayya*.

(1930) 1930 Cal. 278 (280), *Kartic Chandra Biswas* v. *Emperor*.

[See also (1921) 1921 Cal. 433 (433, 434), *Girija Nanda Kali Mitra* v. *Emperor* (Application for return of document filed before Moharrin after termination of proceedings—Application alleged to be forged—Held proceedings not judicial).]

(17) (1932) 1932 Mad. 290 (291): 55 Mad. 531, *Subbarayudu* v. *Gopayya*.

(18) (1926) 1926 All. 30 (31, 32): 48 All. 60, *Kanhaiya Lal* v. *Bhagwandas*.

(19) (1920) 1920 Mad. 218 (219): 43 Mad. 1, In re *Hajee Muhamed Habibulla Badsha Sahib*.

(20) (1914) 1914 Mad. 474 (476): 37 Mad. 107, *W. A. Beardsell and Co.* v. *V. Abdul Gunni Sahib*.

S. 195, Note 13.

13. **"In respect of a document produced or given in evidence in such a proceeding".**—Where the document in respect of which the offence is committed is not produced or given in evidence in a proceeding in Court, Cl. (*c*) does not apply.[1] The production of a document is not the same thing as giving it in evidence. The word "or" between the words "produced" and "given in evidence" in the section shows that the two things are disjunctive.[2] The term "*produced*" has been held to mean produced for the purpose of being tendered in evidence or for some other purpose.[3] Thus, where a document is handed over to the Judge by the party but the Judge returns it without taking it on the file,[4] or rejects it as being inadmissible in evidence owing to want of stamp or registration,[5] it has been held that the document is produced within the meaning of the section. Similarly where a document is sent for from the file of another Court and used by the pleader in arguments and referred to in the judgment, Cl. (*c*) applies to the case.[6]

It is enough for fulfilling the requirements of the section that the document is produced in Court. It is not necessary that the document should be *considered or acted* upon by the Court.[7] Thus, where a document is produced before an *arbitrator* in a reference made in a pending suit and the document is filed in Court by the arbitrator along with the award and thus becomes part of the Court records, the document is produced within the meaning of the section although it is not considered by the Court.[8] So also where a forged document is used in an enquiry by a Police-officer under S. 202 of the Code, the production of the document has been held to be in or in relation to the proceeding of the Magistrate who has directed the enquiry.[9]

To attract the applicability of Cl. (*c*) is it necessary that the document should be actually put into Court or is it enough if it is relied upon and *offered* to be produced into Court by a party? A Full Bench of the High Court of Madras[10] has held that where a document alleged to be forged is simply mentioned in the affidavit as to documents but not actually put into Court, the provisions of this clause do not apply notwithstanding the further fact that the document has been inspected by the opposite party and has even been filed in the court translator's office for translation in accordance with Rules. The Judicial Commissioner's Court of Nagpur[11] has, on the other hand, held that although a

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Note 13.

(1) (1920) 1920 Lah. 89 (90), *Nanakchand* v. *Emperor.*
[See (1920) 1920 Cal. 47 (47), *Hira Lal Ghose* v. *Makhan Lal Daw.*]
[See (1892) 15 Mad. 224 (225), *Abdul Khadar* v. *Meera Saheb* (Under the Codes of 1872 and 1882 the words "Produced" did not occur and hence it was held that document should be given in evidence).]

(2) (1929) 1929 Pat. 60 (63), *Baju Gha* v. *Emperor.*

(3) (1907) 6 Cri. L. Jour. 78 (79) (Bom.), *Gopal Sidheswar*, In re.
(1912) 13 Cri. L. Jour. 6 (7) (Cal.), *Krishna Prasad* v. *Rabindra Nath.*
(1897) 1897 Pun. Re. No. 12, p. 29 (31, 32), *Jamal Khan* v. *Empress.*
[See however (1868) 10 Suth. W. R. Cr. 5, *Queen* v. *Ramdhorry Singh* (Case under old Code—No longer law).]

(4) (1925) 1925 Bom. 467 (468): 49 Bom. 799, *Gulabchand Rupji* v. *Emperor.*

(5) (1886) Rat. Un. Re. Cr. Cas. 242 (242), *Queen-Empress* v. *Nagindas.*

(6) (1918) 1918 Cal. 792: 44 Cal. 1002, *Nalini Kanta Laha* v. *Anukul Chandra Laha.*

(7) (1902) 29 Cal. 887 (889), *Guru Charan Saha* v. *Giriji Sundari Dassi.*
(1929) 1929 Cal. 203 (204), *Jabhar Ali* v. *Emperor.*
[See also (1912) 13 Ind. Cas 99 (100) (Cal.), *Krishna Prosad Mandal* v. *Rabindra Nath Dinda.*]

(8) (1907) 6 Cri. L. Jour. 331 (332) (Mad.), *Puttiah* v. *Veeraswamy.*
(1914) 1914 Lah. 253 (254): 1914 P. R. 3, *Mula Mal* v. *Churanji Lal.*

(9) (1934) 1934 Pat. 156 (158), *Raghunandan* v. *Emperor.*

(10) (1923) 1923 Mad. 136 (137): 45 Mad. 928 (F. B.), *Munuswamy Mudaliar* v. *Rajarathnam Pillai.*

(11) (1917) 1917 Nag. 198 (199), *Zumburlal* v. *Mussammat Malobi.*

document has not been actually produced in Court because of its custody with the Registrar but is relied upon in the list of documents filed by the party, and the Court has also called for its production from the Registrar, that Cl. (*c*) applies to the case. **S. 195, Note 13.**

The section refers to a *document* produced or given in evidence, but does not say whether the original or copy of the document should be produced or given in evidence. Upon this point, the Chief Court of Oudh[12] has held that the production contemplated is that of the *original* and not a copy of the document, the reason being that the Court before which a copy is produced is not really in a position to express any opinion as to the genuineness of the original and a literal construction of the section also requires the production of the original. The Judicial Commissioner's Court of Sind[13] has on the other hand held that the production of a certified copy of a forged document in Court is user of the forged original punishable under S. 471, Penal Code.

Where the offence referred to in Cl. (*c*) is committed by a party to a proceeding in Court, and the document is produced or given in evidence in the proceeding, is it also necessary under the section that such production should have been by the party? The High Court of Bombay[14] has held that Cl. (*c*) applies to documents produced in Court whether by the party who is alleged to have committed the offence or by any one else. The High Court of Patna[15] has, however, held in a case where a document produced before a Police-officer is filed by that officer in Court along with his report in proceedings under S. 145 of the Code and the party filing it subsequently withdrew from the proceedings in Court, that the document has not been produced within the meaning of the section and even if it is produced the offender not being a party to its production the section has no application.

The production or giving in evidence of the document should be before the Court takes cognizance of any of the offences referred to in the section. Where the Criminal Court has taken cognizance of an offence, *e.g.*, forgery, the production of the document (alleged to be forged) subsequent thereto in a Civil Court will not make the section applicable so as to necessitate a complaint of the Civil Court; otherwise it will be open to the accused in every case to defeat the prosecution by instituting a suit and producing the document in such suit.[16] On the same principle it has been held that where the document is produced before the committing Magistrate by the accused in a prosecution relating to the document under S. 218, Penal Code, the complaint of the Magistrate is not necessary for trying the accused in the Court of Session on a charge of forgery under S. 465, Penal Code, in respect of the same document.[17]

Where a document alleged to be forged is not produced by a party in the civil suit filed on the basis of such document because the suit has been withdrawn, the subsequent production of the document as per order of the Court in a

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(12) (1925) 1925 Oudh 413 (414), *Girdharilal* v. *Emperor.*
(1905) 2 Cri. L. Jour. 653 (655): 8 Oudh Cas. 313, *Emperor* v. *Raja Mustafa Ali Khan.*
(13) (1932) 1932 Sind 90 (91): 26 S. L. R. 78, *Hayat Khan* v. *Emperor.*
(14) (1925) 1925 Bom. 433 (435): 49 Bom. 608, In re *Bhau Vyankatesh Chakorkar.*
(15) (1920) 1920 Pat. 147 (148, 149), *Janardhan Thakur* v. *Baldeo Prasad Singh.*
(16) (1929) 1929 Cal. 633 (634): 56 Cal. 1041, *Supdt. and Remembrancer of Legal Affairs, Bengal* v. *Biswambhar Brahmin.*
(17) (1932) 1932 Bom. 545 (546, 549): 56 Bom. 488, *Emperor* v. *Sanjiv Ratnappa.*

S. 195, Notes 13–16.

proceeding started *after the disposal of the suit* on an application for ordering a prosecution cannot be regarded as produced within the meaning of the section; it has been observed that the term "produced or given in evidence" could only mean "tendered or admitted" in the course of the civil proceedings which ended with their withdrawal.[18] Where, however, the proceedings are *pending*, and a document alleged to be forged is produced in the proceedings though only as an annexure to a report by a guardian, the clause applies. The proceedings under the Guardian and Wards Act continue until the minor attains majority and do not terminate on the appointment of a guardian by the Court.[19]

14. In any proceeding".—*See* Note 7, *ante*.

15. "Of any offence described in S. 463"—Cl. (e).—The words 'any offence described in S. 463, 'Penal Code,' mean all forms of forgery described therein though they may be punishable under different sections of the Code. Thus, Cl. (*c*) will apply to an offence under Ss. 466,[1] 467[2] and 468[3] of the Penal Code, as they are all offences *described* in S. 463. But it does not apply to an offence under S. 474 as it is not an offence described in S. 463.[4]

16. Who can make a complaint under Cls. (b) and (c).—It is only the Court in or in relation to whose proceedings the offence is committed, or the Court to which such Court is subordinate within the meaning of sub-S. (3) that is competent to make a complaint in respect of the offences mentioned in Cls. (*b*) and (*c*). No other Court can complain.[1] Thus, a District Magistrate cannot make a complaint in respect of an offence committed before a first class Magistrate,[2] or before an Assistant Collector trying a suit for profits under the Tenancy Act.[3] Even where the same officer is functioning in two different capacities, as for instance a District Judge also exercising the powers of a District Registrar, the District Judge cannot, in his capacity as Judge, make a complaint in respect of an offence committed before him in his capacity as Registrar.[4]

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(18) (1923) 1923 Mad. 136 (137, 140): 45 Mad. 928 (F. B.), *Munusamy* v. *Rajaratnam.*

(19) (1927) 1927 Nag. 184 (188, 189), *Tularam Marwadi* v. *Emperor.*

Note 15.

(1) (1919) 1919 Pat. 551 (554), *Bachu Behari Lal* v. *Emperor.*

(1874) Rat. 83 (83), *Poona Magistrate's Letter No.* 1431.

(2) (1915) 1915 All. 21 (22), *Hardeo Prasad* v. *Ram Sarup.*

(1916) 1916 Cal. 711 (712), *Abdul Ghanni* v. *Emperor.*

(1910) 11 Cri. L. Jour. 280 (280) (Cal.), *Teni Shah* v. *Bolahi Shah.*

(1908) 8 Cri. L. Jour. 51 (53, 54) (Cal.), *Giridhari Marwari* v. *The Emperor.*

(1925) 1925 Lah. 266 (266): 5 Lah. 550, *Khairati Ram* v. *Malawa Ram.*

(1925) 1925 Nag. 337 (338), *Ismail Panju* v. *King-Emperor.*

(1926) 1926 Oudh 485 (486), *Ram Samujh* v. *Emperor.*

(3) (1912) 13 Cri. L. Jour. 35 (36, 37): 36 Mad. 387, *Assistant Sessions Judge of North Arcot* v. *Ramammal.*

(1933) 1933 Cal. 481 (481), *Montajaddin Choukidar* v. *Emperor.*

(4) (1923) 1923 Mad. 136 (140): 45 Mad. 928 (F. B.), *K. V. Munusamy Mudaliar* v. *Rajaratnam Pillai.*

(1915) 1915 Cal. 596 (596), *Asarbuddin Sarkar* v. *Kalidayal Mullick.*

[See however (1927) 1927 Mad. 1060 (1060), *Venkata Reddy* v. *Gadilinga Reddy* (The 'intention to use' contemplated in S. 474, Penal Code, should be fructified into an actual use to attract the provisions of S. 195).]

Note 16.

(1) (1920) 1920 Sind 49 (49): 14 S. L. R. 69, *Khajumal* v. *Crown.*

(1900-02) 1 L. B. R. 47 (47), *Rud Mull* v. *Ram Chandro Khemka.*

(1878) 2 Bom. 653 (653), In re *Muse Ali Adam.*

(1870) Rat. 31 (31), *Chotalal Jahaver.*

(1864) 1 Suth. W. R. 14 (17), *Asmedh Koonwar* v. *Taylor.*

[See also (1902) 1902 All. W. N. 9 (9, 10), *Prasad Debi*, In re.]

(2) (1934) 1934 Oudh 344 (346): 8 Luck. 638, *Wajid Ali* v. *Emperor.*

(1908) 7 Cri. L. Jour. 304 (305) (All.), *Mihi Lal* v. *Lareti Prasad.*

(1890) 1890 All. W. N. 167 (168), *Ram Khilawan.*

(3) (1909) 9 Cri. L. Jour. 180 (181) (All.), *Tota Ram* v. *Emperor.*

(4) (1923) 1923 All. 175 (175), *Dina Nath* v. *Nek Ram.*

(1918) 1918 All. 329 (329): 40 All. 144, *Ram Sahai* v. *Emperor* (District Magistrate cannot complain *qua* Magistrate for offence committed in his capacity as Collector).

S. 195. Note 16.

The complaint should be filed by the Court, *i.e.*, the *presiding judge* of the Court, and not by any other subordinate officer of the Court. Thus, where the offence is committed before a Deputy Magistrate who has been appointed as *commissioner* by the Court of Session, it is the latter Court that is competent to complain.[5] Similarly, in respect of an offence committed before an Official Assignee, the Insolvency Court should make the complaint.[6] In the case cited below[7] a money decree passed by a Subordinate Judge was sent to the Collector for execution under S. 68 of the Civil Procedure Code and the sale was fixed to be held before the *Mamlatdar*. The judgment-debtor applied to the Mamlatdar for an adjournment of the sale alleging satisfaction of the decree and produced a receipt in support thereof which was impugned as being forged. It was held that the Mamlatdar acted only as the agent of the Subordinate Judge and not as a Court, and that the complaint should be given by the Subordinate Judge.

But the Court continues the same nothwithstanding a change of officers presiding therein and consequently a *successor* in office is competent to make a complaint in respect of the offence committed before his predecessor.[8] He is also competent to continue the proceedings for making a complaint under S. 476 which have been started by the predecessor[9]. The presiding Judge cannot however, after he ceases to hold the office, make a complaint as he is no longer

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[See however (1901) 23 All. 249 (251), In re *Alamdar Hussain.*]

(5) (1907) 6 Cri. L. Jour. 160 (161) (Cal.), *Sardat Ali Khan* v. *Emperor.*

(6) (1914) 1914 Mad. 474 (476): 37 Mad. 107, *W. A. Beardsell & Co.* v. *Nilagiri Abdul.*

(1920) 1920 Mad. 218 (219): 43 Mad. 1, In the matter of *Hajee Muhammad Habibulla.*

[See also (1918) 1918 Mad. 460 (461), *Segu Baliah* v. *Ramasamiah.*]

(7) (1935) 1935 Bom. 158 (160), *Narasappa Naick Narappa Naick,* In re.

(8) (1914) 1914 All. 537 (538), *Muhammad Ibrahim* v. *King-Emperor.*

(1912) 13 Cri. L. Jour. 302 (302): 34 All. 393, *Nawal Singh* v. *Emperor.*

(1921) 1921 All. 210 (210), *Badri Singh* v. *Emperor.*

(1924) 1924 All. 770 (771): 46 All. 851, *Emperor* v. *Baldeo Prasad.*

(1910) 11 Cri. L. Jour. 140 (140) (All.), *Yad Ram* v. *Risal.*

(1910) 11 Cri. L. Jour. 407 (410) (Cal.), *Shaikh Bahadur* v. *Shaikh Eradutulla Mallik* (Overruling 5 Cri. L. Jour. 398 (F.B.), 35 Cal. 114, 4 Cri. L. Jour. 209).

(1911) 12 Cri. L. Jour. 209 (210) (Cal.), *Durpa Narayan Bera* v. *Behary Mitter.*

(1912) 13 Cri. L. Jour. 201 (201): 39 Cal. 463, *Rati Jha* v. *Emperor.*

(1907) 5 Cri. L. Jour. 186 (187) (Cal.), In re *Lalat Mohan Pal.*

(1906) 3 Cri. L. Jour. 365 (367): 33 Cal. 193, *Emperor* v. *Molla Fazal Karim.*

(1865) 4 Suth. W. R. 25 (25), *Dinnonath Gangooly.*

(1910) 11 Cri. L. Jour. 438 (439) (All.), *Bholu* v. *Emperor.*

(1924) 1924 Lah. 101 (102): 4 Lah. 58, *Khan Muhammad* v. *Crown.*

(1926) 1926 Lah. 394 (394), *Barkat Ali* v. *Ghulam Hussain.*

(1926) 1926 Lah. 305 (306): 7 Lah. 108, *Behram* v. *Emperor.*

(1928) 1928 Lah. 759 (761), *Faqir Singh* v. *Emperor.*

(1929) 30 Cri. L. Jour. 862 (863) (Lah.), *Ganda Singh Kochar* v. *Emperor.*

(1879) 1879 Pun. Re. No. 29, p. 81 (81), *Karim Baksh* v. *Mul Chand.*

(1906) 4 Cri. L. Jour. 175 (175): 29 Mad. 331, *Ranga Ayyar* v. *Emperor.*

(1929) 1929 Mad. 510 (511), In re *Gururappa Naicker.*

(1872) 7 Mad. H. C. R. App. 12, *High Court Proceedings, 12th November,* 1872, *No.* 1902.

(1917) 1917 Nag. 136 (136): 14 N.L.R. 16, *Dawlat* v. *Emperor.*

(1927) 1927 Pat. 327 (328), *Ram Ayodhya Singh* v. *Emperor.*

(1925) 1925 Rang. 195 (197): 3 Rang. 48, *Shwe Phwe Maung* v. *Ma Me Hmoke.*

(1911) 12 Cri. L. Jour. 521 (523) (Rang.), *Mama* v. *Emperor.*

(1935) 1935 Mad. 673 (679), *Mahabaleswarappa* v. *Gopalaswami Mudaliar.*

But see the following cases; submitted not good law:—

(1915) 1915 Cal. 692 (693): 42 Cal. 667, *Girish Chandra Ray* v. *Sarat Chandra Singh.*

(1918) 1918 Lah. 53 (53): 1916 P. R. 24, *Jai Lal* v. *Phogo Mal.*

(1909) 10 Cri. L. Jour. 158 (159): 1909 P. R. 6, *Emperor* v. *Mt. Dauli.*

(1913) 14 Cri. L. Jour. 178 (179): 1913 P. R. 7, *Ishaq* v. *Muqim-ud-din.*

(1889) 1889 Pun. Re. No. 25, p. 81 (84), *Phina Singh* v. *The Empress.*

(1917) 1917 Pat. 35 (35), *Ram Nigha Singh* v. *Emperor.*

(1917) 1917 Lah. 277 (280): 1916 P. R. 23, *Maula Baksh* v. *Lal Chand.*

(1916) 1916 Oudh 125 (127), *Ajudhia Saran Singh* v. *Emperor.*

(9) (1910) 11 Cri. L. Jour. 438 (439) (All.), *Bholu* v. *King-Emperor.*

(1922) 1922 Lah. 479 (480), *Tara Chand* v. *Emperor.*

(1919) 1919 Mad. 896 (897), *Kurichetty Venkatasubbayya* v. *Emperor.*

[But see (1911) 12 Cri. L. Jour. 68 (69) (Lah.), *Muhammad Munir Khan* v. *Emperor.*]

S. 195, Note 16.

the Judge of the *Court*.[10] Where, however the Court before which the offence was committed was abolished but reinstated with modifications in the territorial jurisdiction two years later, it was held that there was no such continuity as to make the Court reinstated the same as the one that ceased to exist.[11] Similarly, where the offence of perjury had been committed before the Sessions Judge of Ahmedabad but subsequently a portion of the territory subject to his jurisdiction was transferred to the newly constituted Sessions Judge of Kaira, it was held that the Judge of Kaira, though having territorial jurisdiction over the person accused of perjury, had no power to make a complaint regarding the offence committed before the Judge of Ahmedabad.[12] In the undermentioned case[13] where the perjury was alleged to be committed before a First Class Magistrate and pending proceedings for prosecution of the offender under S. 476 he was transferred and was succeeded by a Magistrate with second class powers, it was held that the District Magistrate was competent to make the complaint. It is submitted that the decision is not correct inasmuch as the District Magistrate was neither the successor of the first class Magistrate nor the superior Court to which he is subordinate within the meaning of sub-S. (3).

Where there are several Judges presiding over the same Court, any one of the Judges can order a complaint to be filed with regard to an offence committed in relation to the proceedings of the Court. Thus, one Judge of the High Court is competent to make a complaint with regard to an offence committed before another Judge of the High Court especially when the latter has ceased to hold office.[14] Similarly, a Sessions Judge has been held to be competent to make a complaint in respect of an offence committed before the Additional Sessions Judge as they both are Judges of the same Court and, under S. 9 of the Code, there is only one Court of Session.[15]

Where a case is *transferred* for disposal from one Court to another, it is the transferee Court that tries and disposes of the case that is competent to complain for an offence committed in relation to the proceedings in that Court.[16] The transferring Court, for example a Magistrate who merely takes cognizance of the case or issues process, cannot make the complaint.[17] Thus, where an attempt to fabricate false evidence is made in a proceeding pending before the Magistrate at *C* but the case is transferred to the Magistrate at *S* who tries and

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(10) (1927) 1927 Pat. 327 (328), *Ram Ajodhya Singh* v. *Emperor*.
(1924) 1924 All. 770 (771), *Emperor* v. *Baldeo Prasad*.
(1904) 1 Cri. L. Jour. 596 (597) (All.), *Chuni Lal* v. *Harbans Rai*.
[See however (1917) 1917 All. 214 (215): 39 All. 297, *Dalip Singh* v. *Naval*.
(1920) 1920 All. 177 (179): 42 All. 649, *Mussammat Chhoti* v. *Khacheru*.]

(11) (1916) 1916 Mad. 1007 (1007), In re *Appu Atla*.

(12) (1927) 1927 Bom. 47 (48), In re *Manek-lal*.

(13) (1918) 1918 Bom. 244 (245): 42 Bom. 190, In re *Ramarao N. Bellary*.

(14) (1925) 1925 Bom. 436 (438): 49 Bom. 710, *Bai Kasturbai* v. *Vanmalidas Lakmidas*.

(15) (1931) 1931 Cal. 190 (191, 192): 58 Cal. 1117, *Superintendent* v. *Ijjatulla*.

(16) (1926) 1926 Cal. 788 (789): 53 Cal. 488, *Tarakeshwar Mukhopadhyaya* v. *Emperor*.
(1912) 13 Cri. L. Jour. 484 (485): 39 Cal. 1041, *Emperor* v. *Bhika Hossein*.
(1930) 1930 Mad. 192 (192), *Mattayya* v. *Emperor*.
(1926) 1926 Sind 215 (216): 20 S.L.R. 90, *Gerimal* v. *Shewa Ram*.
(1931) 1931 Oudh 417 (418), *Ramji Lal* v. *Emperor* (Transfer of the case to a Bench of Magistrates only as regards some accused and not all the accused complained against—*Held*, the Transferee Bench has no power to complain against the other accused whose case was not transferred).
[See also (1910) 11 Cri. L. Jour. 4 (6) (Cal.), *Brojobashi Panda* v. *Emperor*.]

(17) (1901-02) 6 Cal. W. N. 35 (36), *Jeebun Krista Shaw* v. *Benoy Krista Shaw*.

disposes of the case, it is the latter that should make the complaint although the offence was not actually committed before him. The reason is that the attempt of fabrication of evidence was made in relation to the proceedings, that is to say, the original prosecution, in whichever Court it was ultimately tried, and the Court at *S* was the Court in which if the attempt had succeeded the false evidence would have been given. Further, the object of the section being to ensure that a prosecution will be launched only on the complaint of the Court which is in the best position to judge whether the prosecution is desirable in the interests of justice, it is essential that the Court trying the case should make the complaint.[18] The contrary view taken by a single Judge of the High Court of Allahabad,[19] is, it is submitted, not sound.

On the same principle as that discussed above, where a District Magistrate *withdraws* a case to his file and disposes of it himself, a complaint for an offence committed in relation to the proceedings in that case should be filed by him and not by the Magistrate who originally took cognizance of the case.[20] So also where a plaintiff first instituted a suit in Court *A* and obtained an *ex parte* decree only for a portion claimed, and subsequently filed a fresh suit in Court *B* in respect of the portion disallowed by Court *A*, it was held that Court *B* which tried and found the claim to be false should complain for an offence under S. 210, Penal Code.[21] Where, however, a claim based on a sale deed was produced before a Subordinate Judge but the claim suit was disposed of by the Munsif, and by the District Judge on appeal, it was held that the Subordinate Judge was competent to complain for an offence respecting the sale deed under S. 206, Penal Code, as the offence was committed in order to prevent a sale of the property attached by him and therefore was in relation to proceedings in his Court.[22]

Where a case is transferred to another Magistrate not for disposal, but for *enquiry and report*, judicial opinion is divided as to whether the enquiring Magistrate is competent to prefer a complaint with regard to the offence committed in the course of the enquiry. In the undermentioned case[23] it has been held that he is; while a contrary view has been expressed in the following cases.[24] But where a complaint is filed before a Magistrate who refers it to another Magistrate for enquiry and report the latter cannot prefer a complaint under Penal Code, S. 211 if he finds the complaint which was referred to him to be false.[25] As to when a superior Court can make a complaint, *see* S. 476-A.

17. "Court," meaning of—Sub-S. (2).—The term 'Court' has not been defined in the Code. The High Court of Madras[1] has held that two

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(18) (1934) 1934 Bom. 185 (186), *Emperor* v. *Hasam Ajam*.

(19) (1922) 1922 All. 233 (234), *Sunder Lall* v. *Emperor*.

(20) (1929) 1929 Cal. 724 (726), *Amanat Ali* v. *Emperor*.

(21) (1925) 1925 Lah. 524 (525): 6 Lah. 445, *Vishnu Ram* v. *Crown*.

(22) (1904) 1 Cri. L. Jour. 706 (708) (All.), *Durga Prasad* v. *King-Emperor*.

(23) (1909) 9 Cri. L. Jour. 295 (296) (Cal.), In the matter of *Kanchan Garhi* v. *Ram Kishen Mundal*.

(24) (1916) 1916 Cal. 867 (869): 43 Cal. 173, *Gangadhar Pradhan* v. *King-Emperor*.

(1899) 4 Cal. W. N. 366 (367), *Asmatulla* v. *The Empress*.

(1909) 10 Cri. L. Jour. 424 (426) (All.), *Abdul Rahman*.

(25) (1916) 1916 Cal. 867 (869): 43 Cal. 173, *Gangadhar Pradhan* v. *Emperor*.

Note 17.

(1) (1912) 36 Mad. 72 (86, 90), In re *R. Nataraja Iyer*.

(1935) 1935 Mad. 673 (677), *Mahabaleswarappa* v. *Gopalaswami Mudaliar* (Power to regulate legal rights by delivery of definitive judgments, etc., combined with fact that procedure is judicial in character constitute essentials of Court).

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tests should be applied in order to see whether a particular officer is a Court, and they are:—

(*a*) authority to take evidence on oath, and

(*b*) authority to deal out justice, *i.e.*, to give a final decision in the matter.

The High Courts of Calcutta,[2] and Bombay,[3] have held the same view as that of the High Court of Madras. The High Courts of Allahabad,[4] and Lahore,[5] have however held that it is not necessary to apply the second test, *viz.*, authority to deal out justice, for the purpose of deciding as to whether or not a particular officer is a Court within the meaning of the section. The reason given for the latter view is that if that test were to be strictly applied the Judicial Committee of the Privy Council which merely *recommends or advises* to His Majesty, or a Sessions Judge who passes a sentence of death subject to the confirmation by the High Court, cannot be considered to be Courts. The High Court of Lahore has accordingly held in the aforementioned case that a Commissioner, appointed under the Public Servants Inquiries Act, 37 of 1850, though he merely makes a *report* of the result of the enquiry held by him and does not in the narrow sense administer justice himself, is a Court within the meaning of the section. The section without giving a definition of the term Court says that it "includes" a Civil, Revenue or Criminal Court but does not include a Registrar or a Sub-Registrar. Consequently a Registrar or a Sub-Registrar under the Registration Act has no power to make a complaint under the section in respect of the offences mentioned.[6] The word "includes" was substituted in 1923 for the word "means" which occurred originally. According to Sulaiman, J., of the High Court of Allahabad, the Legislature must be taken thereby to have intended to widen the scope of the definition in this section, by including Courts *other* than *civil, criminal* or *revenue* Courts referred to in S. 476.[7] This view has been followed by the High Court of Lahore.[8] In *Bilas Singh* v. *King-Emperor*,[8-a] Daniels, J., however, expressed himself as follows:—

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(2) (1918) 1918 Cal. 932 (933): 45 Cal. 585, *Nando Lal Ganguli* v. *Khetra Mohan Ghose*.
(1907) 6 Cri. L. Jour. 160 (161) (Cal.), *Seadut Ali Khan* v. *Emperor*.
(1934) 1934 Cal. 457 (458): 61 Cal. 792, *Bibhuti Bhusan Adhikary* v. *Khem Chand Churoria*.

(3) (1913) 14 Cri. L. Jour. 73 (73, 74): 37 Bom. 365, In re *Nanchand Shiv Chand*.

(4) (1925) 1925 All. 737 (740, 741): 47 All. 934, *Bilas Singh* v. *Emperor*.

(5) (1931) 1931 Lah. 662 (663): 12 Lah. 391, *M. M. Khan* v. *Emperor*.

(6) (1934) 1934 Mad. 316 (317): 57 Mad. 682, *Tulasi Ammal* v. *Lakshimi Ammal*.
(1907) 30 Mad. 326 (327), *Manavala Goundan* v. *Kumarappa Reddi*.
(1889) 12 Mad. 201 (203), *Queen-Empress* v. *Sobhanadri*.
(1888) 11 Mad. 500 (501), *Queen-Empress* v. *Vaithilinga*.
(1888) 11 Mad. 3 (5), *Queen-Empress* v. *Subba*.
(1892) 2 Mad. L. J. 286 (288) *Marudayya* v. *Ravutha*.
(1894) 4 Mad. L. J. 189 (192), *Queen-Empress* v. *Ramaya Nadan*.
(1893) 15 All. 141 (143), *Queen Empress* v. *Ram Lall*.
(1914) 1914 Bom. 202 (202), In re *Manku Bala Patel*.
(1888) 12 Bom. 36 (43), *Queen-Empress* v. *Tulja*.
(1912) 13 Cri. L. Jour. 845 (846) (Bom.), *In re Ardeshir Kavasji Karanjavalla*.
(1909) 9 Cri. L. Jour. 54 (55): 11 Oudh Cas. 358, *Talewand* v. *King-Emperor*.
(1924) 1924 Pat. 128 (130): 2 Pat. 459, *Cheta Mahto* v. *King-Emperor* (Held as the District Registrar was also District Magistrate, in the latter capacity he can complain).
See however the following cases; (Submitted not good law).
[Weir 3rd Edn. 844 (845) High Court Proceedings 12th May 1881 No. 962.
(1892) 15 Mad. 138 (145, 149), *Atchayya* v. *Gangayya*.
(1887) 10 Mad. 154 (158), *Venkatachella Pillai*, In re.]

(7) (1925) 1925 All. 737 (740, 741): 47 All. 934, *Bilas Singh* v. *Emperor*.
(1926) 1926 All. 30 (32): 48 All. 60, *Kanhaiya Lal* v. *Bhagwan Das*.

(8) (1931) 1931 Lah. 662 (663): 12 Lah. 391, *M. M. Khan* v. *Emperor*.

(8-a) (1925) 1925 All. 737 (741): 47 All. 934, *Bilas Singh* v. *Emperor*.

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"It seems to me doubtful whether the Legislature in substituting the word 'includes' for 'means' in S. 195, sub-S. (2) really intended to widen the definition. They may have thought that to say that the term 'Court' means 'a Civil, Revenue or Criminal Court but does not include a Registrar or Sub-Registrar,' implies that a Registrar or Sub-Registrar would be a Court unless specially excepted from the definition.....If the term Court in S. 195 is really wider than the Civil, Revenue or Criminal Court in S. 476, the curious result follows that whereas the order of the Civil, Revenue or Criminal Court making or refusing to make, a complaint, is subject to appeal and to a special procedure prescribed by S. 476, a similar order passed by a Court constituted is not subject to any appeal. The marginal Note to S. 476 read with the language of this section shows that it was enacted in order to prescribe the procedure to be followed in cases coming under S. 195, Cls. (*b*) and (*c*) and presumably in all such cases". It is submitted that this latter view is to be preferred to the former.

The following have been held to be Courts (i.e., *Civil, Criminal or Revenue*) *within the meaning of this section and S.* 476:—

(1) Election Commissioner.[8-b]

(2) An Income Tax Collector.[9]

(3) A Divisional Officer hearing an appeal under the Income Tax Act.[10]

(4) A Collector acting under S. 69 and S. 70, Bengal Tenancy Act.[11]

(5) A Sub-Divisional Officer acting under S. 58, Bengal Tenancy Act.[12]

(6) A Settlement officer proceeding under Chap. X, Bengal Tenancy Act.[13]

(7) A Collector holding investigation under S. 14, Putni Regulation VIII of 1819.[14]

(8) A Deputy Thasildar proceeding under Madras Act, III of 1869 in connection with transfer of *patta*.[15]

(9) An Assistant Collector or Thasildar holding mutation proceed-

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(8-b) (1935) 1935 Mad. 673 (678, 679), *Mahabaleswarappa* v. *Gopalaswami Mudaliar*.
[See however (1925) 1925 All. 737 (741): 47 All. 934, *Bilas Singh* v. *Emperor* (Where it was held that Election Commissioner is not civil, revenue or criminal court under S. 476 but was a court under this section).]

(9) (1914) 1914 Bom. 138 (141): 38 Bom. 642 (F.B.), In re *Punamchand Manekal* (Overruling 4 Cri. L. Jour. 34).
(1906) 3 Cri. L. Jour. 128 (130): 1905 P. R. 44, *Emperor* v. *Rup Singh*.
(1914) 1914 Oudh 114 (114), *Ganga Sahai* v. *Emperor*.
(1930) 1930 Rang. 201 (202): 8 Rang. 25, *K. C. V. Reddi* v. *Emperor*.
(1909) 10 Cri. L. Jour. 395 (397, 405): 3 S. L. R. 66, *Emperor* v. *Deumal Wd. Dipomal*.

(10) (1912) 13 Cri. L. Jour. 723 (730, 733): 36 Mad. 72, In re *Nataraja Iyer*.

(11) (1890) 17 Cal. 872 (875), *Raghoo Buns* v. *Kokil Singh*.
(1918) 1918 Cal. 927 (928): 45 Cal. 336, *Chandi Charan Giri* v. *Gadadhan Pradhan*.
(1921) 1921 Cal. 260 (261): 48 Cal. 1086, *Lakshan Bor* v. *Naranarain Haza*.

(12) (1913) 14 Cri. L. Jour. 139 (140): 40 Cal. 465, *Phanindar Singh* v. *Emperor*.

(13) (1913) 14 Cri. L. Jour. 197 (204): 40 Cal. 477, *Har Prasad Das* v. *Emperor*.

(14) (1934) 1934 Cal. 457 (458): 61 Cal. 792, *Bhibuti Bhusen Adhikary* v. *Khan Chand Ohuroria*.

(15) (1901) 24 Mad. 121 (123), *Queen-Empress* v. *Munda Shetti*.
(1923) 1923 Mad. 87 (87), *Mattam Chinna Viriah*, In re.

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ings.[16]

(10) A Collector acting in pursuance of the powers conferred under S. 70 of the Code of Civil Procedure.[17]

(11) A Mamlatdar in Bombay.[18]

(12) A Tribunal formed under the Calcutta Improvements Act, 1911.[19]

(13) A District Judge acting under S. 22 of Bombay District Municipalities Act.[20]

(14) A Deputy Commissioner deciding revision application under rules framed under S. 240, Punjab Municipal Act.[21]

(15) An Assistant Registrar acting under R. 14 of the rules framed under S. 43 of the Co-operative Societies Act, II of 1912.[22]

(16) A Registrar of a Court of Small Causes enquiring into the question of service of summons under the Presidency Small Cause Courts Act, according to the view taken by the Calcutta High Court.[23] The High Court of Bombay[24] has however held that the Registrar is only a *Public servant* and not a Court.

(17) A Village Munsif trying a cause under the Village Courts Act.[25]

(18) A certificate officer acting under the Public Demands Recovery Act, IV of 1914, adjudicating upon a petition pleading payment of road cess.[26] But the officer in refunding surplus proceeds has been held to act only *ministerially* and not as a Court.[27]

(19) A Court taking action under the Legal Practitioners Act.[28]

(20) A Magistrate recording a statement under S. 164 of the Code.[28-a]

The following have been held not to be Courts within the meaning of this section and S. 476:—

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(16) (1930) 1930 Oudh 58 (59): 5 Luck. 435, *Lachhman Prasad Joshi* v. *Emperor.*
(1925) 1925 All. 99 (100), *Abdul Qayum Khan* v. *Emperor.*
[See however (1915) 1915 Lah. 250 (250): 1915 P. R. 18, *Emperor* v. *Lehna Singh* (Mutation proceedings by Naib Tahsildar in administrative capacity—*Held*, not a Court but a Revenue Officer).]

(17) (1917) 1917 All. 59 (60): 39 All. 91, *Asharfi Lal* v. *Emperor.*
[See however (1915) 1915 All. 283 (284): 37 All. 334, *Bhajan Tewari* v. *King-Emperor.*]

(18) (1907) 6 Cri. L. Jour. 225 (226) (Bom.), *Narayan* v. *Tukaram.*
(1913) 14 Cri. L. Jour. 80 (80) (Bom.), *Emperor* v. *Bhavdu Dhondu.*
(1914) 1914 Bom. 232 (232): 39 Bom. 210, *Emperor* v. *Narayan.*
(1881) 5 Bom. 137 (140), In re *Savanta.*
(1880) Rat. Un. Re. Cr. Cas. 149 (150), *Savanta* v. *Bhimaji.*

(19) (1918) 1918 Cal. 932 (933): 45 Cal. 585, *Nundolal Ganguli* v. *Khetra Mohun Ghose.*

(20) (1913) 14 Cri. L. Jour. 72 (73, 74): 37 Bom. 365, *Nanchand Shivchand,* In re.

(21) (1921) 62 Ind. Cas. 413 (414) (Lah.), *Karim Ullah* v. *Emperor.*

(22) (1930) 1930 Mad. 869 (870), *Thadi Subbi Reddi,* In re.

(23) (1915) 1915 Cal. 105 (106), *Balchand* v. *Tarak Nath Sadhu.*

(24) (1903) 27 Bom. 130 (134), In re *Govardhandas.*

(25) (1888) 11 Mad. 375 (376, 377), *Queen-Empress* v. *Venkayya.*
[See also (1885) 2 Weir 1, *Viziramutha Pillai.*]
[See however (1910) 8 Ind. Cas. 949 (949) (Rang.), *Maung Kye* v. *Emperor* (*Held*, proceedings under the Burma Village Act not judicial proceedings of a Court and sanction under cl. 1 (*b*) not necessary).]

(26) (1919) 1919 Pat. 212 (214, 215), *Mathura Prasad* v. *King-Emperor.*

(27) (1923) 1923 Pat. 410 (411): 2 Pat. 257, *Jharu Lal* v. *Madan Das.*

(28) (1918) 1918 Mad. 398 (399), *Nallasivan Pillai* v. *Ramalingam Pillai.*
(1912) 13 Cri. L. Jour. 190 (190) (All.), *Gauri Shankar Lal* v. *King-Emperor.*

(28-a) (1935) 1935 All. 341 (342), *Har Narain* v. *Hoshiar Singh.*

(1) A land acquisition Collector.[29]
(2) A Registrar acting under Land Registration Act, III of 1877.[30]
(3) An Assistant Collector holding a *departmental* enquiry under the Bombay Land Revenue Code into the alleged misconduct of a subordinate.[31]
(4) A Revenue Officer proceeding under S. 46 of Land Revenue Act, III of 1901.[32]
(5) A Revenue officer preparing a record of rights under S. 164 to S. 167 of the Madras Estates Land Act, I of 1908.[33]
(6) A Collector to whom application is made for a new stamp under S. 50 of Act X of 1862[34] or holding an enquiry as to who should pay stamp duty in a document impounded.[35]
(7) A Deputy Magistrate appointed as *commissioner* by Sessions Judge to examine witnesses.[36]
(8) The Governor in Council or a Member of the Council disposing of an appeal from an order of the Conservator of Forests in a Forest Department case.[37]
(9) An Excise Collector.[38]
(10) A Police Patel.[39]
(11) A Collector acting under rules framed under Madras District Municipalities Act, 1884.[40]
(12) Courts in Native States outside British India as for instance in Baroda, are not Courts within the meaning of this section.[41]

18. Subordination of Courts—Sub-S. (3).—Sub-S. (3) deals with the question of subordination of Courts for the purpose of this section. The Subordination of Courts generally for the purposes of the Code is dealt with by S. 17, *ante* and is different from that dealt with here.[1] Under this sub-section—

(1) where appeals *ordinarily* lie from the appealable decree or sentence of a Court, such Court is subordinate to the appellate Court. It is enough if an appeal lies from the decisions of the *Court* although the particular proceeding in respect of which the offence is committed is not appealable.[2]
(*a*) where appeals lie from a decision of a Court to more Courts

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(29) (1927) 1927 Cal. 621 (623), *Galstaun* v. *Banku Behari Dhar.*
(1900) 27 Cal. 820 (826), *Durga Dos Rukhit* v. *Queen-Empress.*
(30) (1898) 2 Cal. W. N. ccxliv, *Haridas Bairagi*, In re.
[See (1905) 2 Cri. L. Jour. 15 (16) (Cal.), *Hiranand Ojha* v. *Emperor* (Question left open).]
(31) (1898) 22 Bom. 936 (939), In re *Ohhotalal Mathuradas.*
(32) (1910) 11 Cri. L. Jour. 514 (514): 13 Oudh Cas. 198, *Prag Tewari* v. *King-Emperor.*
(33) (1916) 1916 Mad. 555 (555, 557): 39 Mad. 414, In re *Venkata Hanumantha Rao* (Not authorised to administer oath and function is *executive*).
(34) (1869) 11 Suth. W. R. Cr. 48 (49), *Queen* v. *Gour Mohun Sein.*
(35) (1903) 7 Cal. W. N. 795 (797), *Kedar Nath* v. *Emperor.*
(36) (1907) 6 Cri. L. Jour. 160 (161) (Cal.), *Saadut Ali Khan* v. *The Emperor.*
(37) (1932) 1932 Cal. 390 (393): 59 Cal. 1233, *Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Daulatram Mudi.*
(38) (1906) 3 Cri. L. Jour. 196 (197) (Cal.), *Mohadeo Misser* v. *Narayan Ram Sha.*
(39) (1880) 4 Bom. 479 (481), *Imperatrix* v. *Irbasappa.*
(40) (1909) 10 Cri. L. Jour. 9 (10) (Mad.), *Singaravelu Mudaliar* v. *Varadaraja Mudaliar.*
(41) (1925) 1925 Bom. 535 (535): 49 Bom. 860, In re *Muljibhai Hirabhai Patel.*

Note 18.

(1) (1930) 1930 Pat. 550 (555), *Banti Pande* v. *Emperor.*
(2) (1930) 1930 All. 407 (407), *Ratan Lal* v. *Abdul Hai.*

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than one, the former is subordinate to the appellate Court of *inferior jurisdiction* [Proviso (*a*)].[2-a]

(*b*) where appeals lie both to a Civil and Revenue Court, then the subordination is determined by the nature of the proceedings in which the offence is alleged to have been committed. Where the proceedings are civil the subordination is to the civil appellate Court, and if revenue, to the revenue appellate Court [Proviso (*b*)].

(2) in the case of a Civil Court from whose decree no appeal lies it is subordinate to the principal Civil Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate.[3]

19. **"Courts to which appeals ordinarily lie".**—The following Courts have been held to be subordinate to the Courts mentioned, on the ground that appeals ordinarily lie thereto:—

(1) *District Munsifs* are subordinate to the District Judge[1] and not to a Subordinate Judge to whom appeals are *transferred* by the District Judge for disposal.[2] Where however a Subordinate Judge is empowered to *entertain* appeals *directly* from the decrees of Munsifs by virtue of special Notification under the sanction of the Local Government as required by the Provincial Civil Courts Act, it has been held that the Munsif is subordinate to the Subordinate Judge.[3]

(2) *District Judge* is subordinate to the High Court.[4]

(3) The Court of the *Assistant Commissioner* in Punjab[5] and the *Deputy Commissioner* in Lower Burma[6] are subordinate to the Commissioner.

(2-a) (1933) 1933 Cal. 192 (194), *Nagendra-Nath Adhikari* v. *Emperor* (Assistant Sessions Judge is subordinate to Sessions Court).

(3) (1935) 1935 Mad. 673 (679), *Mahabaleswar-appa* v. *Gopalaswami Mudaliar* (Offence in regard to Election Commissioner's Court—District Court can complain).

[See (1909) 10 Cri. L. Jour. 454 (458): 37 Cal. 13, *Ram Prosad Malla* v. *Raghubar Malla* (Small Cause Court in moffussil not subordinate to High Court).]

Note 19.

(1) (1933) 1933 Pat. 179 (180), *Dulari Koeri* v. *Fazdar Khan*.

(1884) 1884 All. W. N. 57 (57), In re *Chajmal Das*.

(1916) 1916 Lah. 236 (237), *Miran Bukhsh* v. *Beli Ram*.

(1898) 1898 Pun. Re. No. 16, p. 36 (36), *Bure Khan* v. *Queen-Empress*.

(1900) 1900 Pun. Re. No. 25, p. 54 (55), *Munshi* v. *Ganda Mul*.

(1871) 15 Suth. W. R. 352 (352), In the matter of *Ishan Chandra Ghose*.

[See however (1886) 1886 Pun. Re. No. 34, p. 80 (81), *Narain* v. *Hukam Chand* (In Punjab, the Divisional Court is the Court to which appeals "ordinarily lie" from the decrees of Munsifs).

(1891) 1891 Pun. Re. No. 10, p. 32 (34), *Yusaf Ali* v. *Empress* (Do.).

(1879) 1879 Pun. Re. No. 9, Cr., p. 26 (27), *Chund Mal* v. *Empress* (Do.).]

(2) (1912) 13 Cri. L. Jour. 191 (191, 192): 39 Cal. 774, *Ramcharan Chandra* v. *Tirupalla Sheikh*.

(1912) 13 Cri. L. Jour. 296 (296): 40 Cal. 37, *Hari Nandal* v. *Keshab Chandra Manna*.

(1935) 1935 All. 696 (697), *Shiva Prasad* v. *Pahlad Singh*.

(1933) 1933 Pat. 179 (180), *Dulari Kocri* v. *Fauzdar Khan*.

(3) (1916) 1916 Mad. 1105 (1105), *Boddu Ramayya* v. *Chitturi Surayya*.

(1918) 1918 All. 332 (333): 40 All. 21, *Jagrap Shukul* v. *Emperor*.

(1935) 1935 All. 696 (697), *Shiva Prasad* v. *Pahlad Singh*.

(1918) 1918 Lah. 400 (400): 1918 P. R. 29, *Labhu Ram* v. *Nand Ram*.

(1929) 1929 Pat. 367 (368): 8 Pat. 428, *Ramachandra Pandhi* v. *Emperor*.

(4) (1906) 4 Cri. L. Jour. 164 (164): 29 Mad. 122, *Kannambath Imbichi Nair* v. *Manmathanath Raman Nair*.

(1923) 1923 Rang. 12 (13): 11 L. B. R. 418, *Karupiah Naidu* v. *Muthuswami*.

(5) (1875) 1875 Pun. Re. No. 5, p. 7 (7), *Crown* v. *Kirpa Ram*.

[See also (1886) 1886 Pun. Re. No. 7, p. 13 (14), *Lal Singh* v. *Kadha Singh*.]

(6) (1893-1900) 1893-1900 L. B. R. 529 (530), *Taung San Dok* v. *Ma U Zon*.

(4) The *Additional Recorder* of Rangoon was held to be subordinate to the High Court of Calcutta, at a time when the High Court of Rangoon was not established.[7]

(5) *A Single Judge of the High Court*, according to the High Courts of Bombay,[8] Calcutta[8-a] and Madras,[9] is subordinate to the Bench which hears appeals from his judgment under Cl. 15 of the Letters Patent. The High Court of Allahabad[10] and the Chief Court of Lower Burma[11] have, on the other hand, held that a Single Judge, is not subordinate to the Bench because both are Judges of the same Court.

(6) *Revenue Courts* are generally subordinate to the Board of Revenue to which appeals ordinarily lie.[12] But where any particular Act prescribes the appellate Court the subordination is to that Court. Thus, an *Assistant Collector*[13] acting under the Tenancy Act is subordinate to the District Collector. Similarly, a *Thasildar* holding mutation proceedings[14] has been held to be subordinate to the Deputy Commissioner. The appellate Court may also be a Civil Court. For example, under the Agra Tenancy Act, III of 1926, an appeal lies under S. 243 from the decree of a *Collector* to the District Judge, and hence the former is subordinate to the latter within the meaning of this section.[15]

(7) A *Sessions Judge* or an Additional Sessions Judge is subordinate to the High Court.[16]

(8) The *District Magistrate*[17] or the *City Magistrate*[18] is subordinate to the Sessions Judge.

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(7) (1895) 22 Cal. 487 (490), *Maduray Pillay* v. *Elderton.*

(8) (1922) 1922 Bom. 455 (456): 47 Bom. 270, *Abdul Latif* v. *Haji Dar.*

(8-a) (1918) 1918 Cal. 850 (855); 44 Cal. 816, *Budhu Lal* v. *Chattu Gopa.*

(9) (1922) 1922 Mad. 495 (496): 45 Mad. 928, *Munuswamy Mudaliar* v. *Rajarathnam Pillai.*

(1907) 5 Cri. L. Jour. 288 (288, 289) (Mad.), *Rama Iyer* v. *Venkatachalla Padayachi.*

(1902) 12 Mad. L. Jour. 408 (408), *Chakrapani Aiyengar* v. *Emperor.*

(10) (1917) 1917 All. 474 (475): 39 All. 147, *Ramjas* v. *Mahadwo Pershad.*

(11) (1911) 12 Cri. L. Jour. 469 (470) (Rang.), *Than Pe* v. *Ba Than.*

(12) (1902) 26 Mad. 139 (141, 142), In re *Chennanagoud.*

[See also (1902) 1902 Pun. Re. No. 8, p. 21 (21, 22), *Saifullah Khan* v. *Emperor of India* (*Held*, Collector not subordinate to Chief Court).

(1891) 1891 All. W. N. 82 (82), In the matter of the petition of *Kadam Singh* (Do.).]

(13) (1895) 1895 All. W. N. 121 (121), *Ajudhia* v. *Queen-Empress.*

(1909) 9 Cri. L. Jour. 180 (181) (All.), *Tota Ram* v. *Emperor.*

[See also (1884) 6 All. 98 (101), *Empress* v. *Narotam Das.*]

(14) (1935) 1935 Oudh 113 (114), *Sajjad Hussain* v. *Emperor.*

(1911) 12 Cri. L. Jour. 109 (109) (All.), *Kulsum Khanum* v. *Ghani Ahmed* (Held Thasildar is subordinate to Collector).

(15) (1934) 1934 All. 886 (887), *Amanul Haq* v. *Girdhar Gopal.*

(1930) 1930 All. 407 (407), *Ratan Lal* v. *Hafiz Abdul Hai.*

[See also (1888) 10 All. 582 (583, 584), *Hari Prasad* v. *Debi Dial.*]

(16) (1932) 1932 Bom. 551 (552), *Chatur Jethaji*, In re.

(17) (1924) 1924 Mad. 387 (388): 47 Mad. 229, *Palikudathan* v. *Buddu Goundan.*

(1914) 1914 Mad. 50 (51), *Public Prosecutor* v. *Raver Unithiri.*

(1890) 1890 All. W. N. 168 (169), *Queen-Empress* v. *Zorawar.*

(1908) 8 Cri. L. Jour. 457 (459) (Lah.), *Ram Kishen* v. *Mehram.*

(1917) 1917 Lah. 91 (93): 1917 P. R. 11, *Jiwan Mal* v. *Beli Ram.*

(1904) 1 Cri. L. Jour. 112 (113): 1903 P. R. 30, *Gurmukh Singh* v. *Naman.*

(1929) 1929 Nag. 97 (98): 25 Nag. L. R. 1, *Pilalal* v. *Emperor.*

[See however (1907) 6 Cri. L. Jour. 454 (456): 30 All. 109, *Ram Devi* v. *Nand Lal Rai.*

(1917) 1917 Pat. 342 (343), *Uchit Jha* v. *Barhmo Singh.*

(1906) 3 Cri. L. Jour. 121 (122): 1905 P. R. 56, *Budh Ram* v. *Emperor.*]

(18) (1902) 4 Bom. L. R. 750 (752, 753), In re *Bal Gangadhar Tilak.*

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(9) A *First Class Magistrate* is subordinate to the Sessions Judge and not to the District Magistrate.[19] It has been held that a First Class Magistrate is subordinate also to an Additional Sessions Judge because under S. 409 of the Code the latter is empowered to hear appeals to the Court of Session.[20] But a First Class Magistrate is not subordinate to a Commissioner appointed under the Defence of India Act.[21]

(10) A *Second Class Magistrate* is subordinate to the District Magistrate[22] and not to a First Class Magistrate who is specially directed by the District Magistrate to hear appeals from Second Class Magistrates under S. 407 (2) of the Code.[23] It has also been held that a Second Class Magistrate is not subordinate to an Additional District Magistrate.[24]

20. Subordination where appeals lie to more than one Court—Proviso (a).—Where appeals lie from the decision of a Court to more Courts than one the subordination is to the appellate Court of *inferior jurisdiction*:—

(1) A *Subordinate Judge* is subordinate to the District Judge, as in suits up to the value of Rs. 5,000, appeals lie from the decrees

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(19) (1922) 1922 Bom. 453 (454): 47 Bom. 102, In re *Badiuddin Sarfuddin.*
(1890) Rat. Un. Re. Cr. Cas. 511 (514), *Queen-Empress* v. *Bhikaji Rao.*
(1915) 1915 Cal. 674 (674), *Mofizuddin Ahmed* v. *Basanta Kumar Ghosh.*
(1908) 7 Cri. L. Jour. 304 (305) (All.), *Mihi Lal* v. *Lareti Prasad.*
(1897) 19 All. 121 (124), *Shankar Dial* v. *A. M. Venables.*
(1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Ali Muhammad* v. *Emperor.*
(1902) 1902 Pun. Re. No. 7, p. 19 (20), *Queen* v. *Mela Ram.*
(1894) 1894 Pun. Re. No. 10, p. 33 (34), *Waryam* v. *Amir.*
(1864) 1864 Suth. W. R. Sup. Vol. 3 (4), *Queen* v. *Bhohisan Mahatoon.*
(1923) 75 Ind. Cas. 289 (290) (Pesh.), *Sant Ram* v. *Dewan Chand.*
But see the following cases under the Old Code which held 1st Class Magistrate subordinate to District Magistrate —Not good law.
(1879) 2 All. 205 (208, 209, 214), Re *Gur Dayal.*
(1877) 2 Bom. 384 (387), *Imperatrix* v. *Padmanabha Pai.*
(1901) 1901 Pun. Re. No. 30, p. 90 (91), *Sobha Singh* v. *Lal Chand.*
(1882) 1882 Pun. Re. No. 42, p. 69 (69), *Swan Mal* v. *Sohan Singh.*

(20) (1920) 1920 Bom. 415 (416): 44 Bom. 877, In re *Sikandar Khan.*
(1913) 14 Cri. L. Jour. 195 (195, 196) (Cal.), *Nishi Chandra Chaudhury* v. *Romesh Chandra Sen.*
(1919) 1919 Pat. 362 (363), *Kusum Sao* v. *Janak Lal.*

(21) (1921) 1921 Bom. 3 (16): 45 Bom. 834, *Purushotham Ishwar* v. *Emperor.*

(22) (1924) 1924 Mad. 387 (388): 47 Mad. 229, *Pallikudathan* v. *Buddu Goundan.*
(1915) 1915 Mad. 508 (508), *Reddi Rama Reddy* v. *Public Prosecutor of Kurnool* (Second Class Magistrate not subordinate to Sessions Judge).
(1904) 1 Cri. L. Jour. 7 (9): 26 All. 244, *Hardeo Singh* v. *Hanwman Dat Narain.*
(1923) 1923 All. 597 (597), *Sita Ram* v. *Emperor.*
(1921) 1921 Lah. 298 (299), *Waryam Singh* v. *Crown.*
(1913) 14 Cri. L. Jour. 107 (108) (Lah.), *Abdul Jamal* v. *Crown.*
(1882) 1882 Pun. Re. No. 42, p. 69 (71), *Sawan Mal* v. *Sohan Singh.*

(23) (1903) 26 Mad. 656 (659), *Eroma Variar* v. *Emperor* (Impliedly overruling 18 Mad. 487).
(1919) 1919 Mad. 1132 (1133): 41 Mad. 787, *Kompella Anantaramayya* v. *Chikkatta Tukkadu.*
(1904) 1 Cri. L. Jour. 422 (424): 27 Mad. 124, In the matter of *Subbamma.*
(1912) 13 Cri. L. Jour. 273 (274): 34 All. 244, *Lal Singh* v. *Emperor.*
(1902) 1902 All. W. N. 9 (10), In re *Debi Prasad.*
(1929) 1929 Cal. 172 (173, 174): 56 Cal. 824, *Mohim Chandra Nath Bhowmik* v. *Emperor.*
(1903) 30 Cal. 394 (396), *Sadhu Lall* v. *Ram Churn Pasi.*
(1920) 1920 Lah. 479 (479), *Mt. Jiwani* v. *Emperor.*
(1907) 5 Cri. L. Jour. 432 (433): 3 N.L.R. 50, *Ramdayal* v. *Ramprasad.*
(1924) 1924 Oudh 239 (239): 26 Oudh Cas. 358, *Ahmed Hussain* v. *Kahiman.*
(1930) 1930 Pat. 550 (555), *Banti Pande* v. *Emperor.*
[See however (1900) 2 Bom. L. R. 536 (540), *Bai Harku* v. *Sitaram Kallian.*]

(24) (1931) 1931 Mad. W. N. 1194 (1195), *S. Palankondan* v. *Palaiyandan.*

of the former to the latter although in suits of the value of more than Rs. 5,000 appeals lie to the High Court;[1] and the High Court does not, by virtue of having actually heard the appeal in the particular civil matter relating to the offence, become the superior Court within the meaning of the section.[2]

(2) The *District Judge* in Central Provinces is subordinate to the Divisional Judge because under the Civil Courts Act in that province appeals lie to the latter Court in suits up to the value of Rs. 10,000 and it is only in suits beyond that value that appeals lie to the Judicial Commissioner.[3]

(3) The *District Munsif* in the Punjab is subordinate to the Subordinate Judge which is the appellate Court of inferior jurisdiction as appeals lie under the Punjab Civil Courts Act both to the Subordinate Judge as well as to the District Judge, from the decision of a Munsif.[4]

(4) The Commissioner of the Santhal Parganas is subordinate to the Court of the Commissioner of Bhagalpur.[5]

21. Subordination where appeals lie to a civil and also to a revenue Court—Proviso (b).—Where appeals lie from the decision of a Court both to a Civil Court and also to a Revenue Court, the subordination is determined by the nature of the case or proceeding in connection with which the offence is alleged to have been committed. Thus under the Agra Tenancy Act an appeal lies both to the District Judge as well as to the Collector, but in a suit for recovery of revenue the appeal lies to the District Judge and hence an Assistant Collector acting in such proceeding is subordinate to the District Judge.[1]

The words "or proceeding" have been newly added to give effect to the case noted below[2] decided under the Old Code. In that case it was held that proceedings in execution in a suit for arrears of rent were not appealable to

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Note 20.

(1) (1894) 17 All. 51 (52), *Genga Dei* v. *Sher Singh*.
(1877) 2 Bom. 481 (488), *Imperatrix* v. *Lakshman Sakharam*.
(1886) 11 Bom. 438 (440), *Anant Ranchandra Litliker*, In re.
(1877) Rat. Un. Re. Cr. Cas. 937 (937), In re *Shivram Bhirdas*.
(1918) 1918 Cal. 791 (791), *Raj Kumar Deoty* v. *Satish Chandra Ghosh*.
(1922) 1922 Lah. 346 (347), *Fazal Ilahi* v. *Mohan Lal*.
(1927) 1927 Mad. 683 (684), *Palaniappa Chetti* v. *Chettiappa Chetti*.
(1884) 7 Mad. 314 (315), *Venkata* v. *Muthuswami*.
(1919) 1919 Oudh 181 (181): 22 Oudh Cas. 189, *Hubdar Khan* v. *Sajjad Ali Khan*.
(1918) 1918 Pat. 312 (313), *Bhairo Prasad* v. *Harihar Prasad*.
(1931) 1931 Sind 163 (164): 25 S.L.R. 196, *Wadiro Abdul Rahman* v. *Sadhu Ram*.
(1919) 1919 All. 311 (311), *Ganesh Dutt Tewari* v. *Jitan Tamboli* (Subordinate Judge whether acting in the original or appellate jurisdiction is subordinate to District Judge).
(1923) 1923 Mad. 504 (505), *Narayanan* v. *Kadiraya Goundan* (Do.).
(1918) 1918 Mad. 336 (336), *Rapakka Viyanna* v. *Parakala Bajamma* (Do.).
(2) (1922) 1922 Lah. 346 (347), *M. Fazal Ellahi* v. *Mohan Lal*.
(3) (1912) 13 Cri. L. Jour. 498 (500, 501): 8 N.L.R. 57, *Ram Krishna Puri* v. *Mohan Lal*.
(4) (1921) 1921 Lah. 28 (29, 30): 2 Lah. 57, *Dina Nath* v. *Muhammad Abdulla*.
(1926) 27 Cri. L. Jour. 75 (76) (Lah.), *Jawala Singh* v. *Madan Gopal*.
(1924) 1924 Lah. 356 (356), *Kanhaya Lal* v. *Roshan Mall*.
[See however (1920) 1920 Lah. 29 (30), *Sundar Singh* v. *Phuman Singh*.]
(5) (1903) 30 Cal. 916 (917), *Munna* v. *Padman*.

Note 21.

(1) (1934) 1934 All. 886 (887), *Amanul Haq* v. *Girdhar Gopal*.
(1930) 1930 All. 407 (407), *Ratan Lal* v. *Hafiz Abdul Hai*.
(2) (1912) 13 Cri. L. Jour. 44 (46): 34 All. 197, *Ajodhia Pershad* v. *Ramlal*.

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the District Judge and the fact that the decree in the suit was appealable to the District Judge did not make the Revenue Court acting in the execution proceedings subordinate to the District Court.

22. **Subordination of Civil Courts from whose decrees no appeal ordinarily lies.**—A Civil Court from whose decree no appeal lies is subordinate to the Principal Court having ordinary original civil jurisdiction within whose local limits such Court is situate. Thus, it has been held that there is subordination for the purpose of this section in the case of the following Courts:—

(1) A *Provincial Small Cause Court* is subordinate to the District Court.[1] Hence a Munsif[2] or a Sub-Judge[3] functioning as a Small Cause Court, is subordinate to the District Judge. In the case cited below[4] it has been held that a Small Cause Court at Saugor is subordinate to the Additional District Judge at Saugor as his jurisdiction is that of the District Judge and he is only the Additional Judge of the District Court in Jubbulpore sitting at Saugor.

(2) A *Presidency Small Cause Court,* whether presided over by a Single Judge or sitting as a Full Court is subordinate to the High Court.[5] The High Court of Calcutta[6] has held that according to the prevailing practice an appeal against an order for prosecution by the Small Cause Court lies to a Single Judge of the High Court exercising original jurisdiction. The High Court of Madras[7] has on the other hand held that a Bench of the High Court exercising appellate jurisdiction is competent to entertain and dispose of such an appeal.

(3) A *Village Panchayat* exercising jurisdiction in civil matters is a Civil Court and is subordinate to the District Court which is the Principal Civil Court of original jurisdiction.[8]

(4) A *Village Munsif* acting under the Village Courts Act, III of 1892, is also subordinate to the District Judge.[9]

Note 22.

(1) (1917) 1917 All. 405 (407): 39 All. 657, *Chidda Lal* v. *Bhajan Lal.*
(1918) 1918 Cal. 910 (910), *Nibaran Chandra Chakravarthy* v. *Akshoy Kumar Banerjee.*
(1917) 1917 Mad. 749 (749), In re *Appavu Goundar.*
(1934) 1934 Nag. 236 (237), *Lokman* v. *Halku.*
(1919) 1919 Pat. 350 (361) (353, 356), *Lalji Tewari* v. *Emperor.*
(1917) 1917 L. B. 85 (86), *Iyavoo Raja* v. *Thayammal.*
[But see (1916) 1916 Pat. 372 (372), *Ambica Tewari* v. *King-Emperor* (Not good law in view of 1919 Pat. 350 F.B.).
(1916) 1916 Pat. 53 (54), *Sukhdeo Singh* v. *The District Magistrate of Muzaffarpur* (Do.).
(1870-71) 6 Mad. H. C. 191 (192), Ex parte *Mahalingaiyan.*]
(2) (1922) 1922 Lah. 401 (401), *Bhag Singh* v. *Emperor.*
(1917) 1917 Mad. 749 (749), In re *Appavu Kavundan.*
(1925) 1925 Oudh 713 (713), *Fateh Bahadur* v. *Abdul Rahim.*
(3) (1929) 1929 Oudh 515 (516), *Panchu* v. *Jumman.*
(1917) 1917 Oudh 122 (122): 20 Oudh Cas. 223, *Ram Dayal* v. *Dwarka.*
(4) (1934) 1934 Nag. 236 (237): 31 N.L.R. 90, *Lokman* v. *Halku.*
(5) (1910) 11 Cri. L. Jour. 271 (273): 34 Bom. 316, *Shiv Lal,* In re.
(1916) 1916 Cal. 103 (104): 43 Cal. 597, *Chattu Gope* v. *Budhu Lal.*
(1925) 1925 Mad. 609 (610): 48 Mad. 395, *Kalyani* v. *Ram Deen.*
(6) (1910) 11 Cri. L. Jour. 357 (359): 37 Cal. 714, *Ramdin Bania* v. *Sew Baksh Singh.*
[See also (1917) 1917 Cal. 527 (529), *Budhu* v. *Chotu.*]
(7) (1925) 1925 Mad. 609 (610, 611): 48 Mad. 395, *Kalyanji* v. *Ram Deen Lala.*
(1911) 12 Cri. L. Jour. 545 (546) (Mad.), *Jumna Dass* v. *A. M. Sabapathy Chetty.*
(8) (1931) 1931 All. 141 (142): 52 All. 1018, *Emperor* v. *Salig Ram.*
(1934) 1934 All. 216 (217), *Emperor* v. *Chaiyan* (Panchayat under U. P. Act VI of 1920).
(9) (1909) 10 Cri. L. Jour. 437 (439) (All.),

(5) A *Mamlatdar* in Bombay is a Civil Court and therefore subordinate to the District Judge within the meaning of the section.[10]

S. 195, Notes 22—24.

The present section, unlike the corresponding provision in the Code of 1898, provides only for the subordination of *Civil* Courts from whose decrees no appeals lie and not that of Revenue Courts from whose decisions no appeals lie. Thus an Assistant Collector acting in execution proceedings in a suit, for arrears of rent is not subordinate to the District Judge.[11] The undermentioned cases[12] which held that *Revenue* Courts were subordinate to the District Judge are not good law under the present Code.

23. Abetment conspiracy and attempt to commit offences—Sub-S. (4).—Sub-Section (4) provides that the provisions of sub-S. (1) apply also to the abetment, conspiracy and attempt to commit the offences mentioned therein. Thus, a prosecution in respect of a charge of conspiracy under S. 120-B read with S. 193, I.P. Code, requires the complaint of the Court in or in relation to whose proceedings the offence is alleged to have been committed.[1] But in such a case it is also essential that the other conditions prescribed in sub-S. (1) should also be present. For instance, in the case of a conspiracy or attempt to commit forgery, it is essential that the offender should be a *party* to the proceeding in Court as required by Cl. (*c*) of sub-S. (1).[2]

24. Withdrawal of complaint filed by a public servant—Sub-S. (5).—Before the Amendment of 1923 it was held that where a public servant acted judicially as a *Court* and passed an order sanctioning prosecution for an offence referred to in Cl. (*a*) of this section, he must, for the purposes of appeal be taken to have acted as a *Court*, the *forum* of appeal being governed by the provisions of sub-S. (7) [now sub-S. (3)],[1] but that if he should be taken to have acted not as a Court, but in his *executive* capacity the forum of appeal was not governed by sub-S. (7).[2]

Under the Amending Act of 1923, there is an appeal only against a complaint preferred by a *Court* under S. 476, *infra*, in respect of offences *falling within Cl.* (*b*) *and Cl.* (*c*) of this section. (*See* S. 476-B).[2-a] Where a public servant, whether he is a Court or not, files a complaint in respect of an offence falling under Cl. (*a*) of this section, there is no appeal[3] but sub-S. (5)

Sundar Lal v. *Emperor*.

(10) (1903) 5 Bom. L. R. 206 (207), *Gurunath*, In re.
(1907) 6 Cri. L. Jour. 225 (226) (Bom.), *Narayan* v. *Tukaram*.
[See also (1876) Rat. 118, *Reg.* v. *Dhondi*.]
[But see (1903) 5 Bom. 137 (140), In re *Savanta* (*Held*, subordinate to the High Court).
(1872) 9 Bom. H. C. R. 249 (252, 253), *Mahadaji Govind* v. *Sonu bin Davlata* (Do.).]

(11) (1912) 13 Cri. L. Jour. 44 (46): 34 All. 197, *Ajudhia Pershad* v. *Ram Lall*.

(12) (1918) 1918 Cal. 927 (928, 929): 45 Cal. 336, *Chandi Charan Giri* v. *Gadadhar Pradhan*.
(1909) 9 Cri. L. Jour. 504 (505): 31 All. 313, *Wazir Muhammad* v. *Hub Lal*.

Note 23.

(1) (1932) 1932 Cal. 850 (856), *Emperor* v. *Mathuranath De*.
[See however (1897) 20 Mad. 8 (9), *Queen-Empress* v. *Abdul Kadir Sheriff Saheb* (Case under the Code of 1882 in which there was no provision corresponding to sub-S. 4—Not good law).]

(2) (1931) 1931 Cal. 438 (441): 58 Cal. 727, *Proval Ranjan Barat* v. *Uma Shankar Chatterjee*.

Note 24.

(1) (1919) 1919 Mad. 610 (612): 42 Mad. 64, *Arunachalam Pillai* v. *Ponnuswami*.
(1919) 1919 Mad. 620 (622): 42 Mad. 96, In re *Gaddam Panchalu Reddy*.
(1922) 1922 Bom. 453 (453): 47 Bom. 102, In re, *Badluddin Sarfuddin*.

(2) (1923) 1923 Mad. 473 (474): 47 Mad. 56, *Nataraja Pillai* v. *Rangaswami Pillai*.
[See also (1903) 2 Weir. 155 (155, 156), *Sankaram Ayyar* v. *Sakkarappa Mudaliar*.]

(2-a) (1927) 1927 All. 571 (571): 49 All. 752, *Ram Prasad* v. *Emperor*.
[See also (1918) 1918 Nag. 59 (60), *Nanakram* v. *Emperor*.]

(3) (1927) 1927 All. 828 (828), *Brijendra*

S. 195, Notes 24—26.

newly added enables an authority to which such public servant is subordinate, *to withdraw the complaint.* Thus, a Sub-divisional Magistrate acting under *Cl.* (*a*) of sub-S. (1) is subordinate to the District Magistrate, the authority to which he is subordinate under S. 17 of the Code, and an application for withdrawal of the complaint should be made to him and not to the Court of Session to which appeal ordinarily lies from his decision as a Court.[4]

This sub-section applies only to complaints made under sub-S. (1) (*a*) and does not authorise the withdrawal of complaints filed under Cl. (*b*) or (*c*) of that sub-section.

The sub-section empowers a superior authority only to *withdraw* a complaint and not to *make* a complaint when the subordinate public servant has *declined* to do it.[5]

25. "**Authority to which such public servant is subordinate**".— It has been held that the High Court as being the authority to which a District Judge[1] or an Additional Sessions Judge[2] is subordinate within the meaning of this sub-section is competent to withdraw a complaint filed by the latter as public servant. In the case cited below[3] where a District Magistrate directed a complaint to be filed under S. 174, Penal Code, the High Court ordered the complaint to be withdrawn in the exercise of its *revisional* jurisdiction.

For other instances of subordination of public servants, *see* Note 5, *supra.*

26. **Appeal.**—*See* Notes to S. 476-B, which contains a separate provision for appeal in respect of complaints by *Courts.*

The cases cited below[1] under the repealed sub-S. (6) dealing with appeals

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Nath v. *Emperor.*
(1931) 1931 All. 630 (630) : 53 All. 594, *Yusuf Ali Khan* v. *Lachmi Mani Dassi.*
(4) (1927) 1927 Pat. 111 (112) : 6 Pat. 39, *Maini Misser* v. *Emperor.*
(1934) 1934 Mad. 473 (474, 475) : 57 Mad. 1101, *Naga Servai* v. *Emperor.*
(5) (1934) 1934 Mad. 473 (474): 57 Mad. 1101, *Naga Servai* v. *Emperor.*

Note 25.

(1) (1927) 1927 All. 828 (828), *Brijendra Nath* v. *Emperor.*
(2) (1924) 1924 Oudh 402(403), *Chedi Lal* v. *Emperor.*
(3)(1928) 1928 Rang. 296 (296) : 6 Rang. 529, *Money* v. *Emperor.*

Note 26.

(1) *Under the Code of* 1872, *however no appeal lay against sanction order.*
(1893) 15 All. 61 (62), *Mehdi Hassan* v. *Tota Ram.*
(1893) 1893 All. W. N. 147 (147), *Zahur Ahmad* v. *Muhammad Hassan.*
(1874) 6 N. W. P. 124 (124), In Re *Bulwantrai.*
(1886) 1886 All. W. N. 83 (83), *Mata Badal* v. *Mohammad Raza Khan.*
(1866) 5 Suth. W. R. Mis. 24 (24) (F. B.), *Ram Pershad Hazaree* v. *Soomuthra.*
(1866) 5 Suth. W. R. 8 (10, 11), In re *Radhajeebun Moostaffee.*
(1866) 5 Suth. W. R. 43 (43), *Queen* v. *Enayet Hussain.*
(1872) 18 Suth. W. R. 62 (62), *Seetharam Sahoo* v. *Rai Baboo Shewgolam Sahoo.*
(1874) 22 Suth. W. R. 11 (12), Cr., *Money Mohun Dey* v. *Dinonath Mullick.*
(1866) 5 Suth. W. R. 18 (18), *Gunga Narain Sircar* v. *Azeezoonissa Beebee.*
(1908) 7 Cri. L. Jour. 120 (122) : 32 Bom. 203, *Gopal Siddeswar Deshpande,* In re (*Sub-section* 6 does not apply where sanction application is dismissed for default by the first Court.).
[See also (1916) 1916 Mad. W. N. 8 (8), *Subramaniya Ayyar* v. *Rangiah Reddy.*]
Proceedings not in the nature of an appeal.
(1876) 1 All. 17 (24, 25), (F.B.), *Bharkat-ullah Khan* v. *Reenie.*
(1920) 1920 All. 177 (178) : 42 All. 649. *Mt. Chhoti* v. *Khachera.*
(1921) 1921 Oudh. 108 (108) : 24 Oudh. Cas. 165, *Ali Khan* v. *Emperor.*
(1912) 13 Cri. L. Jour. 599 (601) : 40 Cal. 239, *Pochay Mitay* v. *Emperor.*
(1912) 13 Cri. L. Jour. 209 (218) (F B.) (Mad.), *Bapu* v. *Bapu.*
[See however (1920) 1920 Oudh. 58 (60): 23 Oudh. Cas. 222, *Mohammad Yusuf Ali* v. *Mohammad Yakub Ali.*]
No limitation for application under Sub-section 6.
(1920) 1920 Lah. 305 (306) : 6 Lah 602, *Punna Lal* v. *Jamita Lal.*
(1914) 1914 Sind. 51 (52) : 8 Sind. L.R. 49, *Jaiwatram Jhaman Das* v. *Emperor.*

against orders giving or refusing *sanction* are no longer law.

(1919) 1919 All. 400 (400), *Sher Mohammad Khan* v. *Emperor*.
(1904) 1 All. L. Jour. 395 (397), *Binda* v. *King-Emperor* (Power under Sub-section can be exercised only by a superior Court).
Duty of Superior Court—Judicial—Reasons to be given.
(1921) 1921 Pat. 422 (424), *Daroga Jha* v. *Babujan Mandal*.
(1909) 9 Cri. L. Jour. 189 (190) (Cal.) *Raj Kumar Singh* v. *Tincowri Masumdar*.
(1892) 1892 All. W. N. 60 (60), In re, *Zafary-bi Ali*.
(1921) 1921 All. 86 (87), *Abdul Aziz* v. *Bohra Tara Chand*.
Order of lower Court not to be lightly interfered.
(1906) 4 Cri. L. Jour. 494 (495) (Lah.), *Hira* v. *Gopi*.
(1908) 7 Cri. L. Jour. 460 (460) (Lah.), *Harnam Singh* v. *Crown*.
(1885) 1885 Pun. Re. No. 37, p. 81 (82), *Empress* v. *Munshi Ram*.
(1893) 1893 All. W. N. 104 (104), *Kishen Lal* v. *Sheo Dial*.
(1924) 1924 All. 770 (770) : 46 All. 851, *Emperor* v. *Baldeo Prasad*.
(1920) 1920 Pat. 171 (174), *Nirghin Mahton* v. *Emperor*.
(1895) Rat. 805 (806), In re, *Framji Ardeshir*.
(1896) Rat. 859 (860), *Bhiman Ganda* v. *Mallan Ganda*.
(1915) 1915 All. 146 (146) : 37 All. 439, *Ram Raja Dut* v. *Sheo Dayal* (should reconsider the entire matter on the merits.)
Respondent should be given notice and heard.
(1904) 1 Cri. L. Jour. 632 (633) (Cal.); *Raghubir Singh* v. *Jogeshwar Tewary*.
(1920) 24 Cal. W. N. xlviii, *Ayub Ali* v. *King-Emperor*.
(1914) 1914 Upp. Bur. 11 (11), *Katan* v. *Nga Tin*.
[See however (1904), 1 Cri. L. Jour. 850 (852) : 31 Cal. 811, *Jhalan Jha* v. *Buchar Gope*.]
The Superior Court has no power to remand.
(1911) 12 Cri. L. Jour. 174 (174) : 33 All. 512, *Beni Prasad* v. *Sarju Prasad Thakuria*.
(1918) 1918 Cal. 850 (854, 855) : 44 Cal. 816, *Bhudu Lal* v. *Chatti Gope*.
(1918) 17 Cal. W. N. ccxl, *Chandi Charan* v. *Jugal*.
(1913) 14 Cri. L. Jour. 655 (656) (Cal.), *Chandra Kumar Manna* v. *Jagul Charan Mondal*.
(1913) 14 Cri. L. Jour. 178 (179): 1913 P. R. 7, *Muhammad Ishaq* v. *Mukim-ud-din*.
(1921) 60 Ind. Cas. 794 (795) (Lah.), *Francis Darah* v. *Mohammad Baksh*.
(1907) 5 Cri. L. Jour. 288 (289): 30 Mad. 311, *Rama Ayyar* v. *Venkatachala Padayachi*.
(1910) 11 Cri. L. Jour. 699 (699) (Mad.), In re *Kamma Narayanappa*.
(1910) 11 Cri. L. Jour. 280 (281): 33 Mad. 90, In re *Krishna Reddy*.
(1906) 16 Mad. L. Jour. (S. N.) 45, *Chinnakannu* v. *Nainar*.
(1916) 1916 Low. Bur. 78 (78), *Sat Taw* v. *Maung Ye*.
But Superior Court can itself take additional evidence.
(1918) 1918 All. 332 (333): 40 All. 21, *Jagrup Shukul* v. *Emperor*.
(1916) 1916 All. 97 (98), *Rahmatollah* v. *Emperor*.
(1924) 1924 Cal. 641 (642), *Mathura Nath Bhattacharya* v. *Rajendra Kumar Basu*.
(1920) 1920 Pat. 632 (633), *Baldeo Koeri* v. *Lakshmi Narain Koer*.
(1921) 1921 Mad. 453 (454): 44 Mad. 47, In re *Subbasari*.
(1922) 1922 Pat. 52 (53), *Ramdhari Ahir* v. *King-Emperor*.
Superior Court has no power to review its order.
(1899) 23 Bom. 50 (53), *Queen-Empress* v. *Ganesh Ramakrishna*.
(1918) 1918 All. 247 (248), *Lachumi Narain* v. *Bindraban*.
No second appeal lies to High Court.
(1914) 1914 All. 395 (396): 36 All. 469, *Baran Bari* v. *Mata Prasad*.
(1915) 1915 All. 217 (218), *Muhammad Yasin* v. *Chadda Lal*.
(1884) 1884 All. W. N. 272 (272), *Bhandu* v. *Crown*.
(1920) 1920 All. 177 (179): 42 All. 649, *Mussammat Chhoti* v. *Khacharu*.
(1921) 1921 Jour. 7 (3), *Debi Sahai* v. *Raghunath Sahai*.
(1907) 6 Cri. L. Jour. 372 (373) (All.), *Kusal* v. *Badri Prasad*.
(1909) 9 Cri. L. Jour. 63 (64): 31 All. 48, *Kanhai Lal* v. *Chadami Lal*.
(1923) 1923 Cal. 45 (47, 48, 49), *Sarat Chandra Mandal* v. *Ramsashi Roy*.
(1906) 4 Cri. L. Jour. 168 (168) (Cal.), *Hamijuddi Mondul* v. *Damodar Ghose*.
(1922) 1922 Oudh 225 (226), *Nazir Hasan* v. *Mohammad Yamin*.
But see contra—*Second appeal lies.*
(1907) 6 Cri. L. Jour. 102 (104): 30 Mad. 382, *Muthuswami Mudali* v. *Veeri Chetty*.
(1906) 4 Cri. L. Jour. 164 (164): 29 Mad. 122, *Kammambath Imbichi Nair* v. *Manathanath Ramar Nair*.
(1904) 1 Cri. L. Jour. 321 (324): 27 Mad. 223, *Palaniappa Chetty* v. *Annamalai Chetty*.
(1906) 16 Mad. L. Jour. (S.N.) 42, *C. M. P. No.* 148 *of* 1906.
(1907) 5 Cri. L. Jour. 29 (32) (Cal.), *Hubibar* v. *Munshi Khodabux*.
(1907) 5 Cri. L. Jour. 188 (188) (Cal.), *Girja Sankar Roy* v. *Binode Sheikh*.
(1911) 9 Ind. Cas. 706 (706) (Cal.), *Joy Narain* v. *Upendra Narain*.
(1920) 1920 Pat. 419 (420, 422), *Padarath Singh* v. *Ratan Singh*.
(1918) 1918 Pat. 621 (623), *Kishen Dayal Singh* v. *Jaglal Mandal*.
(1921) 61 Ind. Cas. 995 (1001, 1002) (Pat.), *Ram Nandan* v. *Public Prosecutor*.
(1908) 7 Cri. L. Jour. 389 (391): 30 All. 243, *Serhmal* v. *Bhairan Prasad*.
(1904) 1 Cri. L. Jour. 333 (335) (All.), *Lachumi Das* v. *Sohan Lal*.
(1918) 1918 Low. Bur. 90 (92), *Maung Po Aung* v. *Emperor*.
(1912) 13 Cri. L. Jour. 768 (768): 6 Sind L. R. 81, *Lalu* v. *Gurdasmal*.
(1920) 1920 Lah. 104 (104): 1 Lah. 259, *Ramji Das* v. *Emperor* (No appeal lies from an order sanctioning a prosecution by a Judge in chambers of the Chief Court).
Duration of sanction six months from date of sanction.
(1894) 1 Weir 789 (789), *Peria Krishnama Raju* v. *Kuppa Raju*.
(1883) 1883 All. W. N. 86 (86), *Criminal*

S. 195, Note 27.

27. **Revision.**—As to when a revision lies against an order of Court directing a complaint to be filed, *see* Notes to S. 476-B following.

The undermentioned cases[1] dealing with revision against order granting

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Revision No. 128, *March* 15.
(1915) 1915 All. 110 (111): 37 All. 283, *Zahir Singh* v. *Emperor*.
(1895) Rat. 803 (803), In re *Lala Bahrumal*.
(1895) 22 Cal. 176 (178, 179), *Raj Chunder Mozumdar* v. *Gour Chundar Mozumdar*.
(1884) 1884 Pun. Re. No. 23, p. 41 (41), *Chandan Lal* v. *Gur Prasad*.
(1887) 1887 Pun. Re. No. 28, p. 56 (57), *Sardar Jawala Singh* v. *Monjdin*.
(1893) 3 Mad. L. Jour. 44 (45), *Vatta Thevan* v. *Vandal Alagap Pudyan* (Court cannot limit it to a shorter period).
Computation of period of six months to be reckoned from date of grant by first Court and not from date of refusal to revoke by superior Court.
(1918) 1918 All. 243 (244): 40 All. 338, *Tilak Ram* v. *Dulip Singh*.
(1895) 22 Cal. 573 (580), *Darbari Mandar* v. *Jagoo Lal*.
(1903) 26 Mad. 190 (191), In re *Muthukudam Pillai*.
(1913) 14 Cri. L. Jour. 213 (213): 40 Cal. 584, *Durga Prasad Pattak* v. *Lachman Bania*.
(1926) 1926 Oudh 22 (22), *Makhdum Thather* v. *Emperor*.
[But see (1914) 1914 Mad. 50 (51), *Public Prosecutor* v. *Rave Unithiri*.
(1917) 1917 Bom. 7 (8): 42 Bom. 281, *Parvatrao Mahaskojirao*, In re.]
High Court alone can extend period of six months.
(1911) 12 Cri. L. Jour. 382 (383) (Cal.), *Ananta Pande* v. *Bhagavan Ramanuja*.
[See also (1884) 6 All. 45 (46), *Gulab Singh* v. *Debi Prasad*.]
But special grounds should be shown for extension.
(1885) 11 Cal. 577 (579, 580), *Joydeo Singh* v. *Harihar Pershad Singh*.
(1903) 26 Mad. 480 (480), *Karupanna Servakaran* v. *Sinnagoundan*.
(1896) 18 All. 358 (359, 360), *Mangar Ram* v. *Behari*.
(1892) 1892 All. W. N. 245 (245), *Baldeo Singh* v. *Prasade*.
(1891) 1891 All. W. N. 40 (40), *Chiddu* v. *Hardeo Prasad*.
(1884) 1884 All. W. N. 70 (70), *Budhu Mal* v. *Ajudhia Prasad*.
(1904) 1 Cri. L. Jour. 1112 (1113) (Bom.), In re *Sheik Sahib Saman Saheb*.
High Court can extend though application is made after expiry of six months.
(1924) 1924 Cal. 386 (387, 388), *Ram Saran Singh* v. *Chandra Mohan*.
(1912) 13 Cri. L. Jour. 551 (552, 553): 15 Oudh Cas. 177, *Hari Padu Mazumdar* v. *Lachimi Narain Marwari*.
(1916) 1916 Bom. 178 (179): 41 Bom. 631, *Krishna Kering and Co.* v. *J. R. Miller*.
(1904) 8 Cal. W. N. 797 (799), *Dinabhandu Nandy* v. *Sreemutty Hurrymutty Dassee*.
(1914) 1914 Mad. 370 (370), *Secretary of State* v. *Sankara Pandiya Pillai*.
(1905) 2 Cri. L. Jour. 106 (109): 32 Cal. 469, *Kali Kindar Sett* v. *Dinabandhu Nundy* (Held, application for extension shoud be made in the appellate side of High Court).

Note 27.

(1) *Order of Civil Court—Revision lies only under S. 115, C. P. Code and not under S. 439 of this Code.*
(1918) 1918 All. 68 (68), *Ram Prasad* v. *Emperor*.
(1906) 3 Cri. L. Jour. 400 (407), *Salig Ram* v. *Ramji Lal*.
(1909) 9 Cri. L. Jour. 39 (40): 31 All. 38, *Mazhar Hasan* v. *Said Hasan*.
(1923) 1923 All. 490 (490), *Ram Narain* v. *Harbans Singh*.
(1924) 1924 Cal. 641 (641), *Jainuddin* v. *Keramatullah*.
(1915) 1915 Cal. 457 (458), *Dy. Legal Remembrancer and Public Prosecutor, Behar and Orissa* v. *Ram Udal Singh*.
(1896) 23 Cal. 610 (616), *Rajkumar Debi* v. *Bama Sundari*.
(1904) 7 Bom. L. R. 84 (85), In re *Jivabhai Khusal*.
(1909) 10 Cri. L. Jour. 454 (459, 460): 37 Cal. 13, *Ram Prasad Malla* v. *Raghubar Malla*.
(1902) 26 Mad. 139 (141, 142), In re *Chennanagoud*.
(1927) 1927 Oudh 14 (15), *Nawab Ali* v. *Madhuri Saran*.
(1908) 7 Cri. L. Jour. 416 (417): 4 Low. Bur. Rul. 138, *Ramzan Ali* v. *Oporno Charan Chowdry*.
(1917) 1917 Pat. 173 (176), *Rang Bahadur Singh* v. *Shemandan Singh*.
But see the following—Revision lies under S. 439.
(1908) 7 Cri. L. Jour. 281 (288): 1908 Pun. Re. No. 5, *Bishen Singh* v. *Amirtsaria*.
(1908) 8 Cri. L. Jour. 351 (355): 4 Nag. L. R. 140, *Shankar Rao* v. *Shaik Daud*.
(1917) 1917 Lah. 277 (278): 1916 Pun. Re. No. 23, *Maula Bakhsh* v. *Lal Chand*.
(1916) 17 Cri. L. Jour. 184 (184): 1917 Mad. 158, *Nallapparaju Kataramaraju* v. *Medisetti Achayya*.
(1904) 1 Cri. L. Jour. 120 (121): 26 All. 1, *Nazir Hassan* v. *Dost Muhammad*.
(1905) 2 Cri. L. Jour. 225 (226) (All.), *Ranjit Singh* v. *Bhibba Mal*.
(1903) 1903 All. W. N. 172 (172), *Mohammad Yakub* v. *Muhammad Tyab*.
(1903) 1903 All. W. N. 170 (171), *Moti Ram* v. *Niadar Mal*.
(1881) 3 All. 508 (509), Re *Madho Persad*.
(1903) 6 Oudh Cas. 216 (219, 220), *Musaji* v. *Mohammad Walayatullah Khan*.
(1896) 23 Cal. 971 (975), *Shama Charan Das* v. *Kasi Naik*.
Order of Criminal Court—Revision lies under S. 439.
(1919) 1919 All. 430 (432), *Maquaddas Hussain* v. *Zahuruddin*.
(1924) 1924 All. 461 (461), *Joti Prasad* v. *Durga Prasad*.
(1908) 30 All. 243 (245), *Emperor* v. *Serh Mal*.
(1914) 1914 All. 211 (211, 212): 36 All. 403, *Ahsanullah Khan* v. *Mansukh Ram*.
(1923) 1923 Lah. 341 (342): 4 Lah. 130, *Khazan Singh* v. *Kripa Singh*.
(1922) 1922 Oudh 18 (19): 25 Oudh Cas.

or refusing sanction under the old Code are now obsolete and only of academic interest.

28. **Revision whether lies against withdrawal of complaint under sub-S. (5).**—The High Courts of Allahabad[1] and Patna[2] have held that a withdrawal of a complaint under sub-S. (5) is an *administrative or executive* act and hence not open to revision by the High Court. Thus, where the District Magistrate, as the authority to which the Police of the District is subordinate, orders a complaint filed by the Police to be withdrawn, it has been held that the order cannot be revised.[3] Similarly where the District Magistrate to whom the Returning Officer is subordinate under the Electoral Rules framed by the Local Government refuses to entertain an application for withdrawal of a complaint filed by the latter officer, the Allahabad High Court has held that the High Court cannot interfere with the order of the Magistrate as he did not act as a *Court*.[4]

In a recent decision[5] where a District Magistrate summarily rejected an application under this sub-section for the withdrawal of a complaint preferred by the joint Magistrate without giving notice or hearing the applicant it was held by the High Court of Madras that the application was by way of a judicial revision, and the order was open to revision under S. 439.

29. **Dismissal of complaint for non-compliance with the section whether bars a fresh and proper complaint.**—As already seen in Note 3 the Court has no jurisdiction to entertain a complaint which does not conform to the requirements of the section. Where the Court dismisses a complaint on such ground, the dismissal does not operate as an acquittal by a Court of competent jurisdiction so as to bar a fresh and proper complaint in accordance with the section.[1] (*See also* commentaries under S. 403.)

30. **Analagous provision in other Acts.**—For similar provision under *other Acts* requiring the sanction or the complaint of an authority for a

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153, *Brij Kumar* v. *Manna Lal Misra*.
(1902) 2 Weir 577 (578), *Criminal Revision Case Nos.* 303 *and* 304 *of* 1902.
(1889) 1889 All. W. N. 100 (100), In re *Najib Khan*.
(1881) 3 All. 508 (509), In the matter of the petition of *Madho Pershad*.
[See however (1918) 1918 Cal. 850 (856, 857): 44 Cal. 816, *Budhu Lal* v. *Cheltu Gope* (Held, no revision lies under Ss. 435, 439 of this Code or S. 115, C. P. Code).]
(1903) 1903 Pun. L. R. No. 97, p. 404 (407), *Crown* v. *Ohhanga* (Held, no revision lies against order of Revenue Court).
(1916) 1916 Pat. 151, *Avadh Behari Mishra* v. *Dwaraka Prasad Singh* (Revisional powers discretionary. Parties should show diligence).
(1888) 1888 All. W. N. 132 (132), *Queen-Empress* v. *Janki Prasad* (Where other remedies open, High Court will not interfere).
(1904) 7 Bom. L. R. 84 (85), In re *Jivabhai Khusal* (Jurisdiction not exceeded, High Court will not interfere).
(1915) 1915 Mad. 229 (232, 233): 38 Mad. 1044, *Narayana Nadan*, In re (High Court will not interfere with discretion of lower Courts).

Note 28.

(1) (1929) 1929 All. 931 (932), *Madusudan Lal* v. *Emperor*.
(2) (1930) 1930 Pat. 98 (101), *Kantir Missir* v. *Emperor*.
(3) (1930) 1930 Pat. 98 (101), *Kanti Missir* v. *Emperor*.
(1905) 27 All. 292 (293), *Emperor* v. *Shib Singh*.
(4) (1929) 1929 All. 931 (932), *Mudusudan Lal* v. *Emperor*.
(5) (1934) 1934 Mad. 473 (474): 57 Mad. 1101, *Nagu Servai* v. *Emperor*.

Note 29.

(1) (1928) 1928 Bom. 143 (144): 52 Bom. 257, *Emperor* v. *Ambaji Dhakya Datkara*.
(1930) 1930 Lah. 1055 (1055), *Chuhar* v. *Emperor*.
(1926) 1926 Pat. 302 (304): 5 Pat. 452, *Mohammad Yasin* v. *Emperor*.
(1927) 1927 Sind 10 (12, 15): 21 Sind L. R. 1, *Fakir Mohammad* v. *Emperor*.
See also the following cases under the old Code relating to sanction.
(1909) 9 Cri. L. Jour. 183 (185) (Bom.), In re *Manjnath Shivanath*.
(1875) 24 Suth. W. R. 64 (64), In re *Edoo Khansamah*.
(1921) 1921 Cal. 1 (15): 48 Cal. 388, *Satischandra* v. *Ram Dayal*.
(1901) 24 Mad. 337 (339), *Queen-Empress* v. *Kunivil Raru*.
(1881) 3 Mad. 48 (51), *Rami Reddy*, In re.
(1918) 1918 Nag. 126 (128), *Nanakram* v. *Emperor*.
[See however (1888) 12 Mad. 35 (36), *Queen Empress* v. *Shivaram*.]

S. 195, Note 30.

prosecution under those Acts see the following cases.[1]

Note 30.

(1) *Stamp Act—Sanction of the Collector necessary.*

(1883) 1883 All. W. N. 98 (98), *Deo Shahai* v. *Empress.*

(1915) 1915 Lah. 241 (241) : 1915 Pun. Re. No. 21, *Emperor* v. *Ramji Lal.*

(1884) 9 Bom. 27 (28), *Queen-Empress* v. *Jethmal Jegraj.*

(1892-1896) 1 Upp. Bur. Rul. 313 (318, 319), *Periannan Chetty S. R.M. M.* v. *Queen-Empress.*

(1872-1892) 1872-1892 Low. Bur. Rul. 623 (624), *Queen-Empress* v. *Mawsee Dewraj.*

(1892-1896) 1 Upp. Bur. Rul. 307 (310), *Queen-Empress* v. *Nga Set Yo.*

(1868) 5 Bom. H. C. R. 48 (49), *Reg* v. *Bai Divalli.*

Income Tax Act.—Sanction of Collector necessary.

(1914) 1914 All. 117 (117), *Bankat Lal* v. *King-Emperor.*

(1917) 1917 All. 339 (339), *Jagdeo Sahu Emperor.*

(1933) 1933 Nag. 358 (358) : 30 Nag. L. R. 50, *Champalal Girdhari Lal* v. *Emperor.*

Arms Act.—Sanction of District Magistrate necessary—See S. 29.

(1911) 12 Cri. L. Jour. 234 (235) Mad. *Gopalakrishna Ayyar* v. *Emperor.*

(1910) 11 Cri. L. Jour. 190 (190) Mad. *In re, Abdul Kadir Sahib.*

(1882) 1 Weir. 663 (664), *In re, Perumal Chetty.*

(1927) 1927 Cal. 721 (722), *Ismail Khan* v. *Emperor.*

(1900) 27 Cal. 692 (697), *Ahmed Hussain* v. *Queen-Empress.*

(1914) 1914 Lah. 584 (584) : 1913 Pun. Re. No. 23, *Sunder Singh* v. *Crown.*

(1917) 1917 Lah. 233 (233) : 1917 Pun. Re. No. 4, *Ahmad Din* v. *Crown.*

(1908) 8 Cri. L. Jour. 65 (67, 68) : 4 Low. Bur. Rul. 247, *Kaka* v. *King-Emperor.*

(1916) 1916 Low. Bur. 105 (107) : 8 Low. Bur. Rul. 452, *Po Chein* v. *King-Emperor.*

(1872-1892) 1872-1892 Low. Bur. Rul. 536 (537), *Queen-Empress* v. *Nga Po Ka.*

(1892-1896) 1 Upp. Bur. Rul. 2 (3), *Queen-Empress* v. *Pa Twe Wa.*

(1907) 1907 Upp. Bur. Rul. 1 (1), *Nga Kaing* v. *King-Emperor.*

(1896) 9 C. P. L. R. 26 (26), *Empress* v. *Kisan Kohalee.*

(1926) 1926 All. 143, *Amir Ahmad* v. *Emperor* (Held sanction not necessary).

(1917) 1917 Low. Bur. 96 (98), *Nga Pochien* v. *Emperor* (Held sanction under S. 29 necessary only for an offence under S. 19 (*f*) and not for one under S. 20).

(1924) 1924 Rang. 85 (85), *Nga Tha Hla* v. *Emperor* (do.)

(1931) 1931 Sind 9 (12) : 25 Sind. L.R. 1, *Subjhatallah Shah* v. *Emperor,* (do.)

Municipalities Act.

(1924) 1924 All. 684 (685, 686) : 46 All. 611, *Ram Nath* v. *Emperor,* (U. P. Act).

(1921) 1921 All. 162 (162), *Juggan* v. *Emperor.*

(1917) 18 Cri. L. Jour. 700 (701) : 1917 All. 350, *Bach Lal* v. *Emperor.*

(1916) 1916 Pat. 3 (3), *Baldeo Lall* v. *Emperor.*

(1917) 1917 Cal. 260 (261), *Kisto Lal* v. *Chairman of Hoogli* (Bengal Act).

(1912) 13 Cri. L. Jour. 524 (524), (Cal), *Rasul Bukhsh* v. *Municipal Board of Chapra.*

(1924 1924 Pat. 377 (379), *Rahim* v. *Emperor.*

(1924) 1924 Lah. 80 (81) : 4 Lah. 120, *Mt. Gulazar Jan* v. *Crown* (Pun. Act).

(1922) 1922 Lah. 183 (184), *Shiv Dayal* v. *Takan Das.*

(1916) 1916 Lah. 358 (358) : 1916 Pun. Re. No. 8, *Crown* v. *Dharmashah.*

(1884) 1884 Pun. Re. No. 5 p. 7 (7), *Akbar Khan* v. *Empress.*

(1920) 1920 Mad. 946 (947) In re: *Krishnaswami Naidu.* (Madras Act)

(1920) 1920 Mad. 151 (152), In re, *Kallaperumal Naidu.*

(1918) 1918 Nag. 134 (135), *Cambhir Chand* v. *Secretary, Municipal Committee, Nagpur,* (C. P. Act).

(1903) 2 Low. Bur. Rul. 124 (125), *King Emperor* v. *Abdul Mawait,* (Lower Burma Act).

Sanction under Registration Act—S. 83.

(1916) 1916 All. 64 (65) : 38 All. 354, *Hussain Khan* v. *Emperor.*

(1884) 10 Cal. 604 (605), *Queen-Empress* v. *Balesar.*

(1885) 11 Cal. 566 (570) (F. B.), *Gopinath* v. *Kuldip Singh.*

(1907) 5 Cri. L. Jour. 199 (200, 201) (Cal.), *Ram Charan Singh* v. *Emperor.*

(1866) 6 Suth. W. R. 81 (81), *Queen* v. *Jaggut Chunder Dutt.*

(1901) 5 Cal. W. N. 44 (45), *Goberdhan* v. *Ishvar Chunder.*

(1918) 1918 Mad. 439 (441) : 40 Mad. 880, *Piramu Nadathi,* In re.

(1921) 1921 Mad. 140 (140), *Palani Goundan,* In re.

(1925) 1925 Nag. 344 (345) : 21 Nag. L. R. 167, *Indrani Bahu* v. *Rani Badi Dulaiya.*

(1923) 1923 Pat. 155 (156), *Hari Bux Ram* v. *Chhadi Pande.*

(1924) 1924 Pat. 754 (755), *Musst. Gobinda* v. *King-Emperor.*

Explosive Substances Act VI of 1908.

(1927) 1927 Bom. 21 (21) : 50 Bom. 695, *Emperor* v. *Kallappa Dundappa Rudhrannavar.*

(1934) 1934 All. 982 (982), *Nathu Ram* v. *Emperor.*

(1898) 2 Cal. W. N. 597 (600), *Nabar Chunder Chowdhary* v. *Tripura Charan Chowdhary.*

Bengal Food Adulteration Act.

(1923) 1923 Cal. 561 (561), *Raghunath Mody* v. *Kurseong Municipality.*

Post Office Act.

(1929) 1929 Mad. 447 (447) : 52 Mad. 534, *Sankaran Pillai* v. *Emperor.*

Burma Ante Boycott Act.

(1924) 1924 Rang. 65 (66), *Nga Aung Hman* v. *Emperor.*

Burma Village Act.

(1931) 1931 Rang. 87 (88) : 8 Rang. 654, *Maung Po Thit* v. *Maung Pyu.*

Religious Endowment Act, 1863 (Mad.).

(1910) 11 Cri. L. Jour. 192 (192) (Mad.), *Amin Miran* v. *Madan Hussain.*

(1918) 1918 Mad. 560 (561) : 41 Mad. 237, *Alagappa Chettiar* v. *Muthiah Chettiar.*

Excise Act.

(1916) 17 Cri. L. Jour. 151 (152) : 1916 Lah. 295, *Harnam Singh* v. *Crown.*

(1883) 1883 Pun. Re. No. 28, p. 74 (75), *Kirpal Singh* v. *Empress.*

(1884) 1884 Pun. Re. No. 8, p. 8 (8), *Mangal* v. *Empress.*

196.* No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Indian Penal Code (except S. 127), or punishable under S. 108-A, or S. 153-A, or S. 294-A or S. 295-A or S. 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Prosecution for offences against the State.

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF SECTION	1
"TAKING COGNIZANCE"	2
"COMPLAINT MADE BY ORDER OF OR UNDER AUTHORITY FROM . . ."	3

***(CODE OF 1882—S. 196.)**

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except S. 127, or punishable under S. 294-A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Prosecution for offences against the State.

(CODE OF 1872—S. 465.)

CHAPTER XXXV.

PROSECUTIONS IN CERTAIN CASES.

465. A complaint of an offence punishable under Chapter VI of the Indian Penal Code, except S. 127, or punishable under S. 294-A of the said Code shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council or the Local Government, or some officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General.

Prosecution for offences against the State.

(CODE OF 1861—S. 166.)

CHAPTER XI.

PROSECUTIONS IN CERTAIN CASES.

166. A charge of an offence punishable under Chapter VI of the Indian Penal Code, except S. 127, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the Local Government, or some Officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General.

Prosecutions for certain offences not to be instituted, but under authority of Government or of a duly empowered Officer.

(1920) 1920 Upp. Bur. 46 (47): 3 Upp. Bur. Rul. 197, *Maung Ki* v. *Emperor.*

(1892-1896) 1 Upp. Bur. Rul. 111 (111), *Queen-Empress* v. *Ma Min Thon.*

Railways Act 1890.

(1892) 1892 Pun. Re. No. 9, p. 20 (23), *Queen-Empress* v. *Fattu.*

Provincial Insolvency Act, 1907.

(1918) 1918 Mad. 460 (461), *Segu Baliah* v. *Ramasamiah.*

S. 196, Note 1.

	Note No.
SIGNATURE OF ORDER OF SANCTION	4
SPECIFICATION OF SECTION UNDER WHICH COMPLAINT IS TO BE MADE	5
PROOF OF SANCTION	6
WHO CAN SANCTION PROSECUTION	7
SANCTION NOT JUDICIAL FUNCTION	8
FORM AND CONTENTS OF COMPLAINT	9
WANT OF SANCTION—EFFECT	10
WANT OF COMPLAINT—EFFECT	11
FACTS OF CASE AMOUNTING TO OFFENCE REQUIRING SANCTION AS WELL AS OTHER OFFENCE—EFFECT ..	12

Other Topics.

Commitment for offences not in complaint. See Note 10 and S. 532, Note 2.
Complaint must set out facts. See Note 3, Note 9, Pts. 4-6.
Delegation of power of Local Government. See Note 7.
Letter of Government whether is a complaint. See Note 11.
Prosecution for other offences not mentioned in sanction. See Note 5.

1. Scope and object of section.—This section embodies one of the exceptions to the general rule that a prosecution can be initiated at the instance of *any* person. (*See* Notes under S. 4 (*h*) and S. 190). The section provides that in regard to the offences enumerated in it no proceedings can be taken in the absence of a complaint made by order of or under authority from the Governor-General in Council, the Local Government or any officer empowered in this behalf by the Governor-General in Council. Thus, in cases coming under this section, clauses (*b*) and (*c*) of S. 190 which enable cognizance to be taken by a Magistrate on a report of a Police-officer or on his own knowledge, information or suspicion have no application. Cognizance in cases coming under this section can only be taken on a *complaint*. Further, such complaint must be sanctioned by the authorities mentioned in the section.[1]

It will be seen that the offences enumerated in this section are of a very exceptional nature and are all of them in the nature of offences against the state either in its internal or (S. 108-*A*) in its external relations.[2] The object of the section is thus to prevent unauthorised persons from intruding in state affairs by instituting state prosecutions and to secure that such prosecutions shall only be instituted under the authority of the Government.[3]

This section being a *disenabling* section, must be construed strictly.[4] But, at the same time, it must be remembered that the policy of the Legislature underlying this section is to vest exclusively in the Government the discretion of initiating proceedings in respect of the offences enumerated in it and that

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Defence of India Act, 1915.
(1919) 1919 Mad. 24 (26): 42 Mad. 69, *Kandaswami Pillai*, In re.
Companies Act.
(1916) 1916 Lah. 397 (398): 1916 Pun. Re. No. 14, *Tota Ram* v. *Emperor*.

Section 196—Note 1.

(1) (1919) 1919 Mad. 968 (969): 42 Mad. 180, In re *Varadarajalu Naidu*.
(1911) 12 Cri. L. Jour. 2 (3): 38 Cal. 559, *Emperor* v. *Lalit Mohan Chakravarti*.
(2) (1911) 12 Cri. L. Jour. 217 (221, 222): 1911 Pun. Re. 11, *Girdhari Lal* v. *Emperor*.
(3) (1897) 22 Bom. 112 (125), *Queen-Empress* v. *Bal Gangadhar Tilak*.
(1923) 1923 Mad. 328 (328), *Kutty Moopan*, In re.
(1911) 12 Cri. L. Jour. 286 (289): 38 Cal. 559, *Emperor* v. *Noni Gopal Gupta*.
(4) (1919) 1919 Mad. 968 (969): 42 Mad. 180.

such discretion cannot be delegated to or exercised by any other body or person.[5]

S. 196, Notes 1—2.

The considerations of policy which apply to the initiation of proceedings in respect of the offences mentioned in this section apply not only to the institution of a prosecution for the *first time* but also to the question whether it is desirable to launch a fresh prosecution if the first prosecution fails or is likely to fail on account of a technical defect.[6]

S. 108, *ante* provides for taking security for good behaviour from a person disseminating or attempting to disseminate seditious (or other) matter. No previous sanction is necessary for starting proceedings under the said section. But the section is *preventive* in its object and scope. Hence, where there is no apprehension of an accused hereafter doing any of the acts mentioned in the section it does not apply. In such a case, it is not open to take proceedings under the section merely because a person has committed any of the acts mentioned therein. The proper procedure would be to prosecute the accused for an offence after obtaining sanction under *this* section (S. 196).[7]

Cognizance under this section depends on *complaint* (made under authority emanating from certain sources) while cognizance under S. 197, *infra* depends on *sanction*.[8] Moreover, the two sections are distinct in their aims and scope and the considerations applicable to them are different. Hence, decisions bearing on the interpretation of S. 197 are not *ipso facto* applicable to the questions arising under this section.[9]

2. "Taking cognizance".—As to the meaning of the expression "taking cognizance of an offence", *see* Notes under S. 190.

As mentioned in the said Notes ordering a preliminary investigation by the police under S. 155 of the Code, is not "taking cognizance of an offence". Hence, a complaint made under the sanction of the Government is not necessary for ordering such an investigation.[1]

It has also been seen in the above Notes that the expression "taking cognizance" applies not only to cases where a Court for the first time becomes seised of a criminal transaction but also to cases where subsequently a different offence appears to be involved in such transaction and the Court proposes to proceed in respect of such offence. Hence, where a prosecution has been commenced on the basis of a sanction and a complaint under this section with reference to an offence under S. 121-A of the Penal Code but the facts proved do not amount to an offence under S. 121-A but amount to an offence under S. 124-A it is not open to the Court to proceed in respect of the latter offence in the absence of a

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In re *Varadarajalu Naidu* (*Per* Napier, J.).

(5) (1910) 11 Cri. L. Jour. 453 (459): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor.*

(6) (1920) 1920 Mad. 928 (931, 932): 42 Mad. 885, *Varadarajalu Naidu* v. *Emperor* (*Per* Sadasivier, J.).

(7) (1928) 1928 All. 344 (344, 345): 50 All. 854, *Chiranji Lal* v. *Emperor.*

(8) (1890) 1890 Pun. Re. No. 16, p. 37, *Shamal Khan* v. *Empress.*

(1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor.*

(9) (1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor.*

[See also (1911) 12 Cri. L. Jour. 217 (221, 222): 1911 P. R. 11, *Girdhari Lal* v. *Emperor* (Decisions on S. 196 not applicable to S. 197).]

[But compare (1897) 22 Bom. 112, *Queen-Empress* v. *Bal Gangadhar Tilak* (Decision on S. 197 was applied and followed in case under S. 196).]

Note 2.

(1) (1932) 1932 Lah. 581 (581), *General Relief Association, Lahore* v. *Emperor.*

S. 196, Notes 2—3.

sanction and complaint directed specifically to it.[2]

3. "**Complaint made by order of or under authority from. . . .**"— These words do not mean that the actual complaint must have been sanctioned by the Government. In other words, it is not necessary that the *very words* used in a complaint must have been sanctioned by the Government. It is enough if the *institution* of the complaint has been sanctioned by the Government.[1] But the discretion to decide whether in any case a prosecution should be started for any of the offences enumerated in the section is vested *exclusively* in the Government. It is beyond the power of the Government to delegate its discretion in this respect to any other person or body of persons.[2] Hence, the sanction of the Government must be given with reference to each case specifically. Therefore, the Government must specify in each case the person against whom[3] and the *matter* in respect of which a prosecution should be launched; and the complaint must accord with the sanction in both these respects. Thus, where the acts in respect of which a prosecution has been sanctioned constitute an offence under S. 121-A of the Penal Code, a charge for an offence under S. 124-A cannot be sustained on such a sanction.[4] Similarly, where the order for prosecution relates to a definite offence committed on a particular occasion, a prosecution in respect of a distinct offence committed on a different occasion cannot be sustained on the basis of such an order.[5]

It would also appear that a sanction under this section must contemplate the institution of a complaint by a *definite person* and must not be merely a sanction in the abstract which is not addressed to anybody in particular.[6] But where a prosecution has been ordered and a complaint is made by an official the presumption that official acts are regularly done may be applied and it may be presumed that the official making the complaint is duly authorised to do so.[7] Moreover, in the undermentioned cases,[8] it was held that the defect in a sanction due to the failure to address it to some determinate person is only an irregularity which does not go to the root of the jurisdiction.

Subject to the considerations set forth above, an order sanctioning a

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(2) (1926) 1926 Rang. 169 (171): 4 Rang. 131, *U Nyan Nein Da* v. *King-Emperor.*

Note 3.

(1) (1919) 1919 Mad. 968 (968): 42 Mad. 180, In re *Varadarajalu Naidu.*
(1909) 9 Cri. L. Jour. 130 (132): 32 Mad. 35, In re *Chidambaram Pillai.*
(1909) 9 Cri. L. Jour. 108 (111): 32 Mad. 3, In re *Subramaniya Siva.*
(1925) 1925 Mad. 106 (107), *Narayana Menon,* In re.
(1908) 7 Cri. L. Jour. 10 (13): 35 Cal. 141, *Apurba Krishna* v. *Emperor.*
(2) (1910) 11 Cri. L. Jour. 453 (459): 37 Cal. 467, *Barindra Kumar* v. *Emperor.*
(1912) 13 Cri. L. Jour. 609 (649), *Pulin Behary Das* v. *Emperor.*
(1922) 1922 Mad. 126 (127), In re *Umayyathantagath Puthen Veetil Kunhi Kadir.*
(1918) 1918 Nag. 248 (251), *Narayan Kashinath Vaidya* v. *Emperor.*
(3) (1930) 1930 Lah. 81 (81), *Emperor* v. *Diwan Chand* (Name of the accused was shown on the back of the paper instead of in the body of the sanction merely because there was not sufficient space left on the front side. Held, that the initial presumption was that all the official acts were done in a regular manner and hence the sanction was valid).
(1908) 7 Cri. L. Jour. 10 (13): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor* (Sanction not specifying accused by name but identify of accused established—Held the sanction was valid).
[See also (1872-1892) 1872-1892 L. B. R. 389 (389), *Aungo Do* v. *Queen-Empress* (Identity of person against whom prosecution has been sanctioned with the person against whom proceedings are started must be proved by independent evidence).]
(4) (1926) 1926 Rang. 169 (171): 4 Rang. 131, *U. Nyan Nein Da* v. *Emperor.*
(5) (1924) 1924 Rang. 371 (372), *U Pathada, U Paduma and U Nandiya* v. *Emperor.*
(6) [See (1892) 20 Cal. 474 (475), *Baperam Surma* v. *Gouri Nath Dutt* (Case under old S. 195).
(7) (1908) 7 Cri. L. Jour. 10 (13): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*
(8) (1923) 1923 Mad. 328 (328), In re *Kutti Moopan.*

prosecution under this section need not be in any particular from.[9] Similarly, though a sanction of prosecution under the section must be expressed with sufficient particularity[10] to indicate clearly the matter which is to be the subject of the proceedings, there is no rigid rule as to the degree of particularity required.[11] Thus, it has been held in a prosecution for sedition under S. 124-A that the sanction need not set out the alleged seditious passages if the articles or speeches in which such passages occur are indicated.[12] It has even been held that the particular article in which the alleged seditious matter occurs need not be specified and that an order for prosecution in respect of "certain articles" appearing in a specified newspaper without mentioning the dates on which the articles appeared in the paper and without giving any other particulars is sufficient for the purposes of this section.[13]

An order for prosecution under this section need not be in writing.[14] It may be communicated to the officer who is to set the law in motion in any manner. Thus a sanction to prosecute may be communicated by telegram.[15] There is also no restriction as to the person who can be ordered to make a complaint under this section.[16] Thus, a Police-officer may be authorised to make such a complaint.[17]

4. Signature of order of sanction.—It is not necessary that an order sanctioning a prosecution under this section must be signed personally by the head of the Government issuing the order. It is enough if the order is signed

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(9) (1918) 1918 Nag. 248 (251), *Narayan Kashinath Vaidya* v. *Emperor.*
(1925) 1925 Mad. 106 (107), *Narayana Menon*, In re.
(1897) 22 Bom. 112 (150), *Queen-Empress* v. *Bal Gangadhar Tilak.*
(1908) 7 Cri. L. Jour. 10 (13): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*

(10) (1908) 7 Cri. L. Jour. 10 (13): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*
(1897) 22 Bom. 112 (124), *Queen-Empress* v. *Bal Gangadhar Tilak.*

(11) (1912) 13 Cri. L. Jour. 609 (649), *Pulin Behari Das* v. *Emperor* (Persons to be prosecuted named—The sections under which they are alleged to have committed offences and also the period of their activity specified. The mere circumstance that these persons are not described as members of the revolutionary society the existence whereof was sought to be established at the trial does not affect the validity of the sanction).
(1897) 22 Bom. 112 (124), *Queen-Empress* v. *Bal Gangadhar Tilak* (Sanction in respect of certain "articles"—Objection that the extracts in question did not constitute "articles"—Held that the word "articles" in the order was intended to cover not only articles in the strict sense but generally matter published in the paper which was considered objectionable).
(1919) 1919 Mad. 968 (969): 42 Mad. 180, In re *Varadarajalu Naidu* (The only thing definite in the order is the persons, the sections, and the dates within which the speeches were made. This section must not be construed with the strictness of an enabling section but as being a disenabling section must be read simply as requiring the specific authority of Government for institution of the proceedings and nothing more).
(1923) 1923 Lah. 333 (334), *Kishen Singh* v. *Crown* (Sanction must be deemed sufficient if it names the persons to be prosecuted and specifies the sections under which they are alleged to have committed the offence as also the period of their activity).
(1924) 1924 Rang. 65 (66), *Nga Aung Hman* v. *King-Emperor* (Sanction as to offence of boycott by omitting to invite for accused's *daughter's* marriage while as a fact the marriage was of accused's son and the complaint referred to such marriage—Held that discrepancy was immaterial).

(12) (1919) 1919 Mad. 968 (969): 42 Mad. 180, In re *Varadarajalu Naidu.*
(1923) 1923 Lah. 333 (333), *Kishen Singh* v. *The Crown.*
(1918) 1918 Nag. 248 (252), *Narayan Kashinath Vaidya* v. *Emperor* (Order for complaint in respect of a speech—Complaint filed in respect of certain passages occurring in the speech—Held that complaint was valid).

(13) (1897) 22 Bom. 112 (124, 150), *Queen-Empress* v. *Bal Gangadhar Tilak* (Sanction need not set out the alleged seditious speeches or passages).
(1925) 1925 Mad. 106 (107), *Narayana Menon*, In re.

(14) (1897) 22 Bom. 112 (124), *Queen-Empress* v. *Bal Gangadhar Tilak.*
(1918) 1918 Nag. 248 (251), *Narayan Kashinath Vaidya* v. *Emperor.*

(15) (1920) 1920 Mad. 928 (929): 42 Mad. 885, *Varadarajalu Naidu* v. *Emperor.*

(16) (1897) 22 Bom. 112, *Queen-Empress* v. *Bal Gangadhar Tilak* (Complaint by Oriental Translator to Government).

(17) (1909) 9 Cri. L. Jour. 108 (110): 32 Mad. 3, In re *Subramaniya Siva.*

S. 196, Notes 4—5.

by some gazetted officer having authority to sign such orders on behalf of the Government. (*See* S. 78 of the Evidence Act). For instance, the order may be signed by the Chief Secretary to the Government.[1] But the signature by an officer who is not head of the department concerned so as to attract the provisions of S. 78 of the Evidence Act and who is not otherwise proved to have been authorised to sign the order on behalf of the Government is not sufficient. Thus, a signature by a Deputy Secretary to the Government was held to be insufficient in the undermentioned case.[2] In the same case it was also held that the Deputy Secretary could not sign *on behalf of* the Chief Secretary (who could have signed the order) as the Chief Secretary was himself a delegate.

A Court can take judicial notice of the signature of a gazetted officer who has signed an order for prosecution under this section.[3] (*See* Evidence Act, S. 57.[7]

A person signing an order for prosecution *not* being himself complainant need not be examined on oath in the case.[4]

5. Specification of section under which complaint is to be made.— There is a conflict of decisions as to whether an order for prosecution under this section must specify the *section* under which the alleged offence falls. On the one hand it has been held by the Calcutta High Court that such section must be specified in the sanction and that a prosecution in respect of an offence under a section which is not so specified is illegal. In other words, the sanction should specifically be directed to the particular section in respect of which proceedings are to be taken and the order or authority should be preceded by and be the result of a deliberate determination that proceedings shall be taken in respect of a particular section or particular sections and no other. It would be opposed to the true intendment of this section for the Government by its order to give its legal or other advisers a roving power of determining under what sections proceedings should be taken. Hence, where an order is for prosecution under certain specified sections "or under any other section which may be found applicable", the alternative clause is illegal and cannot be the basis of proceedings under a section not specifically mentioned in the order.[1]

On the other hand it has been held by the Sind Judicial Commissioner's Court that the particular section under which the prosecution is to be started need not be specified in the sanction provided that the matter of complaint is otherwise made clear.[2] A similar view was expressed by one of the presiding Judges in the undermentioned decision of the Rangoon High Court.[3] Attention may also be drawn to a case of the Bombay High Court noted below.[4] In that

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Note 4.

(1) (1908) 7 Cri. L. Jour. 10 (16): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*
(1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar Bose* v. *Emperor.*
(1918) 1918 Nag. 248 (251, 252), *Narayan Kashinath Vaidya* v. *Emperor.*
(2) (1922) 1922 Cal. 298 (299, 300): 50 Cal. 135, *Md. Oziullah* v. *Beni Madhab Chowdhury.*
(3) (1923) 1923 Mad. 600 (600, 601), *Cholaacheri Ayammad*, In re.
(4) (1908) 7 Cri. L. Jour. 10 (16): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor.*

Note 5.

(1) (1910) 11 Cri. L. Jour. 453 (459): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor.*
(1912) 13 Cri. L. Jour. 609 (649), *Pulin Behary Das* v. *Emperor.*
(2) (1910) 11 Cri. L. Jour. 583 (587): 4 S. L. R. 55, *Emperor* v. *Virumal.*
(3) (1926) 1926 Rang. 169 (171): 4 Rang. 131, *U Nyan Nein Da* v. *King-Emperor* (*Per* Duckworth, J.).
(4) (1897) 22 Bom. 112 (122), *Queen-Empress* v. *Bal Gangadhar Tilak.*

case, a prosecution was ordered to be started under S. 124-A of the Penal Code *and any other section of the Code that might be found applicable.* The prosecution was instituted under S. 124-A of the Penal Code. No objection was raised as to the validity of the sanction on the ground of its giving a choice to the prosecutor in the matter of selection of the section under which to proceed.

The decisions of the Madras High Court are varying. In the undermentioned case[5] the view of the Calcutta High Court was approved but it was held that a sanction for prosecution under either of two specified sections in the alternative was regular and did not come within the prohibition laid down by the Calcutta High Court. But the Calcutta view was disapproved by one of the presiding judges in the case noted below.[6]

Where a sanction was given for prosecution under S. 121 of the Penal Code in respect of certain activities of the accused and under S. 124-A in respect of certain speeches delivered by him it was held that a prosecution under S. 121 in respect of the speeches was covered by the sanction.[7]

Where a prosecution under S. 124-A was sanctioned it was held that the *abetment* of an offence under S. 124-A, was also an offence under S. 124-A and a prosecution for such abetment was justified under the sanction.[8]

6. Proof of sanction.—In a prosecution for an offence mentioned in this section the sanction of the Government for such prosecution must be strictly proved.[1] A sanction communicated by telegram must be proved to emanate from the Government. The Court is forbidden by the express provisions of S. 88 of the Evidence Act to make any presumption as to the *person* by whom the telegram was sent.[2]

7. Who can sanction prosecution.—Under this section a prosecution can be sanctioned only by the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf. Thus, it is only the Governor-General in Council that can empower an officer to order or authorise a complaint to be made under this section.[1]

Where a sanction is issued by the Government it must be the act of the Government as a body and not of a single member of it.[2]

It is not open to accused person to dispute the right of the *de facto* Government to exercise the powers of Government including that of sanctioning prosecutions under this section.[3]

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(5) (1922) 1922 Mad. 126 (127), In re *Kunhi Kadir.*

(6) (1919) 1919 Mad. 968 (969): 42 Mad. 180, In re *Varadarajalu Naidu* (*Per* Napier, J.).

(7) (1925) 1925 Mad. 106 (106), *Narayana Menon,* In re (Sanction under S. 121, I. P. C. in respect of certain incidents and under S. 124-A in respect of certain speeches—Complaint under S. 121 in respect of the speeches—Held that the complaint was covered by the sanction. It is submitted that the decision does not appear to be correct in principle because the sanction of the Government cannot refer to any transaction other than that specified therein in respect of the offence for which prosecution is sanctioned).

(8) (1909) 9 Cri. L. Jour. 130 (131, 132, 133): 32 Mad. 35, In re *Chidambaram Pillai.*

Note 6.

(1) (1872-1892) 1 L. B. R. 389 (389), *Aung Do and Gonwana* v. *Queen-Empress.*

(2) (1920) 1920 Mad. 928 (928, 929): 42 Mad. 885, *Varadarajalu Naidu* v. *Emperor.*

Note 7.

(1) (1911) 12 Cri. L. Jour. 217 (221): 1911 P. R. 11, *Girdhari Lal* v. *Emperor.*

(2) (1920) 1920 Mad. 928 (929): 42 Mad. 885, *Varadarajalu Naidu* v. *Emperor.*

(3) (1912) 13 Cri. L. Jour. 609 (612, 613, 649), *Pulin Behari Das* v. *Emperor.*

S. 196, Notes 8—10.

8. Sanction not judicial function.—The Government in according or withholding sanction under this section acts purely in an executive capacity and not on a judicial capacity.[1] Hence, such sanction need not be based on legal evidence.[2] Nor is it necessary that the Government in sanctioning a prosecution should give *reasons* for *doing so*.[3] Similarly, it is not necessary, before sanctioning a prosecution, that the accused must be given an opportunity of showing why his prosecution should not be ordered.[4]

9. Form and contents of complaint.—A complaint under this section must fulfil the requirements of the definition of a complaint under S. 4 (*h*).[1] It is not necessary according to such definition that the complaint must be in writing[2] or that it must be made on oath.[3] But the complaint must set out the facts constituting the alleged offence.[4] If such facts are not stated, the proceedings are liable to be quashed,[5] though after the proceedings have been terminated, a conviction cannot be set aside on the ground purely that the complaint did not properly set out the facts of the case.[6]

It is absolutely necessary that a complaint under this section should specify the accused person against whom action is to be taken. No proceedings can be sustained against a person who is not mentioned as an accused in the complaint although his name may appear as an accused in the order sanctioning the prosecution.[7]

In a prosecution for sedition the complaint must set out the alleged seditious words used by the accused.[8]

10. Want of sanction—Effect.—The sanction of the Government is a condition precedent for the validity of a prosecution under this section. Hence, such a prosecution is illegal in the absence of such sanction.[1] Moreover, the

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Note 8.

(1) (1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In the matter of *Kalagava Bapiah*.
(1912) 13 Cri. L. Jour. 209 (211): 39 Mad. 750, *Bapu* v. *Bapu*.
(1923) 1923 Mad. 338 (339), *China Chendrayya* v. *Maddukuri Subbarayudu*.
(1926) 1926 Rang. 169 (171): 4 Rang. 131, *U Nyan Nein Da* v. *Emperor* (*Per* Duckworth, J.).
(2) (1912) 13 Cri. L. Jour. 209 (211): 39 Mad. 750, *Bapu* v. *Bapu*.
(1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In the matter of *Kalagava Bapiah*.
(3) (1923) 1923 Mad. 338 (339), *China Chendrayya* v. *Muddukuri Subbarayudu*.
(4) (1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah* (Case under S. 197, Cr. P. Code).

Note 9.

(1) (1908) 7 Cri. L. Jour. 10 (14): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
(2) (1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
(3) (1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
(4) (1912) 13 Cri. L. Jour. 609 (651) (Cal.), *Pulin Behari Das* v. *Emperor*.
(5) (1912) 13 Cri. L. Jour. 609 (651) (Cal.), *Pulin Behari Das* v. *Emperor*.
(6) (1912) 13 Cri. L. Jour. 609 (651) (Cal.), *Pulin Behari Das* v. *Emperor*.
(1908) 7 Cri. L. Jour. 10 (16): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor* (Defect of particulars curable under S. 537).
(1909) 9 Cri. L. Jour. 108 (111): 32 Mad. 3, In re *Subramania Siva* (Fact that dates of alleged seditious speeches and nature of seditious words were not given is only irregularity).
(7) (1912) 13 Cri. L. Jour. 609 (612) (Cal.), *Pulin Behari Das* v. *Emperor*.
(1911) 12 Cri. L. Jour. 2 (3): 38 Cal. 559, *Emperor* v. *Lalit Mohan Chakravarti*.
(8) (1929) 1929 Lah. 284 (285, 286), *Ramchand* v. *Emperor* (The fact that the sanction gives the words is not enough).
(1925) 1925 Mad. 106 (107), In re *Narayana Menon*.
(1897) 22 Bom. 112 (150), *Queen-Empress* v. *Bal Gangadhar Tilak*.
[But see (1909) 9 Cri. L. Jour. 108 (110, 111): 32 Mad. 3, In re *Subramaniya Siva*.]

Note 10.

(1) (1890) 1890 Pun. Re. No. 16, p. 35, *Shamal Khan* v. *Empress*.
(1884) 1884 Pun. Re. 42, p. 96, *Mussammat Sharina* v. *The Empress*.
(1926) 1926 All. 231 (232), *Ram Nath* v. *Emperor*.
(1925) 1925 Lah. 449 (450): 6 Lah. 188, *Labh Singh* v. *Narinjan Das*.

sanction must be given *before* the proceedings are started. Sanction given *after* the proceedings are commenced is not enough.[2] S. 196, Notes 10—11.

S. 532, *infra*, provides that if a Magistrate purporting to exercise powers duly conferred, which were not so conferred, commits an accused person to the sessions, the Court of Session may, if the accused has not been prejudiced, accept the commitment. The question has arisen whether this section applies to cases where a Magistrate has committed an accused person to the sessions in the absence of the sanction and complaint required by this section. On this question there is a conflict of decisions. It has been held by the Calcutta High Court[3] and the Chief Court of the Punjab[4] that S. 532 does *not* apply to such cases. The reasons given for such a view are:—

(1) S. 532 only applies to cases where the Magistrate who has purported to commit has not been duly invested with the powers under which he purports to make the commitment, that is, when the defect is one *personal* to the committing officer and not a defect in his *proceedings*.

(2) A distinction must be made between cases coming under this section and cases coming under S. 197. Under S. 197 jurisdiction to take cognizance depends on the *sanction* of the Government. Hence it can be argued with reference to cases under that section that a Magistrate "purports to exercise powers duly conferred." But under this section (S. 196) the power to take cognizance depends on a *complaint* being made. Hence, it would not be correct to say that in such cases, a Magistrate "purports to exercise the powers duly conferred."

But the above distinctions have not been recognised by the Bombay High Court which has taken a contrary view in the matter.[5] *See also*, S. 532, Note 2.

11. Want of complaint—Effect.—A mere sanction of prosecution by the Government is not enough for the validity of proceedings under this section in the absence of a valid *complaint* based upon such sanction.[1] In the undermentioned decision of the Punjab Chief Court,[2] however, it was held that the letter embodying the sanction may itself be treated as a complaint and that at any rate the want of a complaint in such circumstances is only an irregularity curable under S. 537.

(1916) 1916 Cal. 188: 42 Cal. 957, *Amrita Lal Hazra* v. *Emperor*.
(1908) 7 Cri. L. Jour. 353 (356): 1903 P. R. 8, *Swami Dayal* v. *Emperor*.
(1907) 6 Cri. L. Jour. 382 (383): 31 Mad. 80, In re *Perumal Naidu*.
(1882) 1882 Pun. Re. No. 28, p. 36, *Empress* v. *Mulla Abdul Rahim* (The commitment of the accused upon evidence recorded before the sanction of the Government is illegal).
(2) (1920) 1920 Mad. 928 (929): 42 Mad. 835, *Varadarajalu Naidu* v. *Emperor*.
(1890) 1890 Pun. Re. No. 16, p. 35 (37), *Shamal Khan* v. *Empress* (Sanction after commitment not enough).
(1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor* (Do.).
(1933) 1933 Cal. 332 (332), *Rabindra Nath* v. *Emperor*.
(3) (1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar Ghose* v. *Emperor*.
(4) (1890) 1890 Pun. Re. No. 16, p. 33 (35, 36, 37), *Shamal Khan* v. *Empress*.
(5) (1897) 22 Bom. 112 (124, 125), *Queen-Empress* v. *Bal Gangadhar Tilak*.

Note 11.

(1) (1890) 1890 Pun. Re. No. 16, pp. 34, 35, *Shamal Khan* v. *Empress*.
(1911) 12 Cri. L. Jour. 2 (3): 38 Cal. 559, *Emperor* v. *Lalit Mohan Chakravarti*.
(1908) 7 Cri. L. Jour. 10 (16): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
(2) (1908) 7 Cri. L. Jour. 353 (355, 356): 1908 P. R. 8, *Swamy Dayal* v. *Emperor*.

S. 196, Note 12.

12. Facts of case amounting to offence requiring sanction as well as other offence—Effect.—Where the facts of a case amount to an offence which requires for its prosecution a sanction under this section as well as an offence which does not require such sanction the question arises whether proceedings can be taken in respect of the *latter* offence in the absence of the sanction mentioned in this section. On this question there is a conflict of decisions. The general opinion is that there is no bar to such proceedings.[1] But the Allahabad High Court has taken a different view in the undermentioned decisions.[2]

See also, the undermentioned case.[3]

S. 196-A. Prosecution for certain classes of criminal conspiracy.

196-A. No Court shall take cognizance of the offence of criminal conspiracy punishable under S. 120-B of the Indian Penal Code,

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of S. 196 apply, unless upon complaint made by order or under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government, has, by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of S. 195 apply no such consent shall be necessary.

(This section was inserted by S. 5 of the Criminal Law Amendment Act, 1913.)

Note 12.

(1) (1924) 1924 All. 684 (685): 46 All. 611, *Ram Nath* v. *King-Emperor* (Election offence—Jurisdiction to proceed in respect of offence under general law not barred).
(1922) 1922 Mad. 62 (62, 63), *Ponnusamy Thevar* v. *Emperor*.
(1924) 1924 Mad. 487 (487, 488), *Sesha Iyer* v. *Venkatasubba Chetty*.
(1928) 1928 Mad. 1158 (1161, 1164): 52 Mad. 695, *Nune Panakulu* v. *Ravula Subba Rao*.
(1915) 16 Cri. L. Jour. 497 (506): 1916 Cal. 188: 42 Cal. 957, *Amritalal Hazara* v. *Emperor*.
(1901) 25 Bom. 90 (93, 94, 95), *Queen-Empress* v. *Anant Puranik*.
(1934) 1934 Nag. 71 (73): 30 N.L.R. 269, *Maganlal Bagdi* v. *Emperor*.
(2) (1925) 1925 All. 230 (232): 47 All. 268, *Ram Nath* v. *King-Emperor* (Where there are two provisions, one specific and the other general, the specific provision ought to be applied in preference to the general one).
(3) (1910) 11 Cri. L. Jour. 264 (268): 34 Bom. 394, *Emperor* v. *Ganesh Damodar Savakar* (Court can and must proceed in respect of the gravest offence constituted by the facts of the case).

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF THE SECTION	1
CHIEF PRESIDENCY MAGISTRATE—POWER OF TO SANCTION PROSECUTION UNDER THE SECTION	2
ESSENTIALS OF SANCTION	3
WHETHER MAGISTRATE WHO HAS SANCTIONED PROSECUTION CAN TRY A CASE	4
PROVISO	5
WANT OF SANCTION—EFFECT	6

1. Scope and object of the section.—The offence of criminal conspiracy punishable under S. 120-B of the Penal Code, is defined in S. 120-A of that Code, as follows:—

"When two or more persons agree to do or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such agreement is designated a criminal conspiracy.

Provided that no agreement *except an agreement to commit an offence* shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

From the above definition it is clear that a criminal conspiracy need not necessarily have as its object the commission of an *offence* and that an overt *act* in pursuance of the agreement is not *always* necessary to constitute a criminal conspiracy.

This section is intended to see that prosecutions for the offence are not started in cases which are not of a sufficiently serious nature.[1]

The following conditions are necessary for the application of the section:—

(1) The offence charged must be that of *criminal conspiracy*. Where the offence charged is not criminal conspiracy but some *other* offence, the mere fact that it is asserted that the accused "conspired" to commit the offence in the sense that they are jointly responsible for the offence will not make this section applicable.[2]

(2) The criminal conspiracy must be one punishable under *S. 120-B* of the Penal Code. Thus, if the offence charged is *abetment* of an offence by conspiracy, no sanction is necessary under this

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Section 196-A—Note 1.

(1) (1934) 1934 Cal. 391 (392), *Hiralal Das* v. *Emperor*.
(1934) 1934 Pat. 561 (563): 13 Pat. 729, *Bhikhari Singh* v. *Emperor*. (The fact that S. 196-A has been inserted shows that the Legislature is anxious that the prosecution under S. 120-B should not be started indiscriminately).

(2) (1928) 1928 Mad. 1158 (1161, 1164): 52 Mad. 695, *Nune Panakalu* v. *Ravula Subba Rao*.

S. 196-A, Note 1.

section, because, though the element of the conspiracy is present in such an offence, it is not punishable under S. 120-B of the Penal Code, but under *other* sections (*e.g.*, S. 109).[3] The distinction between the two offences consists in this. To constitute the offence of criminal conspiracy (to commit an offence) no overt act besides the agreement is necessary. But to constitute the offence of abetment of an offence by conspiracy some act or illegal omission in pursuance of the agreement is necessary. (*See* S. 107, I.P.C.)

(3) The object of the conspiracy must be one mentioned in the section. A criminal conspiracy entered into with any of the following objects will be within the section:—

(1) Doing an illegal act not amounting to an offence.

(2) Doing a legal act by illegal means.[4]

(3) Committing an offence mentioned in S. 196, *ante*.

(4) Committing a non-cognizable offence.[5]

(5) Committing a cognizable offence not punishable with death, transportation or rigorous imprisonment for two or more years.

If the object of a criminal conspiracy does not fall within any of the above categories, the section will not apply. Thus, the commission of a cognizable offence punishable with death, transportation or rigorous imprisonment and not covered by S. 196, *ante*, is not included in the section and no sanction will be necessary for a prosecution for a criminal conspiracy having as its object the commission of such an offence.[6] In such cases, sanction will not be necessary even where the object of the conspiracy is sought to be attained by doing an act which is covered by the section, such as, for instance, the commission of a non-cognizable offence.[7] Similarly, in such cases, sanction will not be necessary merely because, the offence which is alleged to be the object of the conspiracy is one which cannot be taken cognizance of without the sanction of a particular authority.[8] Thus, an offence under S. 19 (*f*) of the Arms Act cannot be taken

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(3) (1922) 1922 Cal. 107 (112): 49 Cal. 573, *Abdul Salim* v. *King-Emperor*, (Section does not alter the former law that a prosecution for abetment by way of conspiracy punishable under S. 109 requires no sanction)
(1925) 1925 Rang. 296 (299): 3 Rang. 95, *Abdul Rahman* v. *Emperor*.
(1934) 1934 Sind 4 (5), *Muhammad Bachal Abdullah* v. *Emperor*.
[See (1934) 1934 Pat. 561 (563): 13 Pat. 729 (S. 196-A deals only with the case of criminal conspiracy and not with abetment of or attempt to commit an offence).]

(4) (1925) 1925 Rang. 296 (299): 3 Rang. 95, *Abdul Rahman* v. *Emperor* (Conspiracy for getting a certain person adjudicated insolvent by using forged document—Sanction under Sub-section 1 is necessary).

(5) (1918) 1918 All. 345 (345-346): 40 All. 41, *Thakur Das* v. *Emperor* (Section applies irrespective of the amount of punishment that can be awarded for the offence.)
(1921) 1921 Cal. 561 (562), *Sukumar Chatterjee* v. *Mofizuddin Ahmed*.

(6) (1934) 1934 All. 61 (64), *Ram Das* v. *Emperor*.
(1935) 1935 Pat. 91 (93), *Chandra Sekhara Prasad* v. *Emperor*.
(1932) 1932 All. 73 (74), *Mohamad Yakub* v. *Emperor* (No sanction is required for conviction under U. P. Excise Act (IV of 1910), S. 60 as offence is punishable with two years' rigorous imprisonment).
(1935) 155 Ind. Cas. 866 (867) (Pat.), *Ramjanam Tewari* v. *Emperor*.
(1935) 1935 Cal. 316 (319), *Abdul Rahman* v. *Emperor*.

(7) (1934) 1934 Mad. 88 (94): 57 Mad. 545, *Patri Venkata Hanumantha Rao* v. *Emperor*.
(1934) 1934 Sind 4 (5), *Muhamad Bachal Abdullah* v. *Emperor*.
(1926) 1926 Oudh 161 (164), *Bishambar Nath Tandon* v. *Emperor* (Cheating intended to be carried out by forgery.).

(8) (1934) 1934 Nag. 71 (76): 30 N. L. R.

cognizance of without the sanction of the District Magistrate. (*See* S. 29 of the Arms Act.) But such an offence being a cognizable one punishable with imprisonment which may extend to three years, and not being covered by S. 196, *ante*, a criminal conspiracy with the object of committing such an offence will be outside the purview of this section and no sanction will be necessary for a prosecution in respect of such conspiracy.[9]

2. Chief Presidency Magistrate—Power of, to sanction prosecution under the section.—The words "empowered in this behalf" in sub-S. (2) of this section apply not only to the District Magistrate but also to the Chief Presidency Magistrate. Hence, a Chief Presidency Magistrate cannot sanction a prosecution under this section unless he is empowered in this behalf by the Local Government.[1]

3. Essentials of sanction.—No particular *form* is prescribed for a sanction under this section,[1] (except that in cases coming under sub-S. (2) the sanction must be in writing.)

It has been held, that in sanctioning a prosecution under this section, the sanctioning authority is to see not whether the allegations made by the prosecution side are true but whether if true, the case is such that in the interests of public justice, there should be a trial.[2]

4. Whether Magistrate who has sanctioned prosecution can try a case.—When an application is made to a Chief Presidency Magistrate or a District Magistrate for sanctioning a prosecution under sub-S. (2) of this section, he is to see, not whether the allegations made in the application are *true* but whether, if true the case is such that it is necessary in the interests of justice to consent to the initiation of judicial proceedings. Hence, it has been held that the fact that a District Magistrate (or Chief Presidency Magistrate) has sanctioned a prosecution under sub-S. (2) of this section is neither a disqualification preventing such Magistrate from trying the case under S. 556, *post* nor in itself a ground for transferring the case from him.[1]

5. Proviso.—If the object of a criminal conspiracy is to commit an offence to which the provisions of S. 195, sub-S. (1) apply, then, under sub-S. (4) of that section the complaint of the public servant or the Court concerned (as the case may be) is necessary to enable a Court to take cognizance of the offence constituted by the criminal conspiracy.[1] In such a case, according to the proviso, this section does not apply.[2] Where, however, there are several accused persons in a case and the provisions of S. 195 apply only with regard to some

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269, *Maganlal Bagdi* v. *Emperor*.

(9) (1934) 1934 Nag. 71 (76): 30 N.L.R. 269, *Maganlal Bagdi* v. *Emperor*.

Note 2.

(1) (1934) Bom. 183 (184): 58 Bom. 480, In re *Alexander George Grey*.

(1925) 1925 Cal. 579 (579), *Biroo Sardar* v. *Y. C. Arif*.

Note 3.

(1) (1917) 18 Cri. L. Jour. 634 (635): 1917 All. 438, *Takur Das* v. *Emperor* (Direction by the District Magistrate that the accused must be prosecuted for criminal conspiracy under S. 120-B of the Penal Code and order by him sending case for trial to another Magistrate is sufficient).

(2) (1934) 1934 Cal. 391 (392), *Hira Lal Das* v. *Emperor*.

Note 4.

(1) (1934) 1934 Cal. 391 (392), *Hiralal Das* v. *Emperor*.

Note 5.

(1) (1932) 1932 Cal. 850 (856), *Emperor* v. *Mathuranath Deo*.

(2) (1924) 1924 Cal. 53 (54): 50 Cal. 461, *Kali Singh* v. *Emperor*.

S. 196-A. Notes 5—6.

and not with regard to the others, this section will only apply to the latter and a sanction will be necessary for their prosecution.[3]

6. **Want of sanction—Effect.**—The want of sanction under this section is fatal to the proceedings and a conviction obtained in the absence of such sanction must be set aside as illegal.[1]

The section applies not only when, for the first time, a Court becomes seised of a criminal transaction; but also applies to cases were subsequent to the initiation of proceedings with reference to an offence not requiring sanction under this section, it is found that the transaction in question involves an offence of criminal conspiracy under S. 120-B of the Penal Code, and it is proposed to proceed in respect of such offence. Hence, it is necessary even in such cases that the sanction referred to in this section must be obtained. (*See*, Notes under S. 190).[2] But it is not necessary that such sanction must be obtained before the *original* commencement of the proceedings. It is enough if such sanction is obtained before the charge in respect of the *criminal conspiracy* is added or substituted.[3]

This section merely precludes a Court from taking cognizance of an offence of *criminal conspiracy*. Hence, a Court is not precluded from taking cognizance of a *different* offence in the absence of a sanction under this section, though the facts of the case are such that the accused might have been charged with an offence for the prosecution of which a sanction under this section would be necessary.[4]

Suppose, a prosecution is started for an offence of criminal conspiracy in the absence of the sanction required under this section. The question has arisen whether in such cases, if the facts disclose also a different offence, the

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(3) (1925) 1925 Rang. 296 (298): 3 Rang. 95, *Abdul Rahman* v. *Emperor* [Offence falling within S. 195, sub-S. 1 Cl. (*c*).]
(1929) 1929 Lah. 785 (786), *Bishambar Das* v. *Emperor*.

Note 6.

(1) (1929) 1929 Cal. 754 (755), *Nibaran Chandra Bhattacharya* v. *Emperor*, (Conviction for a different offence jointly tried also set aside as it was not possible to separate the convictions without prejudicing the accused.).
(1933) 1933 Pat. 273 (275): 12 Pat. 352 *Haricharan Misra* v. *Emperor* (Trial in Sessions Court proceeding up to stage of opinion of assessors being taken—Mistake found out by Sessions Judge—New inquiry under Ch. 18, Cr. P. C., on fresh complaint after obtaining sanction must be held.).
[See also (1934) 1934 Sind 4 (5), *Mohamed Bachal Abdullah* v. *Emperor*, (No law which requires a Magistrate to direct the Public Prosecutor to get the sanction of the Government so as to validate any proceedings which are pending before him. If the sanction is wanting he has no jurisdiction to entertain the complaint and he may dismiss the complaint or he may if moved by the Public Prosecutor grant him time to obtain the necessary sanction).]
[But see (1932) 1932 Cal. 786 (787), *Haniff* v. *Emperor*, (Conviction by Sessions Court—Objection on ground of want of sanction not taken during inquiry or trial—Conviction not set aside—1929 Cal. 754, distinguished on ground that in that case the conviction was by a Magistrate).
(1935) 1935 Cal. 316 (319, 320), ***Abdul Rahman*** v. ***Emperor*** (Sanction obtained pending trial in Sessions Court—*Held*, that conviction need not be set aside if accused has not been prejudiced).]
(2) [See also (1934) 1934 Pat. 561 (563): 13 Pat. 729, *Bikhari Singh* v. *Emperor*. (If a charge is framed for a substantive offence a person may without any additional charge being framed be convicted of an attempt to commit that offence. He may similarly be convicted of abetment to commit that offence. But a person cannot be convicted of the offence of *criminal conspiracy* without there being a charge under S. 120-B).]
(3) (1927) 1927 Cal. 296 (297): 54 Cal. 155, *Ali Mia* v. *Emperor*.
(4) (1922) 1922 Cal. 107 (110): 49 Cal. 573, *Abdul Salim* v. *Emperor*.
(1935) 1935 Pat. 91 (93), *Chandra Sakhara Prasad* v. *Emperor* (Prosecution cannot be compelled to frame charge which requires sanction).

proceedings can be validated by amending the charge into one for such (different) offence. On this question there is a conflict of decisions. It has been held by the High Court of Calcutta[5] and the Judicial Commissioner's Court of Oudh[6] that the proceedings can be regularised in this manner. But a contrary view has been taken by the Rangoon High Court.[7] (*See also*, Notes under Ss. 190 and 196.) S. 196-A.

196-B. *In the case of any offence in respect of which the provisions of S.* 196 *or S.* 196-*A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer, shall have the powers referred to in S.* 155, *sub-S.* (3). S. 196-B, Notes 1—2.

Preliminary inquiry in certain cases.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE	2

1. **Legislative Changes.**—This section has been newly added by S. 49 of the Criminal Procedure Code, Amendment Act (XVIII of 1923).

2. **Scope.**—The Select Committee in their report in this connection say as follows:—

"This new section is designed to meet the difficulty which arises from the fact that cases under Ss. 196 and 196-A cannot be properly investigated by the police before complaints are made. Doubts have arisen as to whether investigation can be ordered under S. 155, sub-S. (2) by a Magistrate without his taking cognizance of the case."

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(5) (1925) 1925 Cal. 579 (580), *Biroo Sardar* v. *Y. C. Ariff* (If the facts disclosed on the evidence show a *prima facie* case under S. 120-B then clearly the whole proceedings will be void *ab initio* but if the facts disclosed a *prima facie* case under S. 109 the proceedings are competent and it makes no difference that the Chief Presidency Magistrate *summoned* the accused under wrong sections. The whole test is not under what sections the accused are summoned but whether the proceedings are competent or not).

(6) (1926) 1926 Oudh 161 (164), *Bishambar Nath Tandon* v. *King-Emperor* (The trial started for an object of the conspiracy which was beyond the cognizance of the Court of Session. At the same time other objects of the conspiracy were within the cognizance of that Court *held*, that the omission of one head which was beyond the cognizance of the Court could not affect the jurisdiction as regards the rest of the charges.).

(7) (1925) 1925 Rang. 296 (299) : 3 Rang. 95, *Abdul Rahman* v. *Emperor* (Having acted without jurisdiction throughout the defect cannot be cured by now framing a charge which by law the Court was entitled to frame and which had he done so originally, would have avoided the present objection).

S. 197,

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Prosecution of Judges and public servants.

197*. (1) *When any person who is a Judge within the meaning of* S. 19 *of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government.*

Power of Government as to prosecution.

(2) Such Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, *Magistrate* or public servant is to be conducted, and may specify the Court before which the trial is to be held.

***(CODE OF 1882—S. 197.)**

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF SECTION	1
JUDGE	2
MAGISTRATE	3
PUBLIC SERVANT NOT REMOVABLE FROM OFFICE SAVE BY OR WITH THE SANCTION OF THE LOCAL GOVERNMENT OR SOME HIGHER AUTHORITY	4
RECEIVER APPOINTED BY COURT—PROSECUTION OF ..	5
"IS ACCUSED.....DUTY"	6
TAKING COGNIZANCE	7
WHO CAN SANCTION PROSECUTION	8
ESSENTIALS OF SANCTION	9
STAGE AT WHICH SANCTION IS TO BE OBTAINED ..	10
WANT OF SANCTION—EFFECT	11
SUB-SECTION (2)	12

(CODE OF 1872—S. 466.)

466. A complaint of an offence committed by a public servant in his capacity as such public servant, of which any Judge or any public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

Prosecution of Judges and public servants.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of Government.

Sanction when to be given.

The sanction must be given before the commencement of the proceedings.

Power of Local Government.

The Local Government may limit the person by whom, and the manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.

(CODE OF 1861—S. 167.)

167. A charge of an offence punishable under the Indian Penal Code, of which any Judge or any public servant not removable from his office without the sanction of the Government, is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some Officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

Prosecution against Judges and etc.

S. 197, Note 1.

Other Topics.

Delegation of power by the Local Government in the matter of removal. See Note 4, Pts. 5-9.
Delegation of power by the Local Government in the matter of sanction. See Note 8, Pt. 1.
Inquiry before sanction does not amount to taking cognizance. See Note 7, Pt. 1.
Inquiry by the Government before sanction. See Note 9, Pt .13.
"May specify the Court before which the trial is to be held." See Note 12.
Offence should be specified in the sanction. See Note 9, Pts. 1-5.

1. **Scope and object of section**.—The right to prosecute any person or body of persons by whom one may have been injured is a common right which can only be limited by special legislation; and in considering whether the right has been taken away, it must be seen whether it is taken away by express words or by necessary implication.[1] This section is an instance of a provision restricting the above right. The section embodies one of the exceptions to the general rule laid down in S. 190, that *any* offence may be taken cognizance of by the Magistrates enumerated therein.[2]

The object of the section is to guard against vexatious proceedings against public servants and to secure the well considered opinion of a superior authority before a prosecution is launched against them.[3] But this qualified protection does not apply to *all* public servants or to *all* offences. The section only applies to a *limited* class of public servants and to a *limited* class of offences. In other words, before the section can be invoked, two conditions must be satisfied:—

(1) The accused must be a public servant of the kind mentioned in the section; *i.e.*, he must be a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Local Government or of some higher authority.

(2) The offence must be committed by the accused while acting or purporting to act in the discharge of his official duty.[4]

This section may be compared with S. 196, *ante*. The latter section refers to the nature of the *offence* charged. This section refers to the status of the *accused*. Further, S. 196 requires two conditions:—

(1) a complaint and

(2) a sanction (proceeding from any of the authorities mentioned in the section) on which such complaint is founded.

But the present section requires only a *sanction* for the prosecution. No formal *complaint* is necessary as in the case of S. 196.[5]

The section applies to offences under the Penal Code as well as to offences under other laws.[6] It has been held that the section applies even to offences

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Section 197—Note 1.

(1) (1878) 3 Cal. 758 (761), *Empress* v. *Municipal Corporation of the Town of Calcutta* (*Per* Ainshe, C. J.).
(2) (1921) 1921 Mad. 278 (278): 44 Mad. 417, *Muhammad Ibrahim* v. *Sheikh Dawood*.
(3) (1929) 1929 Bom. 375 (376), *Hanmant Shrinivas* v. *Emperor*.
(4) (1928) 1928 Mad. 161 (162, 163): 51 Mad. 259, *Jagannadhaswamy Naidu* v. *Manikkam*.
(1933) 1933 Sind 161 (162): 27 S.L.R. 3, *Hidayatullah* v. *Emperor*.
(1925) 1925 Oudh 565 (565): 28 Oudh Cas. 155, *Emperor* v. *Krishna Kant*.
(5) (1870) Rat. Un. Re. Cr. Cas. 32 (32), *Reg*. v. *Narayan Chundra*.
[See also (1910) 11 Cri. L. Jour. 453 (460): 37 Cal. 467, *Barindra Kumar* v. *Emperor*.]
(6) [See (1868) 1868 Pun. Re. No. 2, p. 4,

committed outside British India.[7] (*See* Notes under S. 188 for further discussion.) S. 197, Notes 1—4.

2. Judge.—A "Judge" as defined in S. 19 of the Penal Code is entitled to the protection of this section whether or not he is removable from his office without the sanction of the Government.[1] This is now made clear by the amendment of the section in 1923.

The following persons have been held to be Judges for the purpose of this section:—

(1) The President of a Municipality or other Local Board when accepting or rejecting nomination papers for election.[2]

(2) A member of a village panchayat Court.[3]

(3) A village Munsif in the Madras Presidency trying suits under the Madras Village Courts Act (1889).[4]

(4) A Village Magistrate in the Madras Presidency when trying an offender under Regulation, XI of 1816.[5] But a Village Magistrate when he is *preventing* the commission of an offence does not act as a Judge.[6]

See also Note 3, *infra*.

3. Magistrate.—Before the amendment of the section in 1923 the section did not apply to Magistrates as such. A Magistrate would be entitled to protection under the old section only if he was not removable from office without the sanction of the Government or if the offence was committed by him as a *Judge*, i.e., while *trying* a case (*See* S. 19, Penal Code). A Magistrate who was removable without the sanction of the Government and who was accused of an offence committed by him while merely holding an *inquiry* (not being a trial) under the Code would be outside the purview of the section. Under the amended section such a Magistrate also would be entitled to the protection of this section.[1]

4. Public servant not removable from office save by or with the sanction of the Local Government or some higher authority.—For the definition

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Dooloo Mull v. *Dewa Singh* (The corresponding section of the Code of 1861 only applied to offence under the Penal Code—This is no longer good law).]

(7) (1931) 1931 Cal. 646 (648), *Sasadhar Acharjya* v. *Sir Charles Tegrat* (Offence in French Chandranagore).

Note 2.

(1) (1871) 6 Mad. H. C. R. App. 21 (22), *High Court Proceedings, 29th March*, 1871.

(2) (1929) 1929 Mad. 175 (176), *Abboy Naidu* v. *Kanniappa Chettiar*.

(1923) 1923 Mad. 475 (476): 47 Mad. 585, *Sarvothama Rao* v. *Chairman, Saidapet*.

(3) (1931) 1931 Mad. 492 (494), *Lakshimi Narayana Iyer* v. *Chinnappa Goundan*.

(1922) 1922 Mad. 62 (62), *Ponnusamy Thevan* v. *Emperor*.

(1928) 1928 Mad. 391 (391), *Damarla Subbiah* v. *Muhammad Mastan*.

(4) (1929) 1929 Mad. 172 (173, 174, 175): 52 Mad. 347, *Sivaramakrishna Iyer* v. *Seshappa Naidu*.

(1929) 1929 Mad. 256 (256), *Subba Naidu*, In re (Village Court executing a decree by way of distraint under S. 48 of Act I of 1889 is a Court as defined in the Act and the Munsif if he himself distrains, is still acting as a Judge of that Court).

(1933) 1933 Mad. 270 (270), *Venkatasubba Rao* v. *Emperor* (Kurnam who was also acting as a village munsif is a judge).

(1904) 1 Cri. L. Jour. 321 (326): 27 Mad. 223, *Palaniappa Chetty* v. *Annamalai*.

(5) (1900) 23 Mad. 540 (543, 544), *Kandasamy* v. *Soli*.

(6) (1900) 23 Mad. 540 (544), *Kandasamy* v. *Soli*.

Note 3.

(1) See Report of Select Committee (1922).

S. 197, Note 4.

of "public servant" *see* S. 21 of the Penal Code (which applies to this Code by force of S. 4, sub-S. (2), *ante*).

This section applies only to such public servants as are not removable from office save by or with the sanction of the Local Government or of some higher authority. Before the amendment of the section in 1923 the section applied to public servants who were not removable from office "without the sanction of the Government of India or the Local Government". These words would not include public servants removable from office only by the Secretary of State for India and not by the Local Government or the Government of India. The alteration of the section brings such public servants also within the purview of the section.[1]

The substitution of the words "save by or with the sanction" for the words "without the sanction" which occurred in the section before the above amendment gives legislative effect to the view taken under the old section that the test for the applicability of the section is not only that the public servant must not be removable by any other authority than that mentioned in the section but also that he must be removable by such authority. In other words, the public servant must be capable of being removed from his office by any of the authorities mentioned in the section.[2]

The expression "Government" in the section refers to the Government acting in its *executive capacity*. Hence a public servant who is removable from his office only by the *Legislature* is not entitled to the protection of this section.[3] The Commissioner in Sind is not a "Local Government" within the meaning of this section.[4]

There is a conflict of decisions as to whether the section applies to public servants who are removable from office by an authority to whom the Government has *delegated* the power of dismissal. On the one hand, it has been held by the High Court of Madras,[5] Lahore[6] and Rangoon[7] that the section applies in such cases. The reason given is that in such cases, the Local Government *itself* acts, though a particular officer is chosen as the medium through whom the act is done and that it is an ordinary case of *qui facit per alium facit per se*, (he who acts through another acts through himself).[8] But a contrary view has been taken by the Allahabad High Court on the ground that there is no mention in the section of any *delegated* authority.[9] A similar view has also been taken in a later Madras decision.[9-a] But where the power of removal has been *transferred* out and out by the Local Government to some other authority, this section will not apply.[9-b]

Note 4.

(1) See Report of Select Committee (1922).
(2) (1878) 3 Cal. 758 (761, 763), *Empress* v. *Municipal Corporation of the Town of Calcutta*.
(3) (1878) 3 Cal. 758 (762, 763), *Empress* v. *Municipal Corporation of Calcutta*.
(4) (1932) 1932 Sind 177 (180), *Suganchand* v. *Naraindas*.
(5) (1917) 1917 Mad. 344 (346), *Abdul Khadir Sahib*, In re.
(6) (1922) 1922 Lah. 337 (338), *Emperor* v. *Khanchand*.
(7) (1934) 1934 Rang. 238 (239, 240): 12 Rang. 530, *Kyaw Htin* v. *Ah Yoo*.
(1935) 1935 Rang. 165 (166), *Maung Hla Maung* v. *Emperor*.
(8) (1908) 7 Cri. L. Jour. 163 (164), *Kathiawar Valia Mulji Laviji* v. *Lathi State* (Fouzdar in a Native State not removable without sanction of Agent to the Governor is entitled to protection under the section as he is not removable without sanction of Government in the person of the Agent).
(9) (1926) 1926 All. 271 (273): 48 All. 264, *Jalaluddin* v. *Emperor*.
(9-a) (1935) 1935 Mad. 442 (444), *Pichai Pillai* v. *Balasundara Mudaly*.
(9-b) (1935) 1935 Rang. 263 (264) (F.B.), *Emperor* v. *Maung Bo Maung*.

S. 197, Note 4.

There is a difference between *removal* from office and *ceasing* to hold office. The fact that a public servant will *cease* to hold office in certain circumstances does not affect the question whether he can be *removed* from his office without the sanction of the Government. Thus, the president of a Taluk Board who is not *removable* from office without the sanction of the Government is entitled to the protection of this section, though if he absents himself from a certain number of meetings, he will *cease* to hold office even without being removed from it.[10]

Where a public servant is removable from his office without the sanction of any of the authorities mentioned in the section, the fact that the Local Government has the power of *restoring* to office such public servant after his dismissal by some other authority does not bring him within the purview of this section.[11]

In determining the question of the applicability of this section, it is the *status of the accused* at the time of the *commission* of the offence and not at the time of the *commencement of the prosecution* that must be taken into account.[12]

A Corporation (like the Calcutta Municipality) is not a public servant within the meaning of this section.[13] The protection conferred by this section on the public servants mentioned therein does not extend to persons to whom such public servants may delegate any portion of their powers.[14]

The following have been held to be public servants to whom the section applies:—

(1) Member of Municipal Council.[15]

(2) Member of District Board.[16]

(3) President of Taluk Board.[17]

(4) President of Municipality.[18]

(5) The village officers referred to in the undermentioned cases.[19]

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(10) (1933) 1933 Sind 161 (163, 164): 27 S. L. R. 3, *Hidayatullah* v. *Emperor*.

(11) (1922) 1922 Nag. 121 (121, 122), *Kripa Singh* v. *Emperor* (Fact that Forest Ranger dismissed by the Conservator can be restored by the Government does not bring him within the section).

(12) (1932) 1932 Sind 177 (179), *Suganchand* v. *Narain Das*.

(13) (1878) 3 Cal. 758 (760, 762), *Empress* v. *Municipal Corporation of the Town of Calcutta* (The words "every officer" in the 10th clause of S. 21 of I. P. Code, seem rather to point to an individual than to an incorporated body).

(14) (1897) 2 Weir 226 (226), *Venkatesalu Naidu* v. *Heeraman Chetty* (No sanction is necessary for prosecuting a Municipal Chairman Delegate for acts done *qua Chairman Delegate*).

(15) (1934) 1934 Cal. 838 (841), *Nur Ahmad* v. *Jogesh Chandra Sen*.

(1928) 1928 All. 756 (758): 51 All. 377, *Bhairon Prasad* v. *Emperor*.

(1930) 1930 Lah. 147 (147), *Mahomed Rafiq* v. *Emperor*.

(1890) 1890 Pun. Re. No. 14, p. 28, *Bukshi Ram Labhaya* v. *Diwan Gonpat Rai*.

(1902) 1902 Pun. Re. No. 17, p. 48, *Nur Baksh* v. *Emperor*.

(1932) 1932 Sind 177 (178, 179), *Sugan Chand* v. *Naraindas*.

(16) (1933) 1933 All. 543 (544): 55 All. 798, *Rudra Dat Bhatt* v. *Emperor*.

(1932) 1932 Oudh 308 (309), *Bajrang Bahadur Singh* v. *Emperor*.

(1925) 1925 Oudh 565 (566): 28 Oudh Cas. 155, *King-Emperor* v. *Krishna Kant*.

(17) (1929) 1929 Mad. 8 (10): 52 Mad. 446, *Sivasankaram* v. *Emperor*.

(1933) 1933 Sind 161 (162, 163, 164): 27 S. L. R. 3, *Hidayatullah* v. *Emperor*.

(18) (1928) 1928 Cal. 516 (518): 56 Cal. 227, *Ram Narayan* v. *Paswanth Sen*.

(1928) 1928 Mad. 1158 (1160, 1161): 52 Mad. 695, *Nune Panakalu* v. *Subba Rao*.

(1893) 1 Weir 243 (243), In re *Chairman of the Municipal Council, Ellore*.

(1926) 1926 Rang. 171 (172): 4 Rang. 128, *Emperor* v. *U Maung Gale*.

(19) (1917) 1917 Bom. 33 (33): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir* (A Vatandar Patil).

(1927) 1927 Bom. 432 (433), *Kalu Mahadu Patil* v. *Emperor* (Revenue Patil).

S. 197, Notes 4--5.

The following have been held not to be public servants to whom this section applies:—

(1) Police Patel in the Bombay Presidency.[20]

(2) President of Union Committee.[21]

(3) Forest Ranger.[22]

(4) Chairman of Co-operative Credit Society.[23]

(5) Sub-Overseer of P.W.D.[24]

(6) The officers referred to in the undermentioned cases.[25]

5. **Receiver appointed by Court—Prosecution of.**—A receiver appointed by a Court is not a public servant who is "not removable from his office save by or with the sanction of a Local Government or some higher authority". Hence, the sanction of the Local Government is not necessary for his prosecution in respect of acts done by him as receiver. Nor is the permission of the *Court* which appointed the receiver necessary for his prosecution,[1] the reason being that in the absence of a specific provision of law exempting a person from prosecution either expressly or by necessary implication, the *status* of a person is by itself no bar to his prosecution. (*See*, Note 1, *ante*.)

The High Court of Calcutta has, however, held that the sanction of the *Court* must be obtained before a prosecution is instituted against the receiver for criminal breach of trust in respect of the properties taken possession of by him as receiver.[2] This view is based on principles guiding the Court of Chancery in England, and not on any specific provision of law. It is submitted that this view is not correct.

As to the liability of an executor or administrator filing false accounts in Court to be prosecuted without the sanction or complaint of the Court, *see* the

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(1870) 7 Bom. H. C. R. 64 (65), *Reg.* v. *Malhar Ramchandra* (Kulkarni).

(20) (1880) Rat. 147 (147), *Queen-Empress* v. *Virbusapa*.

(1880) 4 Bom. 357 (358), *Imperatrix* v. *Bhagwandevrag*.

(21) (1929) 1929 Mad. 175 (176), *Abboy Naidu* v. *Kanniappa Chettiar*.

(1925) 1925 Cal. 782 (782): 52 Cal. 431, *Mohammed Yasin* v. *Emperor*.

(22) (1922) 1922 Nag. 121 (121, 122), *Kripa Singh* v. *Emperor*.

(23) (1935) 1935 Bom. 36 (36), *Shridhar Mahadeo Pathak* v. *Emperor*.

(24) (1912) 13 Cri. L. Jour. 770 (770) (Mad.), In re *Reddy Venkayya*.

(25) (1879) Rat. Un. Re. Cr. Cas. 142 (142), *Queen-Empress* v. *Ganpat* (Inspector of Police may be removed from office under S. 8 of the Bombay District Police Act, without the sanction of the Government).

(1934) 1934 Pat. 548 (549), *Jotindra Nath Mukherji* v. *Radha Krishna Budhia* (Municipal Engineer).

(1917) 18 Cri. L. Jour. 106 (106): 1917 Lah. 179, *Nathu Khan* v. *Muhammad Baksh* (Member of a notified area committee).

(1924) 1924 Lah. 310 (311), *Kishen Singh* v. *Girdhari Lall* (Municipal Secretary).

(1931) 1931 Bom. 527 (528), *S. S. Shirke*, In re (Under S. 9 (2) of the Bombay Act IV of 1923, the administrative officer of the school board can be removed from his office, without the sanction of the Government).

(1934) 1934 All. 173 (174), *Anwar Ullah* v. *Emperor* (Clerk in U. P. District Board is not servant of Local Government).

Note 5.

(1) (1928) 1928 Bom. 493 (494): 52 Bom. 898, *Khimchand Narottan Das*, In re.

(1934) 1934 Bom. 306 (307), *Lukmanji Kamruddin* v. *Valibhai Karimbhai*.

(1912) 15 Ind. Cas. 491 (492) (Cal.), *Nagendra Nath Srimoney* v. *Jogendra Nath Srimoney*.

(2) (1918) 46 Ind. Cas. 836 (840): 1919 Cal. 647: 46 Cal. 432, *Santok Chand* v. *Sugan Chand Manawat*.

[See also (1912) 15 Ind. Cas. 489 (490) (Cal.), *Anath Nath Dey* v. *Mohendra Nath Srimani* (Defamation while acting on behalf of estate).

(1903) 30 Cal. 721 (724) *W. R. Fink* v. *The Corporation of Calcutta*.]

undermentioned case.[3]

S. 197, Notes 5—6.

6. "Is accused . . . duty".—The corresponding words that occurred in the section before its amendment in 1923 were "is accused as such Judge or public servant of any offence". There was a conflict of decisions as to the interpretation of these words. The general view was that the words referred to all offences committed by him in the course of an action which was taken or purported to be taken in compliance with an official duty.[1] But in a few decisions it was held that the words only applied to cases where the offence was such that the fact of the offender being a public servant was an essential ingredient of the offence as it was defined under the law.[2] In other words, according to this view, the section only applied to those offences which according to their definition under the law could only be committed by public servants and not by others, as, for example, an offence of taking or attempting to take a bribe (Indian Penal Code, S. 161)[3] or an offence of fabrication by a Judge of the record of a case before him (Indian Penal Code, Ss. 167, 218)[4] but not to offences which could be committed by anybody and not by a public servant or Judge alone.[5] Thus, where a Judge used insulting and defamatory language in the course of the trial of a case it was held that the section did not apply to the offence (if any) committed by the Judge.[6] Similarly, it was held that where a public servant was entrusted in his official capacity with certain moneys and he committed criminal breach of trust in respect of such moneys it was held that the offence not being one which could only be committed by a public servant, the section did not apply.[7] So also, where the Superintendent of the Gun Carriage Factory in Madras imported certain timber (required for such factory) without taking out a license and thereby committed an offence under a certain Municipal Act, it was held that as the offence was not one which could be committed only by a public servant, the section did not apply to the case.[8]

By S. 50 of Act XVIII of 1923 the words "as the Judge or public servant" were replaced by the words "while acting or purporting to act in the discharge

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(3) (1921) 1921 Cal. 431 (432), *Krishna Lal Dhar* v. *Emperor* (*Held*, that under the provisions of Probate Act, S. 98, such act is offence under Penal Code, S. 193 and hence sanction of Court was necessary under S. 195 as it stood before amendment of 1923).

Note 6.

(1) (1867) 1867 Pun. Re. No. 47 (84), *Crown* v. *Boodh Singh*.
See also cases cited in foot-notes 23 *to* 34, *below*.
(2) *See cases cited in foot-notes* 3 *to* 8, *below*.
(3) (1917) 1917 Bom. 33 (33, 34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir*.
(1922) 1922 Mad. 62 (62), *Ponnusamy Thevan* v. *Emperor*.
(4) (1877) 2 Bom. 481 (486), *Imperatrix* v. *Lakshman Sakharam*.
(5) (1870) 7 Bom. H. C. R. 61 (63), *Reg.* v. *Parsham Keshav* (Section 167 of Code of 1861 relates only to those acts and omissions which are declared to be offences when they are committed by a public servant).
(1909) 9 Cri. L. Jour. 89 (89, 90): 32 Mad. 255, *Palaniandi* v. *Arunachallam* (Fabrication of record by Judge).
(1908) 7 Cri. L. Jour. 163 (164, 165), *Valia Mulji Lavji* v. *Lathi State* (Fouzdar accused of offence under sections 324 and 355 of the I. P. C., Kathiawar).
(1900) 13 C. P. L. R. 126 (128, 129), *Empress* v. *Ghulam Kadir Khan* (Offence under S. 330, I. P. C.—Charge against Sub-Inspector of Police—Held no sanction necessary as offence was not peculiar to public servant as such).
See also cases cited in foot-notes 6 *to* 8, *below*.
(6) (1899) 26 Cal. 852 (861, 862), *Nando Lal* v. *Mitter* (Insulting and defamatory language towards a pleader in the course of a trial of a case before him).
[See also (1900) 2 Bom. L. R. 1079 (1080), In re *Harlekar* (Where one Magistrate uses abusive language to another while jointly engaged in the discharge of their Majesterial functions, it is not necessary to obtain a sanction under this section before proceeding against him for the use of abusive language).]
(7) (1916) 17 Cri. L. Jour. 168 (169): 1917 Mad. 344, *Abdul Khader Sahib*, In re.
(8) (1902) 25 Mad. 15 (23), *The Municipal Commissioners of Madras* v. *Major Bell*.

S. 197. Note 6.

of his official duty;" the object of the amendment was stated to be to amplify the words and to make the sense clear.[9] There has, nevertheless, been a conflict of decisions as to the interpretation of these words also. At least four different views have been expressed:—

(1) The first view is that the section applies only where the offence is such that it can be committed only by a public servant and not by anybody else.[10] But this view has been only very rarely expressed. It is generally accepted that such a view is not correct and that the *present* section makes it clear that the test is not whether the offence is capable of being committed only by a public servant and not by anybody else but whether it is committed under the circumstances specified in the section.[11] In other words the question as to whether the particular offence comes under the present section depends not on the *nature* of the offence but on the *circumstances* under which it is committed.

(2) The second view is that the section applies only if the act complained of is itself done by the public servant in pursuance of his public office although it may be in excess of the duty or an absence of such duty.[12]

(3) The third view is that the section refers to cases where the act constituting the offence is so connected with the official duty or act as to be *inseparable from it*, in other words, is so connected with the official duty or act as to form part of the *same transaction*.[13] This view is wider than the second view stated above and the difference may be brought out by means of an illustration.

A, a public servant was engaged in the task of realising certain taxes from some persons who had defaulted in their payment. He was talking to the defaulters in connection with the business. A crowd of spectators had gathered round him. While he was thus engaged he suddenly turned round when he saw the complainant, one of the spectators, standing at a little distance from him in a posture which he thought was disrespectful to him. Thereupon he assaulted the complainant and handled him roughly. ***Held***, that the *act* of the public servant in the circumstances of the case, formed part of the transaction (*viz.*, the realisation of arrears

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(9) *Statement of Objects and Reasons*, 1914.

(10) (1929) 1929 Bom. 375 (377), *Hanmant Shrinivas Kulkarni* v. *Emperor* (*Per* Baker, J.).
[See also (1929) 1929 Mad. 172 (173): 52 Mad. 347, *Sivaramakrishna Iyer* v. *Seshappa Naidu.*]

(11) (1929) 1929 Mad. 659 (660, 661): 52 Mad. 602, *Gangaraju* v. *Venki.*
(1933) 1933 Sind 161 (164): 27 S. L. R. 3, *Hidayatullah* v. *Emperor.*
(1930) 1930 Sind 144: 24 S. L. R. 385, *Karachi Municipality* v. *Mukhtiarkar of Karachi.*
(1934) 1934 All. 978 (978), *Sukhdeo* v. *Emperor.*
(1935) 1935 Nag. 52 (53), *Syed Abdul Hadi* v. *D. P. Mishra.*
(1934) 1934 Rang. 238 (239), *Kyaw Htin* v. *Ah Yoo.*
(1935) 1935 Pat. 52 (53, 54): 14 Pat. 299, *Ram Singh* v. *Rizwi.*

(12) (1935) 1935 Cal. 176 (176), *Ganga Prashad Sinha* v. *Brindaban Chandra Das.*
(1935) 1935 Rang. 263 (265, 266) (F. B.), *Emperor* v. *Maung Bo Maung.*
(1927) 1927 Mad. 566 (566, 567): 50 Mad. 754, *Raja Rao* v. *Ramaswamy.*
See also other cases cited in foot-notes 23 to 34, below.

(13) (1935) 1935 Pat. 52 (55, 56): 14 Pat. 299, *Ram Singh* v. *S. A. Rizwi.*

of taxes) in which he was engaged in the discharge of his official duty and that he is entitled him to the protection under this section.[14] According to the second view expressed above, however, the act could not be said to be *in pursuance* of any official duty.

(4) The fourth view is that it is not necessary that the action involving the offence must be done or purported to be done in *compliance* with an official duty. It is enough if the action *relates* to the discharge of an official duty, although it may be in *derogation* of that official duty. In other words, the applicability of the section depends not on the *nature* of the action which involves the offence but on the *matter* to which the action relates so that the words "in the discharge of an official duty" might be read as "in the *matter* of the discharge of an official duty." Thus, where it is the duty of a public servant as such to keep a certain building of which he is in charge in a sanitary condition and he fails in his duty in this respect and thereby commits an offence, it cannot be said that his failure or omission is in *compliance* with such official duty. Nevertheless, it has been held that he commits the offence while acting or purporting to act in the discharge of an official duty.[15] Similarly, a Municipal Councillor who in violation of his obligation as such Councillor acquires a share in a contract with the Municipality (of which he is a Councillor) and thereby commits an offence has been held entitled to the protection granted by this section.[16] But in such cases the action of the accused *relates* to the discharge of his duty as a public servant. This view is, however, very wide.

But in spite of the conflict of decisions above referred to, it is settled law that an offence which does not come within any of the categories enumerated in the above classification is not covered by this section. In other words, this section applies only to acts that can be said to be done in an *official* capacity and not to acts done in a *private* capacity. The conflict of decisions above referred to is only as to the question *when* an act constituting an offence can be said to be done in an official capacity. Thus, the mere fact that an offence is committed by a public servant when he is in office is not enough to attract the provisions of this section.[17] It is not even enough to bring a case within this section that an offence is committed by a public servant at a time during which he is engaged in the transaction of official business.[18] Thus an offence will not come within the section *merely* because it is committed by a Judge while he is sitting on the Bench and trying cases. The reason is that a

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(14) (1935) 1935 Pat. 52 (55, 56): 14 Pat. 299, *Ram Singh* v. *S. A. Rizwi.*

(15) (1930) 1930 Sind 144 (145): 24 S. L. R. 385, *Karachi Municipality* v. *Mukhtiarkar of Karachi.*

(16) (1928) 1928 All. 756 (757, 758): 51 All. 377, *Bhairon Prasad* v. *Emperor.*

(17) (1927) 1927 Mad. 566 (567): 50 Mad. 754, *Raja Rao* v. *Ramaswamy.*

(18) (1935) 1935 Pat. 52 (56): 14 Pat. 299, *Ram Singh* v. *S. A. Rizwi* (Offence committed purely on private account unconnected with the official act would not come under S. 197, though when the offence was committed the Judge or public servant was engaged in the performance of an official duty).

(1932) 1932 Mad. 214 (215), *Ganapathy Goundan* v. *Emperor.*

S. 197, Note 6.

Judge sitting on the Bench can act in a private as well as in official capacity and this section does not apply to acts done in a private capacity.[19]

It is a question of fact in each case whether the alleged offence has been committed in an official capacity or not.[20] In determining this question the Court must at the outset have regard to the allegations in the complaint (if any) in the case.[21]

The section does not mean that the very *act* which constitute the offence must be the official duty of the public servant concerned. If such were the case the section would have no operation at all and would involve a contradiction in terms because an act cannot at the same time be an official duty as well as an offence.[22]

Illustrative cases.

(1) A Judge or public servant passing certain orders or making certain communications in the course of official duty or a Judge regulating the conduct of a case which he is trying makes certain remarks which are objected to as defamatory or insulting. He commits the offence (if any) while acting in the discharge of an official duty, the reason being that the passing of the orders or making the communications constitutes his official duty.[23]

(2) A public servant or Judge purporting to exercise the powers vested in him as such public servant or Judge orders the arrest and detention in custody of a

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(19) (1927) 1927 Mad. 566 (567): 50 Mad. 754, *Raja Rao* v. *Ramaswamy*.
(1916) 17 Cri. L. Jour. 168 (170): 1917 Mad. 344, *Abdul Khadir Sahib*, In re.

(20) (1928) 1928 Mad. 72 (72): 8 Lah. 647, *Muhammad Ismail* v. *The Crown*.
(1935) 1935 Pat. 52 (55): 14 Pat. 299, *Ram Singh* v. *S. A. Rizwi*.
(1902) 1902 Pun. Re. No. 17, p. 47 (48), *Nur Bakhsh* v. *Emperor*.

(21) (1935) 1935 Cal. 176 (176), *Ganga Prasad Sinha* v. *Brindaban Chandra Das*.
[But compare (1933) 1933 Mad. 268 (269), *Public Prosecutor* v. *Nellore Adinarayana Reddi* (It is not correct to say that only the complaint and sworn statement should be consulted).]

(22) (1929) 1929 Mad. 172 (173): 52 Mad. 347, *Sivaramakrishna Iyer* v. *Seshappa Naidu*.
(1929) 1929 Mad. 659 (660): 52 Mad. 602, *Gangaraju* v. *Venki*.
(1935) 1935 Pat. 52 (54): 14 Pat. 299, *Ram Singh* v. *S. A. Rizwi*.
(1934) 1934 All. 978 (979), *Sukhdeo* v. *Emperor*.

(23) (1886) 9 Mad. 439 (440), In re *Gulam Muhammad Sharif Uddaulah* (Defamatory language used by a Judge in the course of the trial of the suit).
(1905) 2 Cri. L. Jour. 119 (123, 124, 125) (Lah.), *Chaudhri Amir Singh* v. *Emperor* (Munsif at hearing of complainant's case asked him why he had not brought his witnesses and complainant replied that his witnesses were to attend that day before another Munsif. Upon this the Munsif broke out into the most foul abuse of his female relatives).
(1931) 1931 Oudh 392 (393, 394), *Bhagirath* v. *Ali Hamid* (Comments on defects and irregularities in petition while returning it).
(1934) 1934 All. 978 (979), *Sukhdeo* v. *Emperor* (Magistrate using insulting language while holding Court and complainant was in witness box—Absence of sanction is a bar to taking cognizance of complaint).
(1933) 1933 Sind 165 (166): 27 S. L. R. 36, *Harumal Hotchand* v. *Haji Imambux Jotoi* (Zamindar requesting Executive Engineer to provide him with a more liberal supply of water. In answer to that application the Engineer said: "Bhena, we supply water, still you say you are dissatisfied". The word was a term of abuse and a complaint under Penal Code, S. 504, was lodged. Held, that the Executive Engineer when he made the answer was clearly acting in his official capacity).
(1902) 1902 Pun. Re. No. 17 (47, 48), *Nur Bakhsh* v. *Emperor* (Letter by Municipal Councillor that complainant had built a new wall in the public street and that proceedings should be taken against him—Prosecution against Councillor for defamation—Held that sanction necessary).
(1890) 1890 Pun. Re. 14 (28, 29), *Bakshi Ram Labhaya* v. *Diwan Ganpat Rai* (Resolution passed by Municipal Committee containing defamatory matter —Complaint against a Councillor for defamation).
(1934) 1934 Pat. 548 (549), *Nath Mukharji* v. *Radhakrishna Budhia* (Report by Municipal Commissioner that certain road-metal was missing and that on enquiry it was learnt that a certain contractor had removed them —Prosecution for defamation—Held that sanction was necessary).
[But see (1921) 1921 Cal. 388 (388, 389), *Baisnab Charan* v. *Sukhmoy* (A Magistrate or a Judicial Officer who is holding a trial cannot be said to be acting in a judicial capacity if he abuses or defames a witness or legal practitioner appearing before him).
(1916) 17 Cri. L. Jour. 462 (462, 463): 1917 Mad. 769, In re *Abdul Rahiman Khan Sahib* (Union Chairman removing obstruction to public street by complainant—Accused using insulting language—Sanction held not necessary).]

certain person when the circumstances do not justify such action. The offence (if any) is committed by the accused while purporting to act in the discharge of his official duty.[24]

(3) A Judge (having the duty of maintaining a record of cases tried by him) fabricates the records of a case before him and thereby commits an offence. He commits the offence while acting in the discharge of an official duty, because the action which he takes, *viz.*, the preparation of the record is a duty imposed on him by his official position.[25] Even if the record should relate to an entirely imaginary case, the offence committed by the Judge would come within the provisions of this section, because, in such cases, the accused would be *purporting* to act in the discharge of an official duty,[26] in other words, he would be *professing* to discharge an official duty, though not *actually* doing so.

(4) A revenue patil was charged under S. 420, Indian Penal Code, for having cheated the Government and dishonestly induced it to part with money by misrepresentation that a certain person was employed as Patkari for the village in a certain year when as a matter of fact, no Patkari was employed in the village during that year. *Held*, that the offence was committed while the accused was purporting to act in the discharge of his official duty.[27]

(5) A public servant having power to arrest and keep under custody persons suspected of certain offences, tortures a person whom he has arrested under such power with a view to force him to confess his guilt. The public servant neither discharges nor purports to discharge his official duty while torturing the prisoner in this way.[28]

(6) A Municipal Councillor being prohibited from entering into or acquiring any interest in any contract with the Municipality of which he is a Councillor does so and thereby commits an offence. He does not commit the offence while acting or purporting to act in the discharge of his official duty, because the action which he takes is not required by his official duty.[29]

(7) The Chairman of a Local Board is accused of having threatened a voter that he would increase his property tax and would prosecute him for alleged encroachment on Municipal land if he did not exercise his franchise in a particular manner. The alleged offence is not committed while acting or purporting to act in the discharge of an official duty.[30]

(8) A Judge was accused of an offence alleged to have been committed by him while *preventing* an offence. *Held*, that he did not commit the offence while acting or purporting to act in the discharge of his official duty, as the *prevention* of offences was not one of his official duties.[31]

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(24) (1921) 1921 Cal. 388 (388, 389), *Baisnab Charan* v. *Sukhomoy* (Judge detaining witness).
(1932) 1932 Mad. 214 (215), *Ganapathy Goundan* v. *Emperor* (Village Munsif in Madras Presidency arresting and keeping under arrest persons suspected of murder).
(1929) 1929 Mad. 659 (660): 52 Mad. 602, *Gengaraju* v. *Venki* (Village Magistrate sent his talayari to fetch the complainant and told him that "for not appearing when summons was sent, he sentenced him to imprisonment in the chavadi," and confined him in his chavadi. The complainant charged the Magistrate of wrongful confinement).
(1934) 1934 Rang. 238 (239): 12 Rang. 530, *Kayaw Htin* v. *Ah Yoo* (Excise Sub-Inspector—Prosecution of, under S. 342—Sanction of Local Government is necessary).

(25) (1920) 1920 Mad. 123 (123), *Subbiah Pillai* v. *Emperor*.
(26) (1929) 1929 Mad. 172 (173): 52 Mad. 347, *Sivaramakrishna Iyer* v. *Seshappa Naidu*.
(27) (1927) 1927 Bom. 432 (433), *Emperor* v. *Kalu Mahadu*.
(28) (1932) 1932 Mad. 214 (215), *Ganapathi Goundan* v. *Emperor* (Charge under I. P. Code, S. 330).
(29) (1932) 1932 Nag. 133 (134): 28 N.L.R. 156, *Dulloomiya* v. *Tularam*.
(30) (1928) 1928 Mad. 1158 (1160, 1161), *Nune Panakalu* v. *Subba Rao*.
[See also (1927) 1927 Mad. 566 (566, 567, 568): 50 Mad. 754, *Raja Rao* v. *Ramaswami* (Threat by Chairman of Municipality to injure property of complainant with intention to induce him to exercise his vote in a particular way—Held, sanction not necessary for his prosecution).
(31) (1900) 23 Mad. 540 (543), *Kanda Sami* v. *Soli*.

S. 197, Note 6.

(9) A public servant is accused of using defamatory words at a time when he was not discharging or purporting to discharge any official duty. No sanction is necessary under this section for his prosecution.[32]

See also the undermentioned cases.[33]

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(32) (1933) 1933 Mad. W. N. 1031 (1032), *Koibolo Porida* v. *Suvarno Mohiniani* (Report by Village Munsif that complainant, a widow, was trying to cause miscarriage—No sanction necessary for prosecution of Village Munsif as he does not act as a "Judge" in such a case).

(1932) 1932 Oudh 308 (309), *Bajrang Bahadur* v. *Emperor* (Member of District Board using defamatory language when canvassing votes for Presidentship or working against the candidature of particular person—Sanction not necessary for prosecution).

[See also (1892-1896) 1 Upp. Bur. Rul. 27 (27), *Criminal Revision No.* 203 *of* 1893.]

(33) (1928) 1928 Lah. 72 (73): 8 Lah. 647, *Muhammad Ismail* v. *Emperor* (Complaint against a member of a Municipal Committee that he, by exercising undue influence on a Sub-Overseer of the Committee, stopped that Sub-Overseer from purchasing bricks from a certain person and compelled him to give his assent to the purchase of bricks from the accused himself—No allegation in the complaint that the accused obtained this advantage to himself, acting or purporting to act in the discharge of his official duty as a Municipal Commissioner—*Held*, no sanction necessary).

(1909) 9 Cri. L. Jour. 89 (89, 90): 32 Mad. 255, *Palani Andi Pillai* v. *Arunachallam Pillai* (Fabrication of record by Judge not bound to maintain any record—Sanction does not apply to prosecution).

(1910) 11 Cri. L. Jour. 162 (162) (Mad.), *Athangarayan* v. *Gopalan Chetty* (No sanction necessary for the prosecution of a Village Magistrate who was charged with extortion).

(1933) 1933 Mad. 270 (270), *Venkatasubba Rao* v. *Emperor* (Karnam of a village, also acting as Village Magistrate, is charged under S. 411, Penal Code, with having dishonestly received stolen property—Sanction not required for his prosecution).

(1933) 1933 Mad. W. N. 876 (877), *Mallikarjuna Prasada Rao* v. *Emperor* (Accused, a village munsif, sending report that his house had been burgled and the revenue collections stolen. Report was found to be false—Charge under S. 182, Penal Code—Held, that the report of the accused was either as a private person or as a village headman and not as a village munsif and no such sanction under S. 197 was necessary).

(1931) 1931 Mad. 492 (494), *Lakshminarayana Iyer* v. *Chinnappa Goundan* (Where a meeting was held for the election of a president of a Village Panchayat Court and two of the members of the Panchayat, the kurnam and the headman, instead of forwarding the true proceedings, suppressed the genuine document and fabricated a false report and forwarded it to the Revenue Divisional Officer. Held, that though members of a Panchayat Court are Judges within S. 197 in forwarding the proceedings the accused were not performing any official duty cast on the members of the Panchayat but were acting as revenue subordinates of the Revenue Divisional Officer and, therefore, no sanction under S. 197 was necessary).

(1931) 1931 Bom. 192 (192, 193), *Narayan Janu Mahajan*, In re (No sanction of Government is necessary in respect of a complaint against the Talati and Patils (Village officers) who are alleged, in collecting subscriptions for the Taluka Agricultural Association to have used force, hurt and intimidation, though it may be, that the Government directed the village officers to encourage the association and enlist subscribers).

(1930) 1930 Bom. 487 (488), *Emperor* v. *Gulabmiya* (Liquidator who is a "Judge" for certain purposes) who appropriated to himself money coming into his custody as liquidator cannot be said even to purport to act in the discharge of his duty as Judge).

(1929) 1929 Cal. 724 (725, 726), *Amanat Ali* v. *Emperor* (In case of criminal breach of trust by a public servant it would be essential to show, before S. 197 would be applicable, that misappropriation had taken place as an official act or at least under the cloak of what purported to be an official act. The mere fact that property was entrusted to the accused as a public servant and his position as a public servant afforded him an opportunity for the commission of the offence is not enough).

(1935) 1935 Rang. 263 (265, 266) (F. B.) (Do.).

(1928) 1928 Mad. 161 (162, 163): 51 Mad. 259, *Jagannadhaswamy Naidu* v. *Manikkam* (Thasildar acting as a polling-officer in connection with a municipal election committing offence under S. 58, Madras District Municipalities Act—Held, that the person appointed to be a polling-officer, though he was a public servant, was for the time being not acting or purporting to act in the discharge of his official duty).

(1929) 1929 Bom. 375 (376), *Hanmant Shrinivas* v. *Emperor* (Kulkarni and revenue patil removing alleged encroachment without orders of higher authorities and assaulting alleged trespassers—Held, no sanction necessary for their prosecution).

(1917) 18 Cri. L. Jour. 37 (38, 39): 1917 Mad. 759, *Vadakke Peediyakkal Unnian Kutty* v. *Yellapally Govindan Nair*, (Village Munsif is Judge—But when he refuses to register a vakalat or authenticate an affidavit unless he is given a bribe and is charged with that offence he is not accused as such Judge.).

(1902) 30 Cal. 927 (933), *Corporation of Calcutta* v. *Administrator-General of Bengal*, (Administrator-General of Bengal appointed by Court as administrator of an estate failing to comply with

S. 197, Note 6.

It will be seen from the above illustrations that a public servant who does not purport to act in the discharge of his official duty but merely uses his official position to do an illegal act cannot claim the benefit of this section.[34]

In order that a public servant may be held to purport to act in the discharge of his official duty, it is not necessary that the action purported to be done by him must be *strictly* within his powers as such public servant. It is enough if he purports to act in the *capacity* with which he is clothed.[35] Thus, where a village munsif in a suit tried by him ordered the attachment before judgment of certain property and its removal under such attachment it was held that he purported to act in the discharge of his official duty though he acted *ultra vires* of his powers.[36] Similarly, where the President of a Municipality entered a private house for the purpose of inspecting the water connection, it was held that his action though irregular as not having been authorised by the Municipal Committee (as required under the law) was purported to be done by him in the discharge of his official duty.[37] So also, where the President of a

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a certain notice from the Municipality requiring him to remodel a privy on certain premises belonging to the estate. *Held* the fact of his being also the Administrator-General being merely an accident, and the offence for which he is charged not being one committed in his official capacity, no sanction of Government is necessary for the prosecution).

(1879) 1879 Pun. Re. No. 8 (17, 18, 19), *Talu Singh* v. *The Empress*, (Accused, a Surgeon in Government service examining wounded man and later on giving false evidence in Court about result of examination. Held that in giving evidence he was not acting in discharge of his official duty.).

(1935) 1935 Cal. 176 (176), *Ganga Prasad Sinha* v. *Brindabhan Chandra Das*, (Accused a Sub-Divisional Officer of the P.W.D. inspecting works done by complainant a road mohurrir—Getting enraged at sight of bad work and beating complainant--Held that the act was not done while acting or purporting to act in the discharge of official duty).

(1925) 1925 Oudh 565 (565, 566) : 28 Oudh Cas. 155, *Emperor* v. *Krishna Kant*, (Sale by auction of impounding cattle by member of District Board deputed for the purpose—Purchase at such auction by himself in name of servant—Offence (I.P.C. S. 169) is committed while acting in discharge of official duty).

(1933) 1933 Sind 161 (163, 164) : 27 S. L. R. 3, *Hidayatullah* v. *Emperor*, (Sanction of the Local Government is necessary before the President of a Taluk Board can be tried for embezzlement in connection with the disbursements of the municipal monies and for falsification of the payment accounts as offence is one committed while acting or purporting to act in the discharge of official duty).

(1929) 1929 Mad. 256 (256), *Subba Naidu* v. *Emperor*, (Village Court *executing* under S. 48 of the Village Courts Act 1 of 1889 a decree, by way of distraint is a Village Court as defined in the Act and the village Munsif if he himself distrains, is still acting as *Judge* of that Court).

(1933) 1933 Mad. 268 (269), *Schamnad* v. *Rama Rao* (Police Inspector purporting to disperse unlawful assembly).

(1929) 1929 Mad. 8 (10) : 52 Mad. 446, *Sivasankaram Pillai* v. *Emperor*, (President Taluk Board evicting from meeting of Board Member who had forfeited his seat).

(1926) 1926 Rang. 171 (172) : 4 Rang. 128, *Emperor* v. *Maung Gale*, (President of Municipality purchasing goods for Municipality and receiving discount from seller and appropriating it to himself—Prosecution for criminal misappropriation—Sanction necessary).

(1935) 1935 Mad. 319 (320), *Rajagopala Iyer* v. *Palanisamy Goundan* (Sub-Magistrate taking steps to prevent apprehended breach of peace).

(1934) 1934 Cal. 838 (841), *Moulvi Nur Ahmed* v. *Jogesh Chandra Sen* (Members of a committee appointed under S. 21 (1) of the Bengal Municipal Act are "public servants" under S. 197, Cr. P. Code, their functions being covered by the expression "official duty". But acts done by them after the final publication of the roll, and having no reference to the things done by them while acting or purporting to act as such, do not attract the protection given by S. 197).

(34) (1916) 17 Cri. L. Jour. 394 (395) : 1917 Mad. 657, *Sankaralinga Tevan* v. *Ayudai Ammal*.

(1929) 1929 Bom. 375 (376), *Hanmant Shrinivas* v. *Emperor*.

(1935) 1935 Rang. 263 (265, 266) (F.B.), *Emperor* v. *Maung Bo Maung* (Criminal breach of trust in regard to moneys that came into accused's hands in course of official duty—Section does not apply).

(35) (1916) 17 Cri. L. Jour. 394 (395) : 1917 Mad. 657, *Sankaralinga Tevan* v. *Avudai Ammal*.

(1931) 1931 Mad. 492 (494), *Lakshminarayana Iyer* v. *Chinnappa Goundan*.

(36) (1916) 17 Cri. L. Jour. 394 (395) : 1917 Mad. 657, *Sankaralinga Tevan* v. *Avudai Ammal*.

(37) (1935) 1935 Nag. 52 (53), *Abdul Hadi Musalman* v. *D. P. Mishra*.

S. 197, Note 6.

Union Board published by affixing on the notice board of his office and otherwise a notice that a certain election had been postponed and in giving the reasons for the postponement he made certain statements which were objected to as defamatory, it was held that the offence (if any) was committed by him while purporting to act in the discharge of his official duty though his action in publishing in the above manner the fact of postponement of the election might not have been authorised under the rules.[38]

But the action purported to be done by the public servant in the discharge of his official duty must not be totally unlike anything which he is authorised to do by virtue of his official position. In other words, such action must be of the *sort* that the public servant is empowered to do in the course of his official duties.[39]

It has been held in the undermentioned case[40] that if a public servant does not act in the *belief* that he is discharging his official duty, he cannot claim the protection of this section. It is submitted that this view does not seem to be correct.[41]

Suppose a public servant holds two offices. One of them is of the kind specified in this section and the other is not. If an offence is committed by the public servant in his capacity as holding the latter office the section does not apply.[42] But where a public servant holding an office of the kind mentioned in this section is, *as such public servant*, appointed to another office, his official acts in connection with the latter office will also relate to the former office and if they involve any offence will attract the provisions of this section.[43] Thus, where members of a Municipal Council (who are public servants to whom this

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(38) (1929) 1929 Mad. 175 (176), *Abboy Naidu* v. *Kuniappa Chettiar*.

(39) (1932) 1932 Mad. 214 (215), *Ganapathy Goundan* v. *Emperor*.

(40) (1916) 17 Cri. L. Jour. 394 (395): 1917 Mad 657, *Sankaralinga Thevan* v. *Avudai Ammal*.

(41) *See Civil Procedure Code by Chitaley and Annaji Rao, S.* 80, *Note* 5.
See also Concise Oxford Dictionary. The meaning of the word "purport" does not necessarily imply that the actor believes that he is really doing the thing which he purports to do.

(42) (1903) 30 Cal. 927 (933), *Corporation of Calcutta* v. *Administrator-General of Bengal* (Administrator-General of Bengal appointed administrator of an estate by Court—Offence committed in latter capacity—No sanction necessary though in former capacity accused is not removable from office except by or with sanction of Government).
(1930) 1930 Bom. 487 (488), *Gulabmiya Dagumiya* v. *Emperor* (Organiser of Co-operative Credit Societies appointed liquidator of certain society—Misappropriation committed in latter capacity—Sanction not necessary though in former capacity accused cannot be removed from his office save by or with sanction of Government).
(1917) 18 Cri. L. Jour. 37 (38, 39): 1917 Mad. 759, *Vadakke Peediyakkal Unnian Kutty* v. *Vallapally Govindan Nair* (Village Munsif when registering vakalats and affidavits does not act as Judge and for offence committed by him in his capacity of person empowered to register vakalats and affidavits no sanction is necessary).
(1928) 1928 Mad. 161 (162, 163): 51 Mad. 259, *Jagannadhaswamy* v. *Manikyam* (Thasildar appointed polling-officer for Municipal Election—Offence committed while acting or purporting to act in latter capacity—Sanction not necessary though as Thasildar accused is not removable from office save by or with sanction of the Government).
(1931) 1931 Mad. 492 (494), *Lakshiminarayana Iyer* v. *Chinnappa Goundan* (Kurnam and village headman though Judges when acting as members of Village Panchayat Court act not as Judges but as revenue subordinates when forwarding proceedings relating to the election of the President of the Panchayat Court—If they forward a false report, sanction is not necessary for their prosecution).
(1933) 1933 Mad. W. N. 876 (877), *Talagadadivi Mallikharjuna* v. *Emperor* (Accused, a Village Munsif, sending false report of burglary).
(1933) 1933 Mad. W. N. 1031 (1032), *Koibolo Porida* v. *Suvarno Mohiniani* (Report by Village Munsif that complainant, a widow, was trying to cause miscarriage—No sanction necessary).
(1899) 23 Mad. 540 (543), *Kandasamy Chetty* v. *Soli Goundan* (Village Magistrate preventing offence does not act as Judge).

(43) (1934) 1934 Cal. 838 (841), *Nur Ahmad* v. *Jogesh Chandra Sen*.

section applies) are appointed, *as such*, to a Committee for the preparation of an electoral roll for the Municipal elections, this section will apply to offences committed by them in the discharge of their duties as members of such committee.[44]

7. **Taking cognizance.**—As to the meaning of the expression "taking cognizance of an offence", *see* Notes under S. 190.

On receipt of reports containing allegations of certain offences against a public servant, the Government directed the Magistrate of the district in which the public servant was serving to make a preliminary inquiry into the truth of the allegations and make a report on the same. The Magistrate examined various persons at such inquiry. *Held*, that the proceedings of the Magistrate did not amount to a *taking cognizance* of the offence alleged against the public servant.[1]

It has been seen in the Notes under S. 190 that the examination of the complaint under S. 200 is as contemplated by the Code to take place only on a Magistrate *taking cognizance* of an offence. Hence, the view expressed in the undermentioned cases[2] that when a complaint is preferred against a public servant as to an offence falling within the purview of this section, the Magistrate is required to examine the complainant on oath under S. 200 even in the absence of the sanction mentioned in this section is not correct.

Where a sanction is given for a prosecution in respect of a certain offence, it is not open to the Court to proceed in respect of a *different offence*. But, if the charge in respect of such (different) offence is founded on the same facts as those on which a prosecution has been sanctioned there is no bar to the Court proceeding with that charge.[3] (*See* S. 230). (*See also* Notes under S. 190).

8. **Who can sanction prosecution.**—Under this section a prosecution can be sanctioned *only* by the Local Government. The Local Government cannot delegate its power in this respect to anybody else.[1]

Before the amendment of the section in 1923, it was provided that sanction to prosecute could be given by the Government empowered to order the removal of the public servant in question or by certain *other* authorities specified in the section. The cases decided before the above amendment and bearing on the question as to what authorities could sanction a prosecution under this section[2] are therefore only of academic interest now.

(1930) 1930 Lah. 147 (147), *Muhammad Rafiq* v. *Emperor* (Municipal Commissioner and Honorary Secretary of Municipal Committee—Offence committed as Secretary—Section applies).

(1925) 1925 Oudh 565 (565, 566): 28 Oudh Cas. 155, *Emperor* v. *Krishna Kant* (District Board Member appointed officer to sell by auction impounded cattle—Offence committed in latter capacity—Section applies, though in such capacity, he is removable without sanction of Government because as member of District Board he is not removable without sanction of Government).

(44) (1934) 1934 Cal. 838 (841), *Nur Ahmad* v. *Jogesh Chandra Sen*.

Note 7.

(1) (1894) 19 Bom. 51 (60), *Queen-Empress* v. *Karigowada*.

(2) (1897) 3 Cal. W. N. 17 (18), *Satya Charan Ghose* v. *The Chairman of the Utterparah Municipality* (The question whether the case is one that can be proceeded with, having regard to S. 197, Cr. P. C. should be decided after examining the complainant in accordance with law).

(1873) 7 Mad. H. C. R. 182 (187), In re *Narayanaswamy Iyer*.

(3) (1903) 30 Cal. 905 (908), *Profulla Chandra Sen* v. *Emperor*.

Note 8.

(1) (1927) 1927 Bom. 432 (432), *Kalu Mahadu* v. *Emperor*.

(1868) 1868 Pun. Re. No. 9 (28), *Crown* v. *Boodh Singh*.

(2) (1867) 1867 Pun. Re. No. 47, Crown v. *Boodh Singh*.

S. 197, Note 9.

9. **Essentials of sanction.**—A sanction under this section must specify the *offence* for which the prosecution should be started.[1] A sanction which leaves it to another to determine the offence in respect of which proceedings should be started is invalid and a prosecution based on such sanction is illegal.[2] Thus, an order sanctioning the prosecution of the accused "for bribery or such other charges as the District Magistrate thinks likely to stand investigation by Criminal Courts" is not sufficient.[3]

But, the *section* under which the alleged offence falls or the name of the offence need not be specified in the sanction. It is enough if the *facts* constituting the offence are set out with sufficient clearness in the order granting sanction.[4] Hence, where the particulars of the offence were specified in a schedule annexed to the order of sanction and the sanction directed the prosecution of the accused for an offence under S. 161 of the Penal Code, "or any other section of the Code that may be found applicable to the offence" the order was held to be a sufficient sanction under this section.[5]

There is no prescribed *form* in which the sanction must be given.[6] So long as the sanction specifies with sufficient clearness the offence for which a prosecution is to be started, any deficiency or error in the particulars set out is immaterial.[7]

(1877) 2 Bom. 481 (486, 488), *Imperatrix* v. *Lakshman Sakharam.*
(1903) 30 Cal. 905 (908), *Profulla Chandra Sen* v. *Emperor.*
(1920) 1920 Lah. 254 (255), *Heymerdinguer* v. *Emperor.*
(1919) 1919 Lah. 300 (301, 302): 1919 P. R. 4, *Indar Singh* v. *Emperor.*
(1923) 1923 Mad. 338 (339), *China Chendrayya* v. *Subbarayudu.*
(1872) 7 Mad. H. C. R. 58 (59), In re *B. Krishna Rao.*
(1870) 7 Bom. H. C. R. Cr. 64 (66), *Reg.* v. *Mathav Ram Chandra.*
(1916) 17 Cri. L. Jour. 168 (171): 1917 Mad. 344, *Abdul Khadir Sahib,* In re.

Note 9.

(1) (1893) 16 Mad. 468 (473), *Queen-Empress* v. *Samavier.*
(1895) 2 Weir 221 (221), In re *Srinivasa Iyengar.*
(1916) 17 Cri. L. Jour. 168 (170, 171): 1917 Mad. 344, *Abdul Khadir Sahib,* In re.
(2) (1893) 16 Mad. 468 (473, 474), *Queen-Empress* v. *Samavier.*
(3) (1893) 16 Mad. 468 (473, 474), *Queen-Empress* v. *Samavier.*
(4) (1911) 12 Cri. L. Jour. 217 (220, 221, 222): 1911 P. R. 11, *Girdhari Lal* v. *Emperor.*
(1917) 1917 Mad. 168 (171, 172), In re *Abdul Khadir Sahib.*
(1918) 1918 Bom. 117 (118, 120, 121): 43 Bom. 147, *Emperor* v. *Madhav Laxman* (Sanction for prosecution for "cheating or any other offence for which it may be necessary to prosecute them in connection with obtaining money from the ryots" held not bad).
[See also (1903) 30 Cal. 905 (909), *Profulla Chandra Sen* v. *Emperor* (Sanction to prosecute for substantive offence—Conviction for abetment held legal).]
(5) (1911) 12 Cri. L. Jour. 217 (220, 221, 222): 1911 P. R. 11, *Girdhari Lal* v. *Emperor.*
[See also (1877) 2 Bom. 481 (488), *Imperatrix* v. *Lakshman Sakharam.*]
(6) (1920) 1920 Lah. 254 (255), *Heymerdinguer* v. *Emperor.*
(1904) 1 Cri. L. Jour. 275 (279): 27 Mad. 54, In the matter of *Kalagava Bapiah.*
(1920) 1920 Pat. 237 (243), *Sarwan* v. *Emperor.*
(1922) 1922 Lah. 146 (147): 2 Lah. 305, *Ali Husain* v. *Harcharan.*
(1872) 7 Mad. H. C. R. 58 (59), *B. Krishna Rao,* In re (Writing desirable but not necessary).
(1933) 1933 All. 543 (544): 55 All. 798, *Rudra Dat Bhatt* v. *Emperor.*
(1909) 10 Cri. L. Jour. 463 (467) (Cal.), *Girwardhari* v. *Emperor* (Order of Government read with the materials referred to in it making clear the offence which is to be subject of prosecution—Order not bad—Sub-S. 2 shows that offence need not be set out with same precision as in charge).
(7) (1904) 1 Cri. L. Jour. 275 (279): 27 Mad. 54, In re *Kalagava Bapiah* (Prosecution of the accused sanctioned for having, as a member of the Municipal Council of *E* committed offence punishable under S. 168, I. P. C. by having interested himself in certain Municipal contracts, but the contracts not specified in the order of sanction, though they were specified in the Collector's report. Held, that the sanction was not vague, and that it specified with sufficient clearness the offence for which the accused was to be prosecuted).
(1927) 1927 Bom. 501 (503, 504, 506), *Emperor* v. *Jehangir Ardeshir* (Offence otherwise correctly and clearly specified—Mistake of one day in stating date of offence held immaterial—Offence need not be set out with same precision as in charge).

S. 197, Notes 9—11.

There is no restriction as to the officer to whom a sanction under this section should be addressed.[8] Nor is it necessary that a complaint based on a sanction issued under this section should be filed by the very officer to whom the sanction was addressed.[9] But where the sanction expressly *specifies* the person by whom the prosecution is to be instituted, it is not open to any *other* person to do so.[10]

A *substantial* compliance with the order directing a prosecution under this section is enough. Thus, where a District Magistrate was ordered to *institute* a prosecution against a certain person but he *took cognizance* of the case and transferred it to another Magistrate for trial, *held* that though *taking cognizance* was not identical with *instituting a prosecution*, the order of the Government had been substantially complied with and that the proceedings were not vitiated.[11]

The granting of a sanction under this section is an *executive* and not a *judicial* act.[12] The sanctioning authority is not authorised to hold a *judicial* inquiry before granting such sanction. An enquiry that the sanctioning authority makes will be only a *department* one.[13]

A sanction under this section being not a judicial act, it need not be based on legal evidence.[14] Nor is it necessary to give reasons for sanctioning a prosecution.[15] Similarly, it is not necessary before sanctioning a prosecution under this section to give the accused person an opportunity to show cause why his prosecution should not be ordered.[16]

10. Stage at which sanction is to be obtained.—The section requires the *previous* sanction of the Local Government for taking cognizance of an offence. Hence, a sanction obtained *after* the commencement of proceedings is not sufficient.[1]

11. Want of sanction—Effect.—The provisions of this section are mandatory and the absence of sanction in cases coming under the section will render the proceedings illegal.[1] But it has been held that where a case is com-

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(8) (1933) 1933 All. 543 (544): 55 All. 798, *Rudra Dat Bhatt* v. *Emperor.*
(9) (1933) 1933 All. 543 (544): 55 All. 798, *Rudra Dat Bhatt* v. *Emperor.*
(10) (1871) 8 Bom. H. C. R. 32 (36), *Reg.* v. *Vinayak Dwakar.*
(11) (1909) 10 Cri. L. Jour. 463 (466) (Cal.), *Girwardhari Lal* v. *Emperor.*
(12) (1922) 1922 Lah. 146 (147): 2 Lah. 305, *Ali Hussain Khan* v. *Harcharan Das.*
(1923) 1923 Mad. 338 (339), *China Chandrayya* v. *Subbarayudu.*
(1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah.*
(13) (1899) 23 Mad. 223 (224, 225), *Queen-Empress* v. *Venkataramanna.*
(14) (1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah.*
(15) (1923) 1923 Mad. 338 (339), *China Chendrayya* v. *Subbarayudu.*
(16) (1904) 1 Cri. L. Jour. 275 (278): 27 Mad. 54, In re *Kalagava Bapiah.*
(1923) 1923 Mad. 338 (339), *China Chandrayya* v. *Subbarayudu* (No notice before sanction is granted is necessary).

Note 10.

(1) (1917) 1917 Bom. 33 (33, 34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*
(1885) 9 Bom. 288 (299), *Queen-Empress* v. *Morton.*
(1923) 1923 Mad. 338 (339), *China Chandrayya* v. *Subbarayudu.*
(1920) 1920 Pat. 237 (243), *Sarwan* v. *Emperor.*
(1933) 1933 Sind 161 (163): 27 S. L. R. 3, *Hidayatullah* v. *Emperor.*
(1870) 7 Bom. H. C. R. 61 (62), *Reg.* v. *Parsharam Keshav.*

Note 11.

(1) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir* (Commitment to Sessions is void——Commitment quashed).
(1885) 9 Bom. 288 (296, 297), *Queen-Empress* v. *Morton.*
(1928) 1928 All. 756 (758): 51 All. 377, *Bhairon Prasad* v. *Emperor* (Search proceedings set aside).
(1927) 1927 Bom. 432 (433), *Kalu Mahadu Patil* v. *Emperor.*
(1931) 1931 Cal. 646 (647, 648), *Sasadhar Acharjya* v. *Charles Tegart.*
(1919) 1919 Lah. 300 (302): 1919 P. R. 4, *Indar Singh* v. *Emperor.*
(1920) 1920 Mad. 123 (124), *Subbiah Pillai* v. *Emperor.*

S. 197, Notes 11—12.

mitted to the Sessions in the absence of the sanction required by this section, the Sessions Court, can under S. 532 waive the defect and accept the commitment.[2] (As to further discussion on this subject, *see* Notes under S. 532.)

Where there are a number of co-accused in a case, the want of sanction in respect of one of them does not vitiate the proceedings as regards the rest.[3]

In the undermentioned case[4] it was held, that the proper course, when a complaint is presented without obtaining the sanction required by this section, is to dismiss the complaint *under S.* 203. As the section forbids a Court from *taking cognizance* of an offence in the absence of the sanction mentioned therein and as the dismissal of a complaint under S. 203, necessarily implies taking cognizance of the offence, it is submitted that the above view is not correct.

12. Sub-Section (2).—This sub-section empowers the Local Government in sanctioning a prosecution under this section to direct by whom and in what manner the prosecution is to be conducted, and to determine the offence or offences for which the accused is to be prosecuted and the Court before whom he is to be tried.[1] Where the Local Government has specified the Court by which a case is to be tried under this sub-section the High Court has no power to transfer the case to any other Court.[2] But the sub-section contemplates the Local Government making an order with reference to each *particular* case. The Local Government cannot pass a *general* order affecting a whole *class* of cases. Thus the Local Government cannot order that all cases in which a particular class of officers. (*e.g.*, Thasildars) must be tried only by a particular Court.[3]

Under this sub-section the Local Government can direct a case to be tried by a Court which otherwise would have no *local jurisdiction* over it.[4] Where a case is directed by the Local Government to be tried by the Sessions Court of a certain place, the case can be tried by the *Additional* Sessions Judge of that place the reason being that though there can be only one Sessions Court for each Sessions Division there may be more than one Judge for each Sessions Court.[5]

(1884) 1884 Pun. Re. No. 42 (96), *Mussammat Sharina* v. *The Empress.*
(1890) 1890 Pun. Re. No. 16 (37), *Shamal Khan* v. *The Empress.*
(1886) 2 Weir 710 (711), In re *Ponnusamy Iyengar.*
(1870) 7 Bom. H. C. R. Cr. 61 (62), *Reg.* v. *Parashram Keshav.*
(1907) 6 Cri. L. Jour. 382 (383): 31 Mad. 80, In re *Perumal Naidu.*
(1931) 1931 Oudh 392 (393, 394), *Lala Bhagirath* v. *Ali Hamid Sahib* (Examining the complainant and ordering inquiry under S. 202 take place after taking cognizance and hence in absence of sanction are illegal).
(1933) 1933 Sind 161 (163): 27 S. L. R. 3, *Hidayatullah* v. *Emperor* (No sanction of Government obtained at the appellate stage can validate the proceedings).
(1867) 1867 Pun. Re. No. Cri. 10 (16), *Mozuffir Ali* v. *Ameer Khan.*
[But see (1919) 1919 Mad. 190 (190), In re *The Sessions Judge of Tanjore* (Defect curable under S. 537).]
(1872) 7 Mad. H. C. R. 58 (59), In re *B. Krishna Rao* (Do.).]
(2) (1885) 9 Bom. 288 (296, 297, 299, 300) (F. B.), *Queen-Empress* v. *Morton.*
(3) (1879) Rat. Un. Re. Cr. Cas. 142 (142), *Queen-Empress* v. *Ganpat.*
(4) (1934) 1934 Rang. 238 (239): 12 Rang. 530, *Kyaw Htin* v. *Ah Yoo.*

Note 12.

(1) (1928) 1928 All. 756 (758): 51 All. 377, *Bhairon Prasad* v. *Emperor.*
(2) (1899) 26 Cal. 852 (862), *Nando Lal Basak* v. *Mitter.*
(3) See (1892) 15 Mad. 36 (38, 39), *Queen-Empress* v. *Renga Rau.*
(4) (1908) 8 Cri. L. Jour. 70 (71): 4 L. B. R. 265, *Emperor* v. *Maung Ka.*
(5) (1888) 2 Weir 215 (216), *Queen-Empress* v. *Kunjan Menon.*

198*. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Prosecution for breach of contract, defamation and offences against marriage.

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf.

SYNOPSIS.

	Note No.
SCOPE AND OBJECT OF SECTION	1
ABETMENT OF OFFENCE MENTIONED IN SECTION—APPLICABILITY OF SECTION	2
COMPLAINT—ESSENTIALS	3

***(CODE OF 1882—S. 198.)**

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for breach of contract, defamation, and offences against marriage.

(CODE OF 1872—S. 142, Para. 2.)

142. * * * * * * * *

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters XIX, XX or XXI of the Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence, without sanction, where such offence, by any law in force, may not be entertained without sanction.

Complaint or sanction required in certain cases.

(CODE OF 1861—S. 68.)

68. Except as is otherwise provided in Chapter XI of this Act, the Magistrate of the District, or a Magistrate in charge of a division of a District, may, without any complaint, take cognizance of any offence which may come to his knowledge and may issue a summons, or in cases where a warrant may issue, a warrant of arrest against the person known or suspected to have committed such offence, in the same manner as if a complaint had been made against such person. The provisions of this section shall not apply to the offences described in Chapters XIX, XX and XXI of the Indian Penal Code.

Magistrate may take cognizance of offences without complaint made.

Proviso.

S. 198, Notes 1—3.

Note No.
"PERSON AGGRIEVED BY SUCH OFFENCE" 4
WANT OF COMPLAINT—EFFECT 5
COMPLAINT OF ONE OFFENCE—EVIDENCE DISCLOSING DIFFERENT OFFENCE FALLING WITHIN SECTION—POWER OF COURT TO PROCEED IN RESPECT OF SUCH OFFENCE 6
POWER OF APPELLATE COURT TO ALTER FINDING .. 7
COMPLAINT ON BEHALF OF ANOTHER—PROVISO .. 8

Other Topics.

Death of complainant. See S. 247, Note 6.
Persons aggrieved—
by bigamy. See Note 4, Pts. 13-19.
by defamation. See Note 4, Pts. 6-12.
Lunatic. See Note 4, F.N. (16) and Note 8, Pts. 3.
Municipal President. See Note 4, F. N. (12).
[illegible]. See Note 4, F.N.(12).
Substance of the complaint must be looked to. See Notes 5, 6, and Pt. 5.

1. Scope and object of section.—The general rule is that any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not a person injured by the offence. This section embodies one of the exceptions to this general rule.[1] The offences referred to in the section are of a *private* character and the object of the section is to limit the persons by whom proceedings can be initiated and to see that it is not in the power of any and everybody to drag such offences into a Court of justice.[2]

2. Abetment of offence mentioned in section—Applicability of section.—There is a conflict of decisions as to whether the section applies to the abetment of an offence mentioned in the section. It has been held by the Allahabad High Court that the section does *not* apply to such cases[1] while a contrary view has been held by the Chief Court of Punjab.[2]

3. Complaint—Essentials.—For the definition of complaint, *see* S. 4 (*h*), *ante*. [*See also* Notes under S. 190, *ante*.]

The definition of a complaint does not include the report of a Police-officer. But the fact that a complaint is made at the instance of the police does not make it other than a complaint for the purposes of this section.[1]

Statements made by a complainant in his *evidence* do not form part of the complaint.[2] But it has been held that the statements by the complainant during his examination under S. 200 form part of the complaint[3]. It is submitted that this view is not correct.

Section 198—Note 1.

(1) (1921) 1921 Cal. 627 (629), *Rayaz Singh* v. *Morgan*.
(1900) 25 Bom. 151 (155), *Chhotalal Lallubhai* v. *Nathabhai Bechar*.
(1889) 13 Bom. 600 (622, 623), In re *Ganesh Narayan Sathe*.
(1934) 1934 Sind 188 (188), *Hosseinbhoy Ismailji* v. *Emperor*.
(2) (1900) 25 Bom. 151 (155), *Chhotalal Lallubhai* v. *Nathabhai Bechar*.

Note 2.

(1) (1926) 1926 All. 189 (191), *Munir* v. *King-Emperor*.
(2) (1888) 1888 Pun. Re. No. 4 (7), *Jit Mal* v. *Empress*.

Note 3.

(1) (1919) 1919 Lah. 389 (390): 1919 P. R. 5, *Emperor* v. *Mt. Ruri*.
(2) (1887) 10 All. 39 (43), *Queen-Empress* v. *Deokinandan*.
(1879) 1879 Pun. Re. No. 6 (9), *Jagat Ram* v. *Empress*.
(3) (1879) 1879 Pun. Re. No. 6 (9), *Jagat Ram* v. *Empress*.

S. 198, Notes 3—4

In construing a complaint regard must be had to *every* portion of it.[4] It is not necessary that a complaint of defamation should make a specific reference to every exhibit proposed to be put in evidence.[5]

As to whether a complaint under this section must specify the section under which the offence falls, *see* Note 5, *infra*.

4. "Person aggrieved by such offence."—A complaint under this section can only be made by a person "aggrieved" by the offence complained of.[1-a] A merely fanciful or sentimental grievance will not make a person "aggrieved" within the meaning of this section. The grievance must be such as the *law* can appreciate. It must be a *legal* grievance and not *a stat pro ratione voluntas* reason.[1] Hence, the mere fact that a person has been pained in his mind by reason of an offence is not enough to enable him to complain under this section.[2]

But the expression is not confined to a person who is *directly* injured by the offence.[3] Nor is it confined to a person who would be entitled to *compound* the offence under S. 345 *post*.[4]

The question whether a person is "aggrieved" within the meaning of this section is a question of *fact* depending on the nature of the accusation and the special circumstances of each case.[5]

The case-law upon the matter may be summarised as follows:—

Defamation.—It is settled law that the right to complain about defamation belongs not only to the person defamed but also to others who are affected by the defamation.[6] Thus, the husband of a woman who has been defamed by the imputation of unchastity to her can complain about the defamation.[7] Similarly, other near relations of the woman to whom unchastity has been imputed are also

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(4) (1891) 1891 Pun. Re. No. 8, p. 19 (22), *Sardar Dayal Singh* v. *Queen-Empress* (A complaint after stating the manner in which he was defamed concluded with the prayer "your petitioner, therefore charges the said accused persons under Ch. XXI, I. P. C. and prays that they may be dealt with according to law." *Held*, that there was a complaint under S. 502, I. P. C.).

(5) (1924) 1924 Mad. 340 (341), *H. Burke* v. *T. C. W. Skipp*.

Note 4.

(1-a) (1914) 1914 Mad. 352 (352), *Subroya Aiyar* v. *Kadar Rowthen Aubdul Kadar Sahib* (Defamation on a question of fact, held complainant was not aggrieved as it was a true statement).

(1) (1906) 3 Cri. L. Jour. 187 (189) (Cal.), *Daem Sardar* v. *Batu Dhali*.
(1900) 25 Bom. 151 (156), *Ohhotalal Lallubhai* v. *Natha Bhai Bechar*.
(1872-1892) 1872-1892 L. B. R. 617 (618), *Queen-Empress* v. *Nga Shun*.

(2) (1872-1892) 1872-1892 L. B. R. 617 (618), *Queen-Empress* v. *Nga Shun*.
(1934) 1934 Sind 188 (190), *Hosseinbhoy Ismailji* v. *Emperor*.

(3) (1928) 1928 Nag. 58 (60), *Surajmal* v. *Ramnath*.

(4) (1900) 25 Bom. 151 (156, 157), *Ohhotalal Lallubhai* v. *Nathabhai Bechar*.

(5) (1934) 1934 Sind 188 (190), *Hossein Ismailji* v. *Emperor*.
(1928) 1928 Nag. 58 (60), *Surajmal* v. *Ramnath*.
(1906) 3 Cri. L. Jour. 187 (189) (Cal.), *Daem Sardar* v. *Batu Dhali*.

(6) (1900) 25 Bom. 151 (156, 157), *Ohhotalal Lallubhai* v. *Nathabhai Bechar* (Overruling Rat. Un. Re. Cr. Cas. 327 and Rat. Un. Re. Cr. Cas. 392 (393)).
(1928) 1928 Nag. 58 (60), *Surajmal* v. *Ramnath*.
[But see (1872-1892) 1872-1892 L. B. R. 617 (618), *Queen-Empress* v. *Nga Shun* (Not good law).]

(7) (1905) 2 Cri. L. Jour. 381 (381) (Mad.), *Anantha Goundan* v. *Emperor*.
(1925) 1925 Mad. 320 (321), *Appanna* v. *Akkanna*.
(1924) 1924 Lah. 559 (561): 5 Lah. 301, *Gurdit Singh* v. *Emperor*.
(1900) 25 Bom. 151 (156), *Ohhotalal Lallubhai* v. *Nathabhai* (Overruling Rat. Un. Re. Cr. Cas. 327 (327)).
(1891) 1891 All. W. N. 188 (188), *Empress* v. *Maiku*.
(1891) 14 Mad. 379 (381), *Chellam Naidu* v. *Ramasami*.
[See (1909) 10 Cri. L. Jour. 263 (264) (Mad.), *Subbanna* v. *Lakshmanamurty* (Imputation attributing disgraceful origin to complainant's wife).]
[But see (1884) 1884 Pun. Re. No. 22 (40), *Daud* v. *Empress* (Submitted not good law).]

S. 198, Notes 4—5.

entitled to complain about the defamation.[8] But a person who is *merely* one whose feelings are hurt by the defamation of another is not "aggrieved" by the offence and cannot complain under this section.[9] The test has been laid down to be whether the complainant's *own* personal reputation has been harmed *directly* or *indirectly*.[10] Thus, imputations against the head of a religious sect which do not affect his *spiritual character* are not sufficient to justify a member of the sect to complain under this section.[11] Similarly, the official superior of the person defamed is not necessarily entitled to complain under this section though the imputation may touch the discharge of official duties by the person defamed.[12]

Where a *class* of persons (*e.g.*, the students of a particular college) are defamed in such a way that the defamation can be brought home to the individual members of the class, any member of the class can complain.[12-a]

Bigamy, etc.—A complaint of bigamy can be preferred by the person with whom the second ceremony is gone through or the husband (by the first marriage) of the woman committing the bigamy.[13] But *other* relations of the parties have been held not entitled to complain. Thus the father,[14] mother,[15] or brother[16] of the first husband or of the second husband[17] or the father of the woman who contracts the bigamous marriage[18] has been held not competent to prefer a complaint of bigamy under this section. Similarly, the spiritual head of a community cannot complain about an offence committed in relation to the marriage of a member of the community.[19]

5. **Want of complaint—Effect.**—A complaint by an "aggrieved" person is a condition precedent to the jurisdiction of any Court to deal judicially with the offences mentioned in this section. Judicial proceedings held

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(8) (1904) 1 Cri. L. Jour. 445 (447): 32 Cal. 425, *Thakur Dass Sur* v. *Adhar Chandra Misra* (Brother).
(1906) 3 Cri. L. Jour. 187 (190) (Cal.), *Daem Sardar* v. *Batu Dhali* (Father-in-law).
(1928) 1928 Nag. 58 (60), *Surajmal* v. *Ramnath* (Adopted son).
[But see (1893) 1893 All. W. N. 207 (208), *Maswria Din* v. *Jagan Nath* (Son cannot complain of defamation of mother).
(1887) 1887 Pun. Re. No. 39 (91), *Empress* v. *Emam Bakhsh* (Father cannot complain of defamation of daughter).]
(9) (1934) 1934 Sind 188 (190), *Hossein Ismailji* v. *Emperor*.
(10) (1934) 1934 Sind 188 (190), *Hossein Ismailji* v. *Emperor*.
(11) (1934) 1934 Sind 188 (190), *Hossein Ismailji* v. *Emperor*.
(1935) 1935 Sind 98 (100, 101), *Hussein Bhoy Ismailji* v. *Emperor*.
(12) (1903) 26 Mad. 43 (47), *Beauchamp, H. K.* v. *C. M. J. Moore* (Attack on Health Officer of Municipality—President of Municipality cannot complain).
(1923) 1923 Oudh 4 (6): 26 Oudh Cas. 44, *Gaya Barhai* v. *King-Emperor* (Where Police-officer is defamed, a complaint by his superior officer on the ground that the good name of police force had been attacked cannot be entertained).
[See also (1910) 11 Cri. L. Jour. 594 595 (All.), *Til Kanchan Gir* v. *Emperor* (Master cannot complain of defamation of servant).]
[See also (1872-1892) 1872-1892 L. B. R. 617 (618), *Queen-Empress* v. *Nga Shun* (Defamation of head of Monastery—Founder of monastery cannot complain).]
(12-a) (1935) 1935 All. 743 (744, 745), *Wahidullah Ahrari* v. *Emperor*.
(13) (1899) 26 Cal. 336 (337), *Deputy Legal Remembrancer* v. *Sarna Khami*.
(14) (1910) 11 Cri. L. Jour. 51 (51): 32 All. 78, *King-Emperor* v. *Lala*.
(15) (1903) 2 Weir 231 (232), In re *The Sessions Judge, Godaveri* (Mother of a minor husband).
(16) (1908) 7 Cri. L. Jour. 457 (458): 11 Oudh Cas. 148, *Hanuman* v. *Emperor*.
(1886) 10 Bom. 340 (341), *Queen-Empress* v. *Bai Rukshmoni* (Brother of lunatic husband).
(17) (1902) 25 All. 132 (133), *Emperor* v. *Imtiazan* (Brother of second husband).
(18) (1912) 13 Cri. L. Jour. 204 (204) (Mad.), *The Sessions Judge of Kishna* v. *Gudru Subbamma*.
(19) (1931) 1931 Mad. 247 (248), *Syed Muhamed Levvai* v. *Emperor* (Charge under S. 496—Levvai cannot complain).

in the absence of such complaint are illegal.[1] But it is not necessary that the complaint must specify the *section* under which the offence falls. It is enough if the complaint states the *facts* constituting the offence of which cognizance is proposed to be taken. (*See* Note 6.)

6. Complaint of one offence—Evidence disclosing different offence falling within section—Power of Court to proceed in respect of such offence.—Under S. 238, sub-S. (3) the power of convicting an accused person of an offence not expressly charged against him, in the circumstances specified in the section does not enable a Court to convict an accused person of an offence mentioned in this section (S. 198) in the absence of a complaint as required by it. Suppose a complaint is made by a person "aggrieved" within the meaning of the section in respect of a certain offence but that the evidence discloses a *different* offence coming within the purview of the section. Can the Court proceed in respect of such latter offence in these circumstances? On this question there is a conflict of decisions. It has been held by the Allahabad High Court,[1] the Punjab Chief Court[2] and the Judicial Commissioner's Court of Oudh[3] that the Court cannot proceed in respect of the offence. But a contrary view has been taken by the Calcutta High Court.[4] It is submitted that the latter view does not seem to be correct. But it is not necessary that the complaint must specify the *section* under which the offence falls. It is enough if the *facts* stated in the complaint amount to the offence in regard to which action is proposed to be taken.[5] [*See also* Notes under Ss. 199, 190, 195, 196, 238, etc.]

7. Power of appellate Court to alter finding.—It has been held that the power of an appellate Court under S. 423, *infra*, to alter a finding is not restricted by this section and that therefore an appellate Court can alter a conviction to one for any of the offences mentioned in this section notwithstanding the absence of any complaint as required by it.[1] [*See also* Notes under Ss. 423, 199, etc.]

Note 5.

(1) (1879) 1879 P. R. No. 5 (8), *Faiz Ahmed* v. *Empress*.
(1878) 1878 P. R. No. 15, p. 39, *Nabi Shah* v. *Crown*.
(1930) 1930 Mad. 705 (706), *Golusu Appalanarasiah* v. *Emperor*.
(1909) 9 Cri. L. Jour. 154 (155) (Lah.), *Abdulla* v. *Clarke*.

Note 6.

(1) (1887) 10 All. 39 (43), *Queen-Empress* v. *Deokinandan* (Complaint containing charges under Ss. 352 and 504 —Conviction for defamation (S. 500) not legal).
(2) (1879) 1879 Pun. Re. No. 5, p. 6 (9, 10), *Faiz Ahmed* v. *Emperor* (Complaint for enticing away a married woman —S. 498. Evidence showing an offence under S. 494. Magistrate had no jurisdiction to convict under S. 494).
(1889) 1889 Pun. Re. No. 18, p. 69, *Crown* v. *Uma Shankar* (A Criminal Court is not competent to amend or alter a complaint under S. 501, I. P. Code into one under S. 500).
(3) (1923) 1923 Oudh 4 (6): 26 Oudh Cas. 44, *Gaya Barhai* v. *Emperor* (Conviction under S. 500, I. P. Code where the complaint and charge were under S. 211, I. P. Code is illegal).
(4) (1878) 1 Cal. L. R. 523 (524), In the matter of *Ujjala Bewa* (Complaint against *A* under S. 498, I. P. Code. Charge against *B* under S. 494 added—Conviction of *B* under S. 494 upheld).
[See also (1892) 20 Cal. 483 (486), *Jatra Shikh* v. *Reazat Shekh* (Case under S. 199).
(1906) 3 Cri. L. Jour. 488 (490) (Kathiawar), *Emperor* v. *Reghunath Giga* (The Court of the Agent to the Governor, Kathiawar, has also held to the same effect).]
(5) (1884) 1884 P. R. No. 24, p. 42, *Nur Aslam* v. *The Emperor* (Complaint only mentioning S. 211 of the I. P. Code, held sufficient complaint under S. 500, I. P. Code).
(1925) 1925 Lah. 631 (632): 6 Lah. 375, *Nauratti* v. *Emperor* (Do.).
(1903) 25 All. 209 (211), *Emperor* v. *Alli* (Complaint specifying S. 498, I. P. Code—Commitment under S. 494 upheld).
[See also (1879) 1879 P. R. No. 5, p. 9 (10) (Jurisdiction extends to offences covered by the facts complained of).]

Note 7.

(1) (1903) 25 All. 534 (536), *Emperor* v. *Gur Narain Prasad*.

S. 198, Note 8.

8. Complaint on behalf of another—Proviso.—A complaint under this section must be made by the very person who professes to be aggrieved by the offence, except in cases coming under the proviso to the section. But the complaint need not be *presented* in person.[1]

Before the *proviso* to the section was inserted by Act, 18 of 1923 it was held that even where the aggrieved person was a minor or lunatic, a complaint could not be preferred on his behalf by *another*.[2] These decisions have been rendered obsolete by the *proviso* which provides that where the aggrieved person is a woman, who cannot be compelled to appear in public according to the manners and customs of the country or an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may complain on his behalf. But even in such cases, the *leave of the Court* is necessary before a complaint can be made on behalf of another. The absence of such leave will make the proceedings illegal.[3]

S. 199.

199. No Court shall take cognizance of an offence under Section 497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

199.* No Court shall take cognizance of an offence under Section 497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, *made with the leave of the Court*, by some person who had care of such woman on his behalf at the time when such offence was committed:

Prosecution for adultery or enticing a married woman.

***(CODE OF 1882—S. 199.)**

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

Note 8.

(1) (1930) 1930 Mad. W. N. 855 (858) (F.B.), *Lores Sequeira* v. *Emperor* (Letter containing a charge of defamation addressed to the President of the *First Class Bench Magistrates* with a request by the complainant that it should be forwarded to the District Magistrate can be treated as a complaint by an aggrieved person).
(1914) 1914 Cal, 479 (479): 42 Cal. 19, *Abhoyeswari* v. *Kishori Mohan* (Complaint by a Purdanashin lady presented by her agent satisfies the requirements of the section provided the Court is satisfied by issue of a commission under S. 503 or otherwise that *it is her complaint*).
[But see (1896) 1896 P. R. No. 10, p. 26 (Held, however, irregularity was cured in the circumstances of the case).]
(2) [See (1886) 10 Bom. 340 (341), *Queen-Empress* v. *Bai Rukshmoni* (Lunatic).]
(1903) 2 Weir 231 (232), In re *The Sessions Judge of Godaveri* (Minor).
(3) (1935) 1935 Oudh 6 (7), *Jagadish Narain* v. *Shams Ara Begam* (Even if objection is not raised in trial Court, Magistrate has no jurisdiction).

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf. S. 199.

SYNOPSIS.

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SCOPE AND OBJECT OF THE SECTION	1
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Acquittal for want of proper complaint whether bars fresh trial. See S. 403.

Charge of house-trespass with intent to commit adultery. See Note 2, Pt. 1.

Complaint of rape—Conviction for adultery. See Note 6, Pt. 2 and F.N. (3).

Complaint under Ss. 494 and 498—Jurisdiction to try under S. 497. See Note 6, Pts. 3 and 4.

Husband appearing as prosecution witness—No compliance with the section. See Note 3, Pt. 3.

"In his absence." See Note 4, Pts. 5-10.

Proof of marriage. See Note 4, Pts. 3 and 4.

(CODE OF 1872—Ss. 478 and 479.)

Prosecution for adultery.

478. A complaint of an offence under section four hundred and ninety-seven of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

Prosecution for enticing away a married woman.

479. A complaint of an offence under section four hundred and ninety-eight of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

(CODE OF 1861—Ss. 177 and 178.)

Prosecution for adultery not to be instituted except by the husband.

177. A charge of an offence under S. 497 of the Indian Penal Code shall not be instituted except by the husband of the woman.

Prosecution for enticing away a married woman not to be instituted except by husband or person in charge of the woman.

178. A charge of an offence under S. 498 of the Indian Penal Code, shall not be instituted, except by the husband of the woman or by the person having care of such woman on behalf of her husband.

S. 199, Notes 1—3.

1. **Scope and object of the section.**—This section embodies one of the exceptions to the general rule that it is open to *any* person to institute a complaint of an offence. The object of the section is to see that in the case of offences which are purely of a *private* character the matter is not dragged to the Court except when the party immediately affected (husband or guardian) cares to bring the matter before the Courts.[1]

The pendency of a suit for divorce by the husband in which the offender has been joined as a co-respondent is no bar to a criminal prosecution by the husband under this section. Section 61 of the Divorce Act does not bar such prosecution.[2]

2. **Offences to which section applies.**—The section only applies to offences under Ss. 497 and 498 of the Penal Code. It does not apply to any *other* offence though the intention to commit an offence under S. 497 or S. 498 of the Penal Code may be an ingredient of the offence in the particular case. Thus, the section does not apply to the offence of house-trespass committed with intent to have illicit sexual intercourse (adultery) with the wife of the occupier or owner. Hence, the complaint of the husband or other person mentioned in this section is not necessary to enable a Court to take cognizance of such offence.[1] But the section applies to attempts to commit the offences mentioned therein.[2]

3. **Complaint—Essentials.**—A complaint under this section must be a complaint *as defined in S.* 4 (*h*).[1] Hence, an allegation made to the *police* is not sufficient for the purposes of this section.[2] Similarly, statements made by a person as a *witness* in the course of the inquiry or trial cannot be treated as

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Section 199—Note 1.

(1) (1900) 25 Bom. 151 (155), *Chhotalal Lallubhai* v. *Nathabhai Bechar.*
(1909) 9 Cri. L. Jour. 450 (451): 2 S. L. R. 15, *Emperor* v. *Tikiomal Bulomal.*
(1906) 3 Cri. L. Jour. 187 (189), (Cal.), *Dacm Sardar* v. *Batu Dhali.*
(1877) 1877 P. R. No. 2, p. 3, *The Crown* v. *Subz Ali*, (Section is intended to guard against the danger of a Magistrate interfering in the domestic troubles of a husband who prefers to keep such troubles to himself).
(1917) 1917 Mad. 220, *Rathnapadayachi* In re (Restriction in S. 199 is not intended to afford immunity to the offender but to prevent a person unconnected with the woman from giving publicity to a matter which neither the husband nor the guardian is willing to agitate.).
(2) (1928) 1928 Lah. 50 (50), *F. Bwye of Simla* v. *Kirk.*

Note 2.

(1) (1917) 1917 Nag. 90 (92), *Dhantua Lodhi* v. *Emperor.*
(1903) 16 C. P. L. R. 182 (183), *Emperor* v. *Mullu Teli.*
(1868) 1 Weir. 531 (531), High Court Proceedings 1st June 1868 No. 795-A.
(1875) 8 Mad. H. C. (App.) VI (6), High Court Proceedings, 26th February, 1875.
(1869) 5 Mad. H. C. App. 5 (6), High Court Proceedings, 15th November 1869 (Court not bound to convict in absence of husband's complaint).
(1877) 1877 P. R. No. 2, p. 7, *Crown* v. *Sulz Ali*, (*Per* Plowden and Lindsay, JJ., Fitzpatrick, J., dissenting).
(1894) Rat. Un. Re. Cri. Cas. 689(690), *Queen-Empress* v. *Bandhu.*
(1899) 1899 All. W. N. 212 (213), *Empress* v. *Clifton.*
(1900) 23 All. 82 (84), *Queen-Empress* v. *Kangla.*
[But see (1886) 1886 All. W. N. 42(42), *Empress* v. *Haricharan Lal*, (Held prosecution in the absence of complaint by husband is very injudicious).
(2) (1882) 1882 P. R. No. 3 (4), *Dula* v. *Empress.*

Note 3.

(1) (1916) 1916 Mad. 1059 (1061), In re *Rukmani Ammal.*
(1911) 12 Cri. L. Jour. 50 (50): 1910 P. R. 32, *Bhana* v. *The Crown* (The report of a Police-officer is not a complaint within the terms of Ss. 4 (*h*) and 199, Cr. P. Code).
See also cases in Foot Note 2 *below.*
(2) (1903) 30 Cal. 910 (915), *Tara Prasad Laha* v. *Emperor.*
(1912) 13 Cri. L. Jour. 287 (288) (Bom.), *Emperor* v. *Imamkhan Rasulkhan.*
(1904) 1 Cri. L. Jour. 763 (764): 17 C. P. L. R. 105, *Emperor* v. *Khushal Singh.*
(1923) 1923 Mad. 59 (59), *Arumuga Madaliar* v. *Emperor.*

a complaint under this section.[3] There is a difference of opinion as to whether the sworn statement of the complainant under S. 200 constitutes a complaint under this section.[4] It is submitted that the better view is that such statement cannot be held to be a complaint as it is made *after* a complaint is preferred and a Court takes cognizance on it. (*See* Notes under S. 190). S. 199, Notes 3—4.

4. **Who can complain.**—A complaint under this section, except in cases covered by the proviso can only be made by the husband of the woman, or during his absence, the person having care of the woman on his behalf.[1] No other person can complain. Thus, the husband's counsel as such has no right to complain under this section.[2]

Where a person professes to complain as the husband under this section, the factum and validity of the marriage must be proved strictly.[3] But it is enough if the married relationship exists on the *date of the offence*. The fact that the tie is broken subsequently will not deprive the husband of his right to complain under this section.[4]

If at the time of the commission of the offence, the husband of the woman is *absent*, a complaint under this section can be lodged by the person having care of the woman on behalf of the husband.[5] An express delegation of trust by the husband is not necessary to entitle a person having care of a woman during her

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[But see (1881) 1881 Pun. Re. No. 17 (30), *Gulzara* v. *Empress*.]

(3) (1912) 13 Cri. L. Jour. 287 (288) (Bom.) *Emperor* v. *Imamkhan Rasul Khan*.
(1902) 29 Cal. 415 (416), *Chemon Garo* v. *Emperor*.
[See also (1883) 1883 Pun. Re. No. 10 (12), *Rahmatulla* v. *Empress* (Statement after commencement of enquiry not sufficient).
(1875) 24 Suth. W. R. 18 (20), *Queen* v. *Lukhy Narain Nagory* (Doubted if formal assent of a husband to a charge of adultery, added at the end of his depositions is a proper compliance with section).
(1934) 1934 Lah. 122 (123), *Mahanti* v. *Emperor* (Statement by husband after recording of evidence, that the complaint had been instituted with his consent is not sufficient).]
[But see (1916) 1916 All. 307 (307): 38 All. 276, *Bhawani Dutt* v. *Emperor* (Statement in the deposition can be taken as complaint within the meaning of S. 4 (*h*).)
(4) (1924) 1924 Mad. 323 (323), In re *Arunachallam Chetty* (Sworn statement is complaint).
(1879) 1879 Pun. Re. No. 5 (8), *Faiz Ahmed* v. *Empress* (Do.).
(1891) Rat. Un. Re. Cr. Cas. 584 (585), *Government of Bombay* v. *Sheikh Mahomed* (Do. *Per* Parson, J.).
(1922) 1922 Mad. 353 (353), *Pedda Anjinigadu*, In re (Sworn statement not part of complaint—Ayling, J. dissenting).

Note 4.

(1) (1868) 1 Weir 531 (531), *High Court Proceedings, 1st June*, 1868, *No.* 795-*A*.
(1916) 1916 Mad. 1059 (1061), In re *Rukmani Ammal*.
(1934) 1934 Lah. 122 (123), *Mahandi* v. *Emperor*.
(1879) 1879 Pun. Re. No. 12 (35), *Crown* v. *Kammu*.
(1922) 1922 Lah. 168 (168), *Walia* v. *Emperor* (In husband's absence only the persons having care of woman can complain).
(2) (1872) 1872 Pun. Re. 11 (16), *Kirpa Singh* v. *Bhup Singh*.
(3) (1914) 1914 All. 214 (215): 36 All. 1, *Nazir Khan* v. *Emperor*.
(1917) 1917 L. B. 30 (30), *Maung Kala* v. *Nga Kin Mya* (Husband living apart from wife can complain).
(1912) 13 Cri. L. Jour. 705 (706): 34 All. 589, *Madan Gopal* v. *King-Emperor* (Marriage between a Banya and a woman born of a Brahman father and Banya mother, which is recognised by the caste to which her husband belongs, is valid).
(1910) 11 Cri. L. Jour. 155 (156) (Lah.), *Nihala* v. *Crown* (Jhanjrara valid according to the custom prevailing generally in the Kangra District, but there is no custom (and even if there be any, it cannot be enforced) allowing a husband to divorce and sell his wife to another on receipt of pecuniary compensation. Such a connection between the woman and the purchaser does not create any legal relationship of husband and wife which can be recognised by any Civil or Criminal Court).
(1930) 1930 All. 834 (835), *Aslop* v. *Emperor* (Husband absolutely abandoning wife—She marrying another man by a marriage which is recognised as valid among the people to which the parties belong, the second husband of the woman has full authority to institute complaint for enticing the woman away).
(4) (1922) 1922 Lah. 477 (478), *Dhanna Singh* v. *Emperor*.
(5) (1924) 1924 Lah. 330 (331), *Mahbub Ali Khan* v. *Emperor* (Mother of husband).

S. 199, Notes 4–5.

husband's absence to complain under this section.[6] If an offence mentioned in this section is committed during the husband's absence, the person who had care of the woman when the offence was committed can complain under this section even though the husband is not absent at the time of *making the complaint* and is not anxious to prosecute.[7]

When a husband can be said to be "absent" within the meaning of this section is a question of fact. In the undermentioned case,[8] where the husband was living in the interior of a district while the wife was living with her father in the district headquarters, it was held that the husband could not be said to be absent within this section. The mere fact that the husband is ashamed to go to Court does not amount to absence of the husband.[9]

In the undermentioned case[10] it was held that absence under this section is absence from *place* and that therefore the husband's *illness* is not enough to entitle another to complain under this section. This view must be treated as obsolete now in view of the proviso which was added to the section by Act 18 of 1923 and which, in the case of the husband's sickness enables another person to complain on his behalf.

The section as amended by Act 18 of 1923 requires that the leave of the Court must be obtained before a person having care of a woman during her husband's absence can complain under this section.[11] But the leave may be implied and need not be *expressly* recorded.[12]

The introduction of the proviso by the amendments of 1923 renders obsolete the view that even in case the husband was sick, or a minor, a complaint under the section should only be made by him except when he was absent.[13] But in order to make the proviso applicable the circumstances which are alleged as bringing the case within its limits should be *proved*.[14] Further, the leave of the Court is necessary before the complaint of a person other than the husband can be entertained.[15] In the absence of such leave, the proceedings will be illegal.[16]

It is open to a *convicted* person to complain under this section if he is otherwise qualified to do so.[17]

5. **Want of complaint—Effect.**—Under this section the complaint of the husband or other person mentioned therein is a condition precedent to the Courts dealing with an offence under S. 497 or S. 498 of the Penal Code. In the absence of such complaint, the proceedings will be illegal.[1] It is not enough

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(6) (1926) 1926 Sind 159 (160), *Sahibrai* v. *Emperor*.
(7) (1917) 1917 Mad. 220 (221), *Rathna Padayachi*, In re.
(8) (1922) 1922 Lah. 168 (168), *Walia* v. *Emperor*.
(9) 28 Mad. L. W. (Sh.-N.) 14.
(10) (1909) 9 Cri. L. Jour. 450 (452): 3 S. L. R. 15, *Emperor* v. *Tikiomal Bulomal*.
(11) (1926) 1926 Sind 159 (161), *Sahibrai* v. *Emperor*.
(12) (1926) 1926 Sind 159 (161), *Sahibrai* v. *Emperor*.
(13) (1909) 9 Cri. L. Jour. 450 (452): 3 S.L. R. 15, *Emperor* v. *Tikiomal Bulomal* (Sickness).
(1912) 1922 Lah. 168 (168), *Walia* v. *Emperor* (Minor husband).
(14) (1933) 1933 Cal. 144 (144), *Mahendra Lal Bose* v. *Gopal Chundar Dey* (Alleged illness of husband found against —Complaint by girl's father—Not maintainable).
(15) *See cases cited in Foot-note* (16) *below*.
(16) (1933) 1933 Cal. 880 (881), *Akshay Kumar Maiti* v. *Emperor*.
(1934) 1934 Lah. 86 (87), *Luqman* v. *Emperor*.
(17) (1874) 21 Suth. W. R. 13 (13), *Queen* v. *Madhub Chunder*.

Note 5.

(1) (1915) 1915 Bom. 194 (195), *Tikaram Sakharam Kasav* v. *Emperor*.
(1933) 1933 Oudh 168 (165), *Baji* v. *Emperor*.

that the complaint is laid after the commencement of the proceedings.[2]

6. Proceedings commencing in respect of offence not falling under section—Evidence disclosing offence within section—Power of Court to convict for such offence.—It has been seen in the Notes under S. 190 that as a *general rule*, it is competent for any Court having seisin of the case relating to a criminal transaction to proceed in respect of the offence which on the materials before it appears to be involved in the transaction, irrespective of the offence in respect of which the proceedings may have been commenced. In proceeding in respect of an offence thus disclosed, a Court "takes cognizance of an offence".[1] Hence, in regard to offences falling under this section a Court cannot proceed in the above manner in the absence of a complaint by the husband or guardian of the woman in question as required by this section.[2] This principle which is in the nature of an exception to the general rule stated above is recognised in sub-S. (3) to S. 238.

Suppose the proceedings originally commenced on the complaint of the husband or other person mentioned in the section but the complaint related to an offence different from that which is eventually disclosed on the evidence and which falls within the purview of this section. In such a case, the question arises whether the original complaint filed by the husband or other person mentioned in the section will be sufficient even in respect of the offence subsequently disclosed. On this question there is a conflict of decisions. But the preponderant view is that the original complaint is not sufficient in such cases to enable the offence subsequently disclosed being taken cognizance of. According to this view, the word "complaint" in this section means a complaint in respect of the offence mentioned in this section and not complaint of *any* offence.[3]

(1892) 2 Weir 235 (236), In re *Chidambara Kalingarayan*.
(1910) 1910 Pun. Re. No. 32 (106), *Bhana* v. *Emperor*.
(1935) 1935 Pat. 357 (358), *Ramjanam Tewari* v. *Emperor*.
(2) [See (1934) 1934 Lah. 122 (123), *Mahandi* v. *Emperor*.
(1883) 1883 Pun. Re. No. 10 (12), *Rahmdtulla* v. *Empress*.
(1875) 24 Suth. W. R. 18 (20), *Queen* v. *Luckhy Narain Nagory*.]
[But see (1916) 1916 All. 307 (307): 38 All. 276, *Bhawani Dhutt* v. *Emperor* (Submitted not correct).]

Note 6.

(1) *See Notes under S.* 190.
(2) (1933) 1933 All. 626 (627): 55 All. 871, *Jagadamba Prasad* v. *Emperor* (Prosecution and charge under S. 366-A —Conviction under S. 498 without complaint by husband in respect of that offence—Conviction is bad).
(1912) 13 Cri. L. Jour. 287 (288) (Bom.), *Emperor* v. *Imamkhan Rasul Khan* (Commitment to Sessions under Ss. 366 and 379, I. P. Code—Conviction by Sessions Court under S. 498—Held, conviction illegal).
(1907) 5 Cri. L. Jour. 164 (167): 31 Bom. 218, *Emperor* v. *Isap Muhammad* (Do.).
(1931) 1931 Cal. 524 (526), *Abdul Aziz Shah* v. *Emperor* (Do.).
(1935) 1935 Pat. 357 (358), *Ramjanam Tewari* v. *Emperor* (Additional charge framed in Sessions Court in absence of complaint under this section—*Held*, trial of this charge was without jurisdiction).
See also cases cited in Foot-note (3) *below*.
(1882) 1882 Pun. Re. No. 3 (4), *Dula* v. *Empress* (Complaint under S. 354, I. P. Code, subsequently altered to one of attempt to commit rape—Magistrate convicting accused of attempt to commit adultery—Conviction set aside).
(3) (1883) 5 All. 233 (235), *Empress of India* v. *Kallu* (Complaint of rape—Conviction for adultery illegal).
(1902) 29 Cal. 415 (417), *Chemon Garo* v. *Emperor* (Do.).
(1882) 1882 All. W. N. 165 (165), *Empress* v. *Ram Bakhsh* (Do.).
(1913) 14 Cri. L. Jour. 284 (286): 1912 U. B. R. 155, *Nga Po Thaw* v. *Emperor* (Do.).
(1924) 1924 Mad. 323 (323), In re *Arunachallam Chetty* (Complaint of kidnapping—Conviction under S. 498 illegal).
(1903) 27 Mad. 61 (62), *Bangaru Asari* v. *Emperor* (Do.).
(1881) 1881 All. W. N. 112 (112), *Empress* v. *Badan* (Complaint under S. 498—Conviction under S. 497 illegal).

S. 199, Notes 6—8.

But a contrary view was taken in the undermentioned case of the Calcutta High Court.[4]

Thus, though a complaint under this section must specifically relate to the particular offence which is proposed to be taken cognizance of, it is not necessary that it must specify the exact *section* under which the offence falls. It is enough if the *facts* alleged in the complaint make out an offence which is taken cognizance of.[5] Thus, a complaint which only mentions S. 366 of the Indian Penal Code, can be the basis of taking cognizance of an offence under S. 498 if the facts stated in the complaint are sufficient to constitute an offence under the latter section. This principle is based on the theory that it is for the *Court* and not the parties to determine the section applicable to a given set of facts.[6] (*See also* Notes under Ss. 190, 195, 196, 198 and 238.)

7. **Power of Appellate Court to alter conviction to offences falling under section.**—*See* Notes under S. 423.

8. **Death of complainant—Abatement of proceedings.**—*See* Notes under S. 247.

S. 199-A.

199-A. *When in any case falling under Section* 198 *or Section* 199, *the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.*

Objection by lawful guardian to complaint by person other than person aggrieved.

(1890) Rat. Un. Re. Cr. Cas. 531 (531), *Queen-Empress* v. *Nalya* (Complaint under Ss. 494 and 498 of the Penal Code—Conviction under S. 497 illegal).

(1910) 14 Cal. W. N. cclxxv (Complaint under S. 494, I. P. Code (Bigamy) —Conviction for adultery (S. 497, I. P. Code) illegal).

(1873) 1873 Pun. Re. No. 18 (21), *Sher Singh* v. *Crown* (Complaint under S. 497—Conviction under S. 498—Illegal).

(1918) 1918 Lah. 385 (385): 1918 P. R. 2, *Roda Singh* v. *Emperor* (Complaint of theft—Conviction under S. 498, I. P. C. illegal).

(1872) 1872 Pun. Re. No. 11, p. 16, *Kirpa Singh* v. *Bhup Singh* (Complaint under S. 498—Commitment under S. 497, illegal).

(4) (1893) 20 Cal. 483 (486), *Jatra Sheikh* v. *Reazat Sheikh* (Complaint under S. 366—Conviction under S. 498, legal).

(5) (1922) 1922 Mad. 353 (355), *Pedda Anjinigadu*, In re.

(1925) 1925 Lah. 631 (632): 6 Lah. 375, *Mt. Naurati* v. *Emperor*.

(1895) 1895 Pun. Re. No. 23 (66), *Piran Ditta* v. *Queen-Empress*.

(1882) 1882 Pun. Re. No. 19 (23), *Empress* v. *Hashmat* (Complaint under S. 494—Conviction under S. 498 upheld).

(1891) Rat. 584 (584), *Shaik Mahomed Shaik Abdulla*, In re.

(1921) 1921 Oudh 149 (150): 24 Oudh Cas. 232, *Brahma Dat* v. *Emperor*.

(6) (1934) 1934 All. 472 (474), *Mohan Singh* v. *Emperor*.

(1934) 1934 Lah. 945 (946), *Sain* v. *Emperor*.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200.* A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Examination of complainant.

Provided as follows:—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(*aa*) *when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties*;

(*b*) where the Magistrate is a Presidency Magistrate such examination may be on oath or not as the Magistrate in each case thinks fit, and *where the complaint is made in writing*, need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

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*(CODE OF 1882—S. 200.)

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Examination of complainant.

Provided as follows:—

(*a*) When the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under S. 192;

S. 200.

SYNOPSIS.

	Note No.
LEGISLATIVE HISTORY	1
SCOPE AND OBJECT OF THE SECTION	2
"MAGISTRATE TAKING COGNIZANCE OF AN OFFENCE" ..	3
WHERE MAGISTRATE IS NOT EMPOWERED TO TAKE COGNIZANCE	4
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STAMP ON COMPLAINT AND WRITTEN EXAMINATION OF THE COMPLAINANT	6
SECOND COMPLAINT	7
WHO MAY MAKE A COMPLAINT	8
STATEMENT IN COMPLAINT, IF PRIVILEGED	9
WHETHER MAGISTRATE CAN REFUSE TO ENTERTAIN A COMPLAINT	10
ORDER ON COMPLAINT	11

(*b*) Where the Magistrate is a Presidency Magistrate, such examination may be on oath, or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(*c*) When the case has been transferred under S. 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

(CODE OF 1872—S. 44, Para. 2 and S. 144.)

Transfer of Criminal cases to subordinate Magistrates.

44. * * * * *

The Magistrate making the reference, may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act: but if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

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Examination of complainant.

144. When, in order to the issuing a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint shall examine the complainant.

The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Effect of irregularity.

Where the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial of the person accused shall not be set aside on this ground.

(CODE OF 1861—S. 66.)

Examination of complainant.

66. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made before the Magistrate of the District, or a Magistrate who is authorized to receive such complaint without reference from the Magistrate of the District, such Magistrate shall examine the complainant. The examination shall be reduced into writing, and shall be signed by the complainant, and also by the Magistrate.

	Note No.	
WHO MAY PRESENT COMPLAINT	12	S. 200, Note 1.
"SHALL EXAMINE"	13	
RIGHT TO BE EXAMINED	14	
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Agent of complainant may present the complaint. See Note 12, Pt. 1.

Complainant himself must be examined. See Note 12.

Mode of examination of complainant. See Note 13.

1. Legislative History.—

Changes introduced in 1872—

(1) The examination of the complainant under S. 66 of the Code of 1861 had to be reduced into writing *in full* while under S. 144 of the Code of 1872 it was enough if it was reduced into writing *in a summary manner.*

(2) The third para. of S. 144 was new and provided that no trial should be set aside on the ground of the omission to examine the complainant.

Changes introduced in the Code of 1882—

Section 200, para. 1 of the Code of 1882 re-enacted S. 144 of the Code of 1872 with the following material changes:—

(1) The words "*a Magistrate taking cognizance* of an offence on complaint" were substituted for the words "*when in order* to the issuing of a summons or a warrant against any person for any offence a *complaint* is made". The words "*taking cognizance of an offence*" connote in a concise form, the receiving of the complaint as well as the competency of the Magistrate to receive it and the purposes for which the complaint is made.

(2) The words "*at once*" were new and added to indicate that the complainant must himself present the complaint so as to be examined.

S. 200, Notes 1—2.

(3) The words "*on oath*" were also new.

(4) The words "*substance of*" were substituted for the words "*in a summary manner*" for the purpose of making the meaning clear.

(5) The last para. of S. 144 was omitted in view of S. 537, newly enacted.

(6) Provisos (*a*) and (*c*) to S. 200 re-enacted in clearer terms the provision contained in S. 144, para. 2 of the Code of 1872.

(7) Proviso (*b*) to S. 200, incorporated in the Code, the provisions of S. 30 of Act V of 1877 relating to Presidency Magistrates, which was in force before the Code of 1882, in the Presidency Towns to which the Code of 1872 did not apply.

Changes introduced in 1898—

The words "*subject to the provisions of S.* 476" were added in the beginning of the section, in conformity to an amendment made in S. 476, to make unnecessary the examination of the officer of a Court, sending up a complaint, with reference to offences committed before such Court.

Changes introduced in 1923—

The words "*Subject to the provisions of S.* 476" were omitted; a new proviso (*aa*) was inserted in order to make it clear that the complainant need not be examined in any case where the complaint is made by a Court or a public servant acting in his official capacity.

Changes introduced in 1926—

S. 3 of the Criminal Procedure Code Amendment Act II of 1926 inserted the words "*where the complaint is made in writing*" after the words "thinks fit" in proviso (*b*) of the section.

2. Scope and object of the section.—The object of an examination under the section is threefold—

(1) to ascertain the facts constituting the offence, where they are not given in the written complaint[1] or to correct and elucidate doubtful points therein.[2] In such cases, it is the duty of the Magistrate even to explain to the complainant the procedure and then ask him to state definitely the charge he intends to make.[3]

(2) to separate unfounded from substantial cases even at the outset and to prevent innocent persons from being brought into police custody and subjected to the annoyance of frivolous charges[4] or in other words, "to prevent issue of process in cases where the examination of the complainant would show that the com-

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Section 200—Note 2.

(1) (1921) 1921 Cal. 561 (563), *Sukumar* v. *Mofizuddin*.
(1924) 1924 Mad. 323 (323), *Arunachalam Chetty*.
(1926) 1926 Sind. 194 (196), *Crowder* v. *Morrison*.

(2) (1922) 1922 Mad. 353 (355), In re *Pedda Anjinigadu* (*Per* Ayling, J.).

(3) (1910) 11 Cri. L. J. 205 (206), *Abdul Razak* v. *Gaurinath*, (*Per* Johnstone, J.—Williams, J. disagreeing with this view at p. 210).

(4) (1914) 21 Ind. Cas. 703 (704) : 37 Mad. 181, *Sheik Meeran* v. *Ratnavelu Mudali*.

plaint was clearly false, frivolous, or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the Court''.[5] S. 200, Notes 2—3.

(3) to help the Magistrate to judge if there are sufficient grounds calling for investigation and for proceeding with the case.[6]

This examination of the complainant is a very valuable safeguard that the Legislature has provided and must be strictly observed.[7]

The section applies exclusively to cases when a Magistrate takes cognizance of an offence *on complaint* under S. 190, Cl. (1) (*a*).[8] It does not therefore apply—

(1) when the Magistrate takes cognizance of an offence under S. 190-1 (*b*) and (*c*).[9]

(2) where no *offence* is disclosed as where an order is required to be made under S. 552, *infra* (power to compel restoration of abducted females.[10] It follows that where there is no complaint, no examination under this section or any further action is necessary or can take place and any prosecution started against the complainant on such examination would be illegal[11] though, where there is a complaint, any defect therein does not affect the validity of the subsequent proceedings, in the absence of failure of justice.[12]

A Municipal Magistrate of Calcutta is a Presidency Magistrate and he is governed by this section as to the examination of the complainant.[13]

3. ''Magistrate taking cognizance of an offence''.—The Magistrate taking cognizance of an offence, on complaint is bound to deal with it himself unless he transfers it under S. 192. He cannot send it on to another Magistrate for orders. A direction by the District Magistrate that as regards a particular class of cases the Subordinate Magistrate should not pass orders on the com-

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(5) (1911) 12 Cri. L. Jour. 217 (220): 1911 Pun. Re. 11, *Girdhari* v. *Emperor*.
(1924) 1924 All. 664 (664): *Rekha Chamar* v. *Emperor*.
(1925) 1925 Sind 328 (329): 18 S. L. R. 274, *Mahomed* v. *Mahomed Idris*.

(6) (1911) 12 Cri. L. Jour. 385 (385, 386): 1910 U. B. R. Vol. I, p. 73, *Nga Tha Tu* v. *Emperor*.
(1912) 13 Cri. L. Jour. 704 (704) (All.), *Baijnath* v. *Raja Ram*.

(7) (1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor*.
(1920) 1920 Pat. 232 (235), *Emperor* v. *Heman*.

(8) (1899) 1899 All. W. N. 87 (89), *Kanhaiyalal*.
(1931) 1931 Oudh 392 (393), *Bhagirath* v. *Saiyid Ali Hamid Sahib*.
[But see (1868) 5 Bom. H. C. R. 29 (29, 30), *Reg.* v. *Sadashivappa* (A case under S. 66 of the Code of 1861, which refers to a complaint *"in order to the issuing a summons or warrant"*. The words have now been omitted and the section applies, as soon as the Magistrate "takes" cognizance of an offence whether he issues a process later or not).]

(9) (1902) 2 Weir 241 (242), Re. *Rangachari*.
(1902) 2 Weir 246 (246), In re *L. M. Soares*.
(1868) 5 Bom. H.C.R. Cr. Cas. 29 (31) *Reg.* v. *Sadashivappa*.
(1904) 1 Cri. L. Jour. 193 (197, 199): 2 L. B. R. 146, *Emperor* v. *Nga Po Thin*.

(10) (1902) 4 Bom. L. R. 609 (611), *Thakordas Mancharan*.

(11) (1906) 4 Cri. L. Jour. 170 (170) (Cal.), *Emperor* v. *Rohini Komar Sen*.
(1907) 5 Cri. L. Jour. 13 (14) (Cal.), *Chamro Sahu* v. *Emperor* (No personal knowledge of the matters in complaint and therefore considered as if there was no complaint).
(1910) 11 Cri. L. Jour. 351 (351) (All.), *Chhedi Kandu* v. *Emperor* (A "Telegram" is not a complaint and therefore examination and further proceedings without a complaint held to be illegal).
(1930) 1930 Mad. 705 (706): *Golusu Appalanarasiah* v. *Emperor*.

(12) (1908) 9 Cri. L. Jour. 108 (111): 32 Mad. 8, In re *Subramania*.

(13) (1928) 1928 Cal. 483 (484), *Ambika Prasad* v. *Calcutta Corporation*.

S 200, Notes 3—8.

plaint but submit them to himself, would be clearly illegal.[1] The District Magistrate has no jurisdiction to try the case which has not been taken cognizance of by him, or has not been sent to him or withdrawn by him, in the proper way.[2]

4. Where Magistrate is not empowered to take cognizance.—As to the procedure to be adopted where a Magistrate is not empowered to take cognizance of an offence on complaint, *see* S. 201, *infra*.

As to the effect of a Magistrate, not empowered, erroneously and in good faith, taking cognizance of an offence on complaint, *see* S. 529 (*e*), *infra*.

5. "On complaint".—As to what is and what is not a "complaint". *see* S. 4 (*h*), *supra* and the Notes thereunder. A complaint is only in the nature of an indictment and should not be treated as if it had the sanctity of *affidavit evidence*.[1]

6. Stamp on complaint and written examination of the complainant.—*See* Sch. II, Art. 1 (*b*) of the Court-Fees Act, 1870.[1]

Where the examination of the complainant, for the first or only time under this section is reduced to writing, such written examination is liable to Court-fees, as provided by S. 18 of the Court-Fees Act, VII of 1870.

The Court may after the conviction of the accused order him to pay the complainant the fee paid on such complaint or written examination.[2]

Complaints however from a Public Servant, a Municipal Officer or an officer or servant of a Railway Company are exempt from any Court-fee under S. 19 of the Court-Fees Act[3] and the accused therefore in such cases are not liable on conviction to refund what was illegally levied from the complainants as such fees.[4]

7. Second complaint.—Where a complaint is dismissed or the accused is discharged, a second complaint for the same offence is not barred. (*See* S. 403). The Magistrate taking cognizance of such complaint should therefore proceed in the manner laid down under this section.[1]

8. Who may make a complaint.—*See* Notes under S. 4 (*h*) *ante*, and the undermentioned case.[1]

Note 3.

(1) (1906) 4 Cri. L. Jour. 213 (213) (Cal.), *Fani Bhushan Banerji* v. *F. E. Kemp.*
(1902) 6 Cal. W. N. 843 (844), *Mrinal* v. *Emperor.*
(1906) 3 Cri. L. Jour. 53 (54): 28 All. 268, *Gullay* v. *Bakar.*
(1912) 13 Cri. L. Jour. 704 (705) (All.), *Baijnath* v. *Raja Ram.*
(1916) 17 Cri. L. Jour. 146 (147): 43 Cal. 173, *Ganghadar* v. *Emperor.*
(1917) 18 Cri. L. Jour. 765 (765, 766) (All.), *Madhogir* v. *Rashid Ahmad.*
(2) (1930) 1930 Mad. 705 (706), *Golusu Appalanarasiah* v. *Emperor.*
(1917) 18 Cri. L. Jour. 765 (765, 766) (All.), *Madhogir* v. *Rashid Ahmed.*

Note 5.

(1) (1934) 1934 Cal. 604 (606), *Cotten* v. *Emperor.*

Note 6.

(1) See also (1873) Rat. 70 (70) (Cognizable offence—No stamp necessary).
(2) *See S. 546-A of the Code.*
(3) (1904) 1 Cri. L. J. 193 (198): 2 L. B. R. 146, *Emperor* v. *Nga Po Thin.*
(4) (1893) 16 Mad. 423 (424), *Empress* v. *Khaja Bhoy.*

Note 7.

(1) (1901) 28 Cal. 652 (661) (F.B.), *Dwarkanath* v. *Beni.*
(1904-1906) U. B. R. 19 (20), *Mi The Kin* v. *Nga Tha.*
(1930) 1930 Rang. 156 (157): 8 Rang. 1, *Dhana Reddy* v. *Emperor.*

Note 8.

(1) (1907) 11 Cal. W. N. 170 (171), *Chamroo Sahu* v. *Emperor* (Complaint by person not having personal knowledge of facts cannot be taken cognizance of).

9. Statement in complaint, if privileged.—*See* S. 4 (*h*) *ante*.

10. Whether Magistrate can refuse to entertain a complaint.—A Magistrate, competent to take cognizance of the offence complained of, cannot refuse to receive such complaint and proceed under this section.[1] Thus he cannot decline jurisdiction on the ground—

(1) that, if the complaint was entertained, it would tend to bring numerous other complaints and stir up old religious ill-feelings,[2] or

(2) that, the case is one in which though an offence is disclosed, a civil action also will lie and that the party may go to the Civil Court,[3] or

(3) that, the case is one in which the charge might also have been laid in the first instance before the Police[4], or

(4) that, the case—one of petty theft or assault—is also cognizable by the village Magistrate[5], or

(5) that, the complaint mentions a section of the Penal Code, while the offence alleged therein, falls under another section.[6]

A Magistrate should refuse to accept a complaint, in the following cases:—

(1) Where it is not signed by the complainant and not preferred in person or by a person duly authorised to prefer the specific complaint.[7]

(2) Where no offence is disclosed therein.[8]

11. Order on complaint.—Where a Magistrate takes cognisance of an offence on *a complaint*, the only manner in which he can dispose of it is to examine the complainant, on oath, and after holding such inquiry as he considers necessary under S. 202, make either an order of dismissal under S. 203 or issue process against the accused under S. 204.

A complaint cannot be said to have been legally disposed of by—

(1) taking no action thereon in view of the Police report and the order thereon,[1] or

(2) passing an order "*shelving*" the complaint[2], or

(3) passing an order "*filing*" the petition.[3]

A complaint being part of the records of a Magistrate's Court, should not be returned, to the party with the order endorsed thereon. The party is entitled only to a certified copy of such order.[4]

Note 10.

(1) (1888) 12 Bom. 161 (163), In re *Jankidas Guru Sitaram.*
(2) (1891) Rat. Un. Cr. C. 562 (563), *Empress* v. *Ramchandra.*
(3) (1884) Rat. Un. Cr. C. 206 (206), In re *Chhatrasanghji.*
(1868) 10 Suth. W. R. 40 (40), *Khosal Singh* v. *Toolsee Singh.*
(4) (1870) 14 Suth. W. R. 36 (36), *Ameer Mahomed* v. *G. Brass.*
(5) (1871-1874) 7 M. H. C. R. App. 31(31).
(6) (1922) 1922 Mad. 62 (62, 63), *Ponnusami Thevar* v. *Emperor.*
(7) (1914) 1914 Cal. 479 (479): 42 Cal. 19, *Rani Abhoyeswari Devi* v. *Kishori Mohan Bannerjee.*
(8) (1884) Rat. Un. Cr. C. 206 (206), In re *Chhatrasangji.*

Note 11.

(1) (1929) 1929 Mad. 849 (849), *Hameed Sahib* v. *Syed Abdul Kadir.*
(2) (1882) 5 All. 36 (38), *Empress* v. *Radha.*
(1871) 16 Suth. W. Rep. 58 (59), *Nilmoney*, In re.
(3) (1871) 16 Suth W. Rep. 58 (59), Re *Nilmoney.*
(4) (1869) 2 Weir. 237 (237).

S. 200, Notes 12—13.

12. **Who may present complaint.**—The words "*at once*" in the section clearly indicate that, as a general rule a complaint should be presented in person by the *complainant himself* so that he may be examined as soon as the complaint is presented though under certain circumstances as for example, when the complainant is a *pardanashin lady*, the complaint may be permitted to be presented by a person duly authorised to prefer the specific complaint.[1]

The above rule however, applies only where a complaint is presented in *person* by the complainant or his agent and not when the complaint is received by *post*. It is competent to a Magistrate to receive and take action on complaints received by post but whether he will do so or not is a matter within his discretion.[2] So a complaint not presented in person but transmitted by post is not necessarily bad in law, and the Magistrate, if he takes action, may call upon the complainant to appear before him on a date to be fixed by him for examination on oath.[3]

13. "**Shall examine**".—The requirement as to the examination of the complainant is imperative and should be strictly complied with.[1] The

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Note 12.

(1) (1914) 1914 Cal. 479 (479): 42 Cal. 19 *Abhoyeswari* v. *Kishori*, (General power of attorney not sufficient).
(1892) Rat. Un. Cr. C. 625 (625) *Empress* v. *Janaki*, (Mukhtear).
(1904) 1 Cri. L. Jour. 845 (846): 32 Cal. 469, *Kali Kinkar* v. *Nritya Gopal*, (Employee of the person to whom sanction to prosecution has been given).
(1875) 24 Suth. W. R. 22 (23), In re *Judoo Nundon*.
(2) (1879) 2 Weir 149 (149).
(1900) 1900 All. W. N. 189 (190), *Geto* v. *Reg*.
(3) (1929) 1929 Sind 132 (134): 23 S.L.R. 285, *Chuhermal* v. *Emperor*.

Note 13.

(1) (1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor*.
(1920) 1920 Pat. 232 (235), *Emperor* v. *Heman Gope*.
(1871) 3 N.-W.P. 272 (273), *Ramcharan*.
(1884) 1884 All. W. N. 47 (47), *Jalaludin* v. *Muhammad Khalil*.
(1881) 1881 All. W. N. 23 (23), *Lallu* v. *Reg*.
(1896) 18 All. 221 (222), *Kesri* v. *Muhammad*.
(1911) 12 Cri. L. Jour. 175 (177) (All.), *Mulchand* v. *Emperor*.
(1912) 13 Cri. L. Jour. 704 (704) (All.), *Baijnath* v. *Raja Ram*.
(1915) 16 Cri. L. Jour. 669 (670): 37 All. 628, *Bakeshar* v. *Emperor*.
(1924) 1924 All. 664 (664), *Rekha Chamar* v. *Emperor*.
(1889) 13 Bom. 590 (597) (F. B.), *Ganesh Narain*, In re.
(1888) Rat. 365 (365), *Hari Purushotam Vaidya*.
(1888) Rat. 368 (369), Re *Bai Kashi*.
(1898) Rat. 954 (955), Re *Subrao*.
(1926) 1926 Bom. 284 (285), In re *Pampappa Ballal Rao*.
(1864) Suth. W. R. (Gap. No.) 33 (34), *Huronath*.
(1864) Suth. W. R. (Sup.) 37 (37), *Rujub Mundle* v. *Lochun Mundle*.
(1867) 8 Suth. W. R. 12 (13), *Hurreck Chand Nowlaka*.
(1869) 12 Suth. W. R. 49 (50), *Queen* v. *Ramtonoo Singh*.
(1870) 14 Suth. W. R. 36 (36), *Ameer Mahomed* v. *Brass*.
(1871) 16 Suth. W. R. 58 (59), *Nilmoney*.
(1869) 3 Beng. L. R. 53 (54), *Dulali* v. *Bhuban*.
(1869) 3 Beng. L. R. 67 (67) (Cr.), *Empress* v. *Mahim Chandra*.
(1886) 13 Cal. 334 (336), *Umer Ali* v. *Safer Ali*.
(1900) 27 Cal. 921 (924), *Mahadeo Singh* v. *Empress*.
(1901) 28 Cal. 652 (661) (F. B.), *Dwarkanath* v. *Beni*.
(1903) 30 Cal. 923 (925, 926), *Lokenath Patia* v. *Sanyasi*.
(1906) 3 Cri. L. Jour. 81 (83) (Cal.), *Saroda Charan* v. *Emperor*.
(1879) 4 Cal. L. R. 534 (536), *Sheikh Erad Ali* v. *Musibunnissa*.
(1899) 3 Cal. W. N. 17 (18), *Satyacharan* v. *Chairman, Uttarpara Municipality*.
(1906) 3 Cri. L. Jour. 471 (473) (Cal.), *Ram Adhim* v. *Wahed Ali*.
(1911) 15 Cal. W. N. (N) lv (lv), *Bhagawan* v. *Crown*.
(1913) 14 Cri. L. Jour. 76 (76) (Cal.), *Khetter Mohan* v. *Emperor*.
(1914) 1914 Cal. 479 (480): 42 Cal. 19, *Abhayeswari* v. *Kishori*.
(1919) 1919 Cal. 433 (434, 436): 46 Cal. 807, *Bhairab*.
(1911) 12 Cri. L. Jour. 217 (219, 220): 1911 Pun. Re. 11, *Girdhari* v. *Emperor*.
(1868-69) 4 Mad. H. C. 162 (164), *Rangaswami*.
(1869) 2 Weir 237 (237).
(1910) 11 Cri. L. Jour. 535 (535, 536) (Mad.), In re *Sivagurunatha*.
(1911) 12 Cri. L. Jour. 463 (463) (Mad.), In re *Arulakotiah*.
(1901) 4 Oudh Cas. 127 (131), *Ram Sarup* v. *Emperor*.
(1917) 18 Cri. L. Jour. 366 (366, 367) (Lah.), *Phagu Sahu* v. *Emperor*.
(1917) 18 Cri. L. Jour. 890 (891) (Lah.), *Jhuna* v. *Emperor* (Overruled on another point).
(1919) 1919 Pat. 545 (545), *Guru Prasad*

S. 200, Note 13.

substance of the examination, reduced to writing should be distinct from the complaint itself.[2] The examination is not to be a mere form, but must be a full and intelligent inquiry into the subject-matter of the complaint, carried far enough to enable the Magistrate to exercise his judgment and see if there is a *prima facie* case or sufficient ground for proceeding.[3] A diligent, proper and thorough examination, made in an intelligent and not in a perfunctory manner, will often show the complaint to be imaginary or unnecessary.[4] The examination should, however, be on facts which are within complainant's knowledge.[5] The examination should be a full and complete one even on the first examination though a sketchy examination on one day and a more complete one on another will not vitiate the whole trial.[6] The reason that the facts were fully set out in the written complaint, does not justify an omission to examine the complainant.[7] The mere putting of a question on the presentation of a complaint under S. 498 of the Penal Code as to where the complainant's wife was[8] or the cross-examination of the complainant on depositions recorded under S. 159 by another Magistrate[9] is not an examination under this section; nor is a mere attestation upon oath, that the terms of the complaint are true, sufficient compliance with the terms of this section.[10] The Judicial Commissioner's Court of Sind has, however, taken a contrary view and has held that such an attestation is sufficient.[11] It has purported to follow the undermentioned decision[12] of the High Court of Bombay, which however was a case of a complaint presented to a *Presidency Magistrate* who is not bound to examine *on oath* or to reduce such examination to writing.[13] It is submitted that the Sind view is not correct.

It is desirable that the substance of the oral examination should be read over to the complainant on the principle underlying S. 360 especially if it is to be utilised as the basis for a possible prosecution for perjury in the future.[14]

Sahu v. *Ajodhyanath Patro.*

(1920) 1920 Pat. 670 (672), *Manju Koeri* v. *Emperor* (Overruled on another point).

(1921) 1921 Pat. 205 (205), *Kartick* v. *Emperor.*

(1900-1902) Low. Bur. R. 286 (287), *Mokun Maistry* v. *Valoo Maistry.*

(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor.*

(1930) 1930 Rang. 226 (226), *Maung Ko* v. *Maung Set.*

(1921) 1921 Sind 84 (84): 15 S. L. R. 200, *Mulchand Pamandas* v. *Kessoomal Ramchand.*

(1926) 1926 Sind 194 (196): 21 S. L. R. 293, *M. H. Crowder* v. *L. A. Morrison.*

(2) (1896) 18 All. 221 (222), *Kesri* v. *Muhammad Baksh.*

(3) (1868) 10 Suth. W. R. Cr. Cir. 1.

(1910) 11 Cri. L. Jour. 205 (206, 210), *Abdul Razak* v. *Gawri Nath* (Duty of Magistrate to explain the facts and, in view of that explanation, to call upon complainant to state precisely what charge is).

Bombay H. C. Circular Orders (1931), *S.* 41 *Criminal Circular No. 7, Judicial Commissioner, C. P.* (1929) *Lahore H. C. R. and O. Vol. III, Chap. I-B, Para.* 6, *Patna H. C. G. R. and O. O.* (1922), *Vol. I, Part* 1, *Chap. IV, Rule* 11.

(4) (1896) 18 All. 221 (223), *Kesri* v. *Muhammad.*

(1933) 1933 Rang. 297 (298), *Maung Ba Yone* v. *Ma Hla Kim* (It is unjust to compel a person to stand his trial when the complainant in her complaint and statement on oath, has made no allegations of fact which would, if proved, constitute a criminal offence).

(5) (1864) Suth. W. R. (Gap) 33 (34), Re *Huronath.*

(6) (1932) 37 Cal. W. N. 319 (320), *Makhan Lal Pal* v. *Khuki Sundari Datya.*

(7) (1899) 3 Cal. W. N. 17 (18), *Satya Charan* v. *Chairman of Mun.*

(8) (1872) 4 N.-W. P. 23 (25), *Empress* v. *Hur Prasad.*

(9) (1903) 30 Cal. 923 (925), *Lokenath* v. *Sanyasi.*

(10) (1896) 18 All. 221 (222), *Kesri* v. *Muhammad Baksh* (Distinguishing and disapproving of *Murphy*, 6 All. 696).

(11) (1925) 1925 Sind 328 (329): 18 S.L.R. 274, *Mahommad* v. *Mohammed Idris.*

(12) (1904) 6 Bom. L. R. 662 (663), In re *Mirabhai.*

(13) [See also (1902) 4 Bom. L. R. 609 (611), *Thakore Das* v. *Bhagwan Das.*]

(1911) 12 Cri. L. Jour. 550 (550) (Mad.), In re *Velu Nathan.*

(14) (1926) 1926 Nag. 141 (144), *Bhagirathi Bai* v. *Emperor.*

S. 200, Notes 14—16.

14. Right to be examined.—A complainant, as soon as he presents his complaint, is entitled to demand that his examination should be taken and reduced to writing before his complaint is disposed of.[1]

See Note 13, *supra*.

15. Refusing to answer.—"A complainant fulfils a duty where he informs a Court of an offence and it is not proper to examine him about his motives and force him to name the persons who had written the complaint for him, or helped him with legal advice, as if, in making a complaint, he has done something wrong" and where the complainant refuses to answer such irrelevant questions, he cannot be punished either under S. 485 of this Code or S. 179 of the Penal Code.[1]

16. Omission to examine complainant.—An omission to examine the complainant as required by this section is a serious irregularity. But this will not necessarily vitiate the proceedings. The question in such case will be whether the person objecting has been prejudiced by such irregularity. The *accused* cannot ordinarily complain of the irregularity, because the omission to take a sworn statement cannot prejudice him, as he has ample opportunities of cross-examining the complainant when he is examined in the case. In cases, therefore, where the *accused* person, after conviction complains of the omission to examine the complainant, such omission, will be cured by S. 537 (*a*) and will not ordinarily vitiate the trial or the conviction.[1] If, however, the objection is taken at an early stage action will be taken to set right the defect and to proceed with the case after the examination of the complainant.[2]

Where the *complainant* objects to the irregularity, the position is somewhat different. In cases which end in the conviction of the accused he cannot, of course, have any grievance[3] but where the complaint is dismissed without

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Note 14.

(1) (1902) 29 Cal. 410 (412), ***Kuldip Sahai*** v. *Budhan*.
(1906) 4 Cal. L. R. 134 (135), In the matter of *Bijoy Bhagat*.

Note 15.

(1) (1889) 13 Bom. 600 (604, 621), In re *Ganesh Narayan*.

Note 16.

(1) (1922) 1922 Mad. 443 (444), In re *S. Ramaswami Iyengar*.
(1920) 1920 Pat. 232 (234), *Emperor* v. *Heman Gope* (51 Ind. Cas. 465 and 1919 Pat. 432 dissented from).
(1887) 9 All. 666 (670), *Empress* v. *Murphy*.
(1915) 16 Cri. L. Jour. 669 (670): 37 All. 628, *Bateshar* v. *Emperor*.
(1918) 1918 All. 17 (18): 41 All. 164, *Mahadeo Singh* v. *Emperor*.
(1918) 1918 Bom. 141 (142), In re *Appa Rao Jhaveri Lal*.
(1919) 1919 Cal. 383 (384), *Harihar* v. *Emperor*.
(1919) 1919 Cal. 433 (434): 46 Cal. 807, *Bhairat Chandra* v. *Emperor*.
(1929) 1929 Cal. 175 (175), *Anil Krishna Das* v. *Badam Santra*.
(1911) 12 Cri. L. Jour. 217 (219, 220): 1911 Pun. Re. 11, *Girdhari Lal* v. *Emperor*.
(1924) 1924 Lah. 258 (259): 4 Lah. 359, *Mehr Chiragh Din* v. *Emperor*.
(1888) 11 Mad. 443 (444), *Empress* v. *Monu*.
(1924) 1924 Mad. 587 (587), *Ambayara Goundan* v. *Pachamuthu Goundan*.
(1928) 1928 Mad. 1235 (1236): 52 Mad. 79, In re *Molaippa*.
(1917) 18 Cri. L. Jour. 366 (367) (Lah.), *Phagu Sahu* v. *Emperor*.
(1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor*.
(1920) 1920 Pat. 700 (702, 703), *Abdul Ali* v. *Emperor*.
(1929) 1929 Pat. 473 (475, 476), *Bharat* v. *Judhistir* (Overruling 41 Ind. Cas. 1002 and cases following it, *viz.*, 1919 Pat. 452, 1920 Pat. 670 and 1920 Pat. 614 which held that omission to examine is an illegality).
(1913) 14 Cri. L. Jour. 420 (420): 1 U. B. R. 170, *Emperor* v. *Nga Po Kan*.
(1924) 1924 Rang. 87 (87): 1 Rang. 517, *Gopi Chand* v. *Emperor*.
(1914) 1914 Sind 19 (19): 8 S.L.R. 41, *Muso* v. *Emperor*.
(1933) 1933 All. 816 (818), *Baldewa* v. *Emperor*.
(2) (1920) 1920 Pat. 232 (235), *Emperor* v. *Heman Gope*.
(1913) 14 Cri. L. Jour. 76 (76) (Cal.), *Khether Mohan*.
[See (1905) 3 Cri. L. Jour. 471 (473), *Ram Adhin* v. *Wahed*.
(1917) 1917 Pat. 611 (612), *Jhuna Lal Sahu* v. *Emperor* (Proceedings quashed).]
(3) (1922) 1922 Mad. 443 (444), In re *S. Ramaswami Iyengar*.

such examination[4] or on an improper examination[5] he is prejudiced by the procedure adopted and the order of dismissal will be set aside.

S. 200, Notes 16—18.

17. **Examination before the case is transferred under S. 192.**— Under the Code of 1861, there was a conflict of decisions, as to whether a transfer of a case to another Magistrate, without examination of the complainant under S. 66, was with or without jurisdiction, the Allahabad High Court holding the view that he has no jurisdiction[1] the Calcutta High Court, after a great deal of conflict in its own decisions, finally holding that he has.[2]

The Code of 1872 however provided in S. 44, para. 2, an option to the Magistrate transferring a case, to examine the complainant or not, which provision is now embodied in proviso (*a*). So now where, the complaint is made in writing, the Magistrate in cases where he is transferring the case under S. 192, is not required to examine the complainant.[3] But he is not precluded from making such examination in which case the Magistrate to whom the case is transferred need not examine the complainant again. *See* Note 28.

18. **Examination where complaint is by Court or public servant — Proviso (aa).**—Before the Code of 1898 there was no express provision exempting the Court or public servant making a complaint, from being examined under the section. The High Court of Allahabad, however, held that such an examination was not necessary.[1] While the High Court of Madras held that the non-examination was only an irregularity curable by S. 537.[2]

With a view to remove misconception on the point, the Legislature in the Code of 1898, enacted in sub-S. (2) to S. 476, that the Magistrate shall, upon receiving the case for inquiry or trial, proceed according to law and *as if upon complaint made and recorded under S.* 200. At the same time, it amended S. 200, and prefixed to it the words "*Subject to the provisions of S.* 476"[3] thus

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(4) (1922) 1922 Mad. 443 (444), In re *S. Ramaswami Iyengar.*
(1867) 8 Suth. W. R. 12 (13), *Empress* v. *Harrakchand.*
(1869) 3 Beng. L. R. A. Cr. 53 (54), *Dulali* v. *Bhuban.*
(1868) 4 Mad. H. C. R. 162 (164, 165), *Rangaswami Goundan* v. *Sabapathy Goundan.*
(1884) 1884 All. W. N. 47 (47), *Jalaluddin* v. *Md. Khalil.*
(1889) 13 Bom. 590 (597) (F.B.), In re *Ganesh Narain Sathe.*
(1924) 1924 Bom. 321 (321): 48 Bom. 360, In re *Ningappa Rayappa Ghotadki.*
(1879) 4 Cal. L. R. 534 (536, 537), *Sheikh Erad Ali* v. *Nusiban Nisi Bibi.*
(1899) 3 Cal. W. N. 17 (18), *Satyacharan* v. *Chairman.*
(1903) 30 Cal. 923 (925, 926), *Lokenath Patra* v. *Sanyasi.*
(1905) 2 Cri. L. Jour. 51 (53) (Cal.), *Haladar* v. *Sub-Inspector.*
(1919) 1919 Cal. 78 (79), *Fazlar Rahman* v. *Abidhar Rahman.*
(1911) 12 Cri. L. Jour. 539 (541): 1912 Pun. Re. 2, *Ali Muhammad* v. *Emperor* (Obiter).
(1919) 1919 Pat. 319 (320), *Eqbal Khan* v. *Emperor.*
(1919) 1919 Pat. 545 (546), *Guru Prasad Sahu* v. *Ajodhyanath Parhi.*
(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor.*
[But see (1911) 12 Cri. L. Jour. 550 (Mad.), In re *Velunathan* (Where a complaint was before a Presidency Magistrate before the amending Act of 1926 and complaint was verified on oath though there was no examination).
(1872) 17 Suth. W. R. 37 (37), *Kabil Nusyó* v. *Baharullah* (Where the High Court refused to interfere as the case was trivial).
(5) (1896) 18 All. 221 (222), *Kesri* v. *Muhammad Baksh.*

Note 17.

(1) (1872) 4 N.-W. P. 88 (90), *Empress* v. *Bhikaree.*
(2) (1872) 9 Beng. L. R. 146 (149) (F.B.), *Queen* v. *Haru* (Overruling 7 Ben. L. R. 513 and 8 Ben. L. R. 19; Distinguishing 3 Ben. L. R. A. Cr. 53 and 3 Ben. L. R. A. Cr. 67).
(1870) 14 Suth. W. R. Cr. 1 (2), *Empress* v. *Umesh Chandra Chowdhry.*
(3) (1910) 11 Cri. L. Jour. 535 (536) (Mad.), *Sivagurunatha* v. *Emperor.*
(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor.*

Note 18.

(1) (1885) 7 All. 871 (874, 875) (F.B.), *Ishri* v. *Shamlal.*
(2) (1888) 11 Mad. 443 (444), *Empress* v. *Monu.*
(3) (1904) 1 Cri. L. Jour. 73 (80): 26 All. 249, Re *Bhup Kunwar.*

S. 200, Notes 18—21.

giving legislative effect to the Allahabad view as regards complaints by *Courts.*[4]

This still left the cases of complaints by *public servants* under S. 195 in doubt and Courts got over this difficulty by holding that the non-examination of the complainant, was cured by S. 537 and did not vitiate the trial.[5] With the object of removing all doubts whatever and to make it clear that public servants preferring complaints need not be examined, the section was amended in 1923 by the Criminal Procedure Code Amendment Act, XVIII of 1923, by omitting the words "*subject to the provisions of S.* 476" and by inserting the new proviso (*aa*). The words "*in writing*" were also introduced after the word 'complaint' in S. 195.[6]

It is now therefore clear that, in cases of complaints by a *Court*[7] or by a *public servant* purporting to act in the discharge of his official duties[8] no examination is necessary under this section.

19. Joint complaint by two or more complainants.—It has been held by the Calcutta High Court that a joint complaint by two or more persons is not contemplated by the Code.[1]

20. State prosecution.—*See* S. 196, *supra*, and Notes thereunder.

21. Prosecution under S. 211, Penal Code.—An order for the prosecution of the complainant under S. 211 of the Penal Code for making a false charge, cannot be made, unless complainant had been examined on oath under

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(4) (1904) 1 Cri. L. Jour. 73 (80): 26 All. 249, In re *Bhup Kunwar*.
(1908) 7 Cri. L. Jour. 54 (63): 31 Mad. 140 (F.B.), In re *Rahimat Ullah Saheb*.
(1909) 9 Cri. L. Jour. 41 (43): 32 Mad. 49, In re *Ayyakannu*.
(1909) 10 Cri. L. Jour. 420 (423): 33 Mad. 49, In re *Othupara Narayanan*.
(1918) 1918 Bom. 141 (142), In re *Aparoa Jhaverilal* (Complaint by *Court*—Non-examination was held to be mere irregularity).

(5) *Superintendent, Salt Department, Excise Sub-Inspector.*
(1916) 18 Cri. L. Jour. 366 (367) (Pat.), *Phaju Sahu* v. *Emperor*.
(1910-1911) 15 Cal. W. N. (N.) lv (lv), *Bhagwan* v. *Crown*.
Police Officer, in a non-cognizable case.
(1919) 1919 Cal. 383 (384), *Harihar Roy* v. *Emperor*.
(1919) 1919 Cal. 433 (434): 46 Cal. 807, *Bhairab* v. *Emperor*.
(1924) 1924 Lah. 258 (259, 260): 4 Lah. 359, *Chirag Din* v. *Crown*.
(1920) 1920 Pat. 700, *Sheikh Abdul Ali* v. *Emperor*.
Forest Range Officer.
(1924) 1924 Mad. 587 (587), Re *Ambayara*.
Revenue Sub-Divisional Officer.
(1919) 1919 Pat. 203 (206), *Saheb Tewari* v. *Emperor*.
Municipal Officer—Hackney Carriage Inspector.
(1924) 1924 Rang. 87: 1 Rang. 517, *Gopi Chand* v. *The Crown*.
Government Advocate.
(1900) 1 Punj. L. R. 63, *Uttamchand*.
Public Prosecutor.
(1911) 12 Cri. L. Jour. 217 (220): 1911 Pun. Re. 11, *Girdhari Lal* v. *Crown*.
Prosecuting Inspector.
(1920) 1920 Pat. 232 (233), *Emperor* v. *Heman Gope* (Overruling 1920 Pat. 670. Where it was held that a public servant (Municipal Overseer) must be examined).
Court Bailiff.
(1914) 1914 Sind 19 (19): 8 S. L. R. 41, *Muso* v. *Crown*.

(6) (1924) 1924 Pat. 691 (692), *Lachmi Singh* v. *Emperor*.
See also Statement of Objects and Reasons on proviso (*aa*), Bill III of 1914, cl. 41.
Select Committee Report, 1922, on cl. 54.

(7) (1933) 1933 Pat. 87 (88), *Sukha Sahu* v. *Emperor*.

(8) *Police Officer.*
(1928) 1928 All. 765 (766, 767): 51 All. 382, *Prag Dutt Tiwari* v. *Emperor*.
(1926) 1926 Mad. 865 (871): 49 Mad. 525, *Public Prosecutor* v. *Ratnavelu Chetty* (Overruling the decision in 1925 Mad. 672 which held that a Police Officer when making a complaint must be examined).
(1929) 1929 Pat. 514 (517), *Lal Bihari Singh* v. *Emperor*.
Municipal Officers.
(1930) 1930 Cal. 222 (223, 224), *Ram Gopal Goena* v. *Corporation of Calcutta* (Building surveyor).
(1930) 1930 Cal. 665 (665), *Nandi* v. *Corporation of Calcutta* (Conservancy Overseer).
(1930) 1930 Nag. 33 (34): 25 N. L. R. 194, *Nanhe* v. *Municipal Committee, Jubbulpore* (Police Inspector delegated).
[But see (1904) 1 Cri. L. Jour. 1118 (1119): 2 L. B. R. 311, *Emperor* v. *Po Chon* (Superseded by amendment of 1923—Decision prior to amendment).]

Note 19.

(1) (1931) 1931 Cal. 646 (647), *Sashadhar Acharjya* v. *Sir Charles Tegart*.

the provisions of this section and allowed an opportunity of substantiating the charge which he made originally to the police and which was reported as false.[1] S. 200, Notes 21—23.

22. Commission for examination.—Section 503, *infra*, provides for the examination of *witnesses* on commission where they cannot be examined in Court, without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable.

The question whether that section applies to the examination of a *complainant* under this section, if the circumstances stated therein apply, depends upon the question whether he can be regarded as a *witness*. There is a conflict of decisions on the point. The Allahabad High Court[1] and the Punjab Chief Court[2] have held that in the earlier stage of the proceeding, a complainant is not a witness but only a complainant, and that therefore a commission for his examination cannot be issued under S. 503, which applies only to witnesses. The Calcutta High Court, on the other hand, has held that a complainant is a "witness" and that a commission can be issued to him under S. 503.[3] No reference has, however, been made in the decision to the rulings of the Allahabad High Court and the Punjab Chief Court. It is submitted that the Calcutta view is not correct. The examination of the complainant is not made in the presence of the accused, and cannot be used as "evidence" against him.[4]

The word "evidence" under the Evidence Act means statements made before the Court by *witnesses*. It seems to follow from this that a complainant at the stage of examination under this section is not a witness, and cannot come under S. 503.

23. "Upon oath".—The examination of the complainant should be *on oath*. The question whether he could be examined on *solemn affirmation*

Note 21.

(1) (1891) 15 All. 336 (338), *Empress* v. *Raghu*.
(1899) 1899 All. W. N. 90 (90, 91), In re *Gajadhar*.
(1924) 1924 All. 664 (664), *Rekha Chamar* v. *Emperor*.
(1898) 22 Bom. 596 (600), *Imperatrix* v *Jijabhai Govind* (It is very desirable in the ends of justice that the accused should be allowed to substantiate the charge).
(1924) 1924 Bom. 321 (321): 48 Bom. 360, In re *Ningappa Rayappa*.
(1926) 1926 Bom. 284 (285, 286), In re *Pampappa Ballal Rao Desai*.
(1879) 4 Cal. L. R. 134 (136), In re *Biyogi Bhagat*.
(1881) 7 Cal. L. R. 382 (384), In re *Russick Lall Mullick*.
(1887) 14 Cal. 707 (712, 720), *Empress* v. *Sham Lall*.
(1900) 27 Cal. 921 (924, 925), *Mahadeo* v. *Empress*.
(1900) 4 Cal. W. N. 305 (306), *Budhnath* v. *Emperor*.
(1901) 5 Cal. W. N. 254 (255), *Sahiram* v. *Jibun Kumar*.
(1905) 2 Cri. L. Jour. 51 (53), *Haladhar Bhumij* v. *Sub-Inspector of Police*.
(1905) 2 Cri. L. Jour. 615 (617, 618): 33 Cal. 1, *Jogendra* v. *Bahu Ballabh*.
(1906) 4 Cri. L. Jour. 68 (69) (Cal.), *Gati Mandal* v. *Emperor*.
(1915) 1915 Cal. 20 (21), *Md. Imaruddin* v. *Debendranath*.
(1908) 8 Cri. L. Jour. 349 (350): 4 N. L. R. 136, *Emperor* v. *Ghansram*.
(1921) 1921 Pat. 205 (205, 206), *Kartick* v. *Emperor*.
(1927) 1927 Pat. 402 (403), *Tenhu Dhabuk* v. *Emperor*.
(1910) 11 Cri. L. Jour. 199 (200): 3 S. L. R. 189, *Emperor* v. *Topan*.
(1910) 11 Cri. L. Jour. 351 (351) (All.), *Chhedi Kandu* v. *Emperor*.
(1911) 12 Cri. L. Jour. 539 (541): 1912 Pun. Re. 2, *Ali Muhammad* v. *Emperor*.
[See also (1934) 1934 Pat. 573 (575): 13 Pat. 789, *Daroga Mahton* v. *Emperor* (Where Magistrate has already taken cognizance of offence under S. 211, I. P. Code, on police complaint, but subsequently opposite party files a protest petition, failure of Magistrate to examine him on oath is only irregularity).
(1910) 11 Cri. L. Jour. 338 (338), *Rachappa Tippanna*, In re.]

Note 22.

(1) (1883) 5 All. 92 (92, 93), In re *Farid-un-nissa* (Purdanashin lady).
(2) (1896) 1896 Pun. Re. No. 10, p. 24 (26), *Sarbdyal* (Ruler of a Native State).
(3) (1914) 1914 Cal. 479 (480), *Abhoyeswari Debi* v. *Kishor Mohan Banerjee* (Purdanashin lady).
(4) (1911) 12 Cri. L. Jour. 585 (587) (Mad.), *Jeremiah* v. *Vas*.

S. 200, Notes 23—25.

depends upon the question whether he is a *witness* within the meaning of S. 6 of the Oaths Act. As has been seen already in Note 22 above, there is a conflict of opinion on the point.

The words "upon oath" were for the first time introduced in the Code of 1882, though in so far as the Presidency Towns were concerned, there was an option given for taking the examination on oath, under S. 30 of Act, IV of 1877. The evident object of getting the substance of the examination *on oath* and signed by him, is to use it against him if needed, in a prosecution for perjury.[1] In a case where the statement of the complainant was not *on oath* and before a Magistrate, the conviction was quashed.[2]

This section does not *authorise* a Magistrate to administer an oath but merely *recognises* his power to do so.[3]

As to whether the examination should be on oath or not, when the complaint is to a Presidency Magistrate, *see* Note 27, *infra*.

24. Shall be reduced to writing.—The substance of the examination of the complainant, is required to be reduced to writing[1] except in the case in proviso (*b*) as to which, *see* Note 27, *infra*.

The written examination must be and is intended to be distinct from the complaint.[2] In the following cases under the Code of 1861 the omission to reduce to writing the examination of the complainant was held to be an illegality which vitiated all the proceedings taken subsequently.[3]

25. "Shall be signed".—The examination of the complainant on oath should be signed both by the complainant[1] and by the Magistrate. The object of getting the signature of the complainant is to make use of it, if need be, in proceedings against him, under S. 193 of the Penal Code.[2] A statement not so signed cannot be used as evidence in such a prosecution.[3] Where *A* was convicted under S. 193 of the Penal Code in respect of his contradictory statements, one of which was made in the course of his examination under this section but such statement was not signed by him it was held that the conviction should be quashed.[4]

Note 23.

(1) (1926) 1926 Nag. 141 (143), *Bhagirathibai* v. *Emperor*.
(1887) 9. All. 666 (670), *Empress* v. *Murphy*.
(2) (1873) 20 Suth. W. R. 55 (55), In re *Mohesh Chunder*.
(3) (1916) 1916 Lah. 281 (283): 1916 Pun. Re. 34, *Abdul Aziz* v. *Emperor*.

Note 24.

(1) (1872) 4 N.-W. P. 88 (89), *Empress* v. *Bhikaree*.
(1896) 18 All. 221 (222), *Kesri* v. *Muhammad*.
(1864) Suth. W. R. (S. N.) 37 (37), *Rajib*.
(1871) 16 Suth. W. R. Cr. 40 (40), *Empress* v. *Girish Chandra* (Overruled on another point).
(1871) 16 Suth. W. R. 58 (59), *Nilmoney Bhuttacharjee*.
(1869) 3 Ben. L. R. 67 (67, 68), *Empress* v. *Mahim Chandra*.
(1869) 2 Weir 237 (237).
(2) (1896) 18 All. 221 (222), *Kesri* v. *Muhammad* (9 All. 966 distinguished).
(3) (1872) 4 N.-W. P. 88 (90), *Empress* v. *Bhikaree Nawab Abdoolla*.
(1871) 16 Suth. W. R. 40 (40), *Girish Chunder* (Overruled on another point).
(1902) 2 Weir 241 (242), *Rangachari*.
[But see (1871-74) 2 Weir 709 (710) (A case under the Code of 1872 in which S. 144 specifically provided that it is only an irregularity).]

Note 25.

(1) (1869) 3 Ben. L. R. 67 (67, 68), *Mahim Chandra Chakravarthy*.
(2) (1926) 1926 Nag. 141 (143), *Bagirathi Bhai* v. *Emperor*.
(3) (1902) 6 Cal. W. N. 840 (841), *Baijoo* v. *Reg*.
(4) (1902) 6 Cal. W. N. 840 (841), *Baijoomandal* v. *Reg*.

The failure of the Magistrate to sign the examination would only be an irregularity curable by S. 537.[5] S. 200, Notes 25—28.

A refusal to sign the substance of the examination taken down under this section is punishable under S. 180 of the Penal Code.

26. Oral complaints.—When the complaint is an *oral* one, the Magistrate must, even in cases in which he intends to transfer the case under S. 192, examine the complainant.

See also Note 27.

27. Presidency Magistrate.—Proviso (*b*) provides certain exceptions to the general rule prescribed in the section in cases where the complaint is before a Presidency Magistrate:—

(1) The examination of the complainant may be on oath or not as the Magistrate thinks fit.[1]

(2) Where the complaint is in writing the examination need not be reduced to writing.[2]

(3) Where the complaint is oral, the Magistrate may require it to be reduced to writing.

As the section stood before 1926, a Presidency Magistrate need not record the substance of the examination even if the complaint was not made in writing.[3] The words "*where the complaint is made in writing*" were newly added by the Criminal Procedure Code (Amendment) Act (II of 1926).

28. Shall not be bound to re-examine.—A complainant should be examined either by the Magistrate receiving the complaint, or by the Magistrate to whom he has transferred the case.[1] Under the proviso (*c*) if the Magistrate who had received the complaint had examined the complainant before transfer, the Magistrate who receives the case by transfer, need not re-examine the complainant. He can issue process on the examination already made.[2] If the complaint has been transferred without such examination, the Magistrate receiving it by transfer cannot issue process without examining the complainant.[3]

201.* (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper S. 201.

Procedure by Magistrate not competent to take cognizance of the case.

*(CODE OF 1882—S. 201.)

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

(5) (1912) 17 Ind. Cas. 65 (70): 36 Mad. 275, *Kamal* v. *Udayavarma*.
Note 27.
(1) (1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
(2) (1921) 1921 Cal. 561 (568), *Sukumar Chatterjee* v. *Mufizuddin Ahmed*.
(3) (1908) 7 Cri. L. Jour. 10 (15): 35 Cal. 141, *Apurba Krishna Bose* v. *Emperor*.
Note 28.
(1) (1900) 27 Cal. 921 (924), *Mahadeo* v. *Empress*.
(2) (1899) 3 Cal. W. N. (Notes) cclxxxv (cclxxxv), *Kali Singh* v. *Jhari Lal*.
(1900) 4 Cal. W. N. (Notes) ccxxi (ccxxii), *Sarat Chandra* v. *Agore*.
(3) (1914) 1914 Cal. 479 (480): 42 Cal. 19, *Abhayeswari* v. *Kishori*.

S. 201, Notes 1—3.

Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
MAGISTRATE NOT COMPETENT	3
"SHALL RETURN"	4
ORAL COMPLAINTS	5

1. Legislative Changes.—

Changes introduced in 1872—

There was no section in the Code of 1861 corresponding to this section. The provision contained in sub-S. (1) of this section was newly inserted as S. 145 in the Code of 1872.

Changes introduced in 1882—

S. 145 of the Code of 1872 applied to all complaints *oral* as well as written. S. 201 of the Code of 1882 limited the section to complaints made in *writing*.

Changes introduced in 1898—

Sub-S. (2) has been newly added to the Code of 1898.

2. Scope of the section.—A Magistrate, when he receives a complaint under S. 190 is either competent to take cognisance of the case or he is not. This section deals with the procedure to be adopted where he is *not competent* to take cognisance of the case.

As to the procedure to be adopted in cases where the Magistrate is competent to take cognisance of the case but finds during the course of the enquiry or trial, that he is not competent to inquire or try further, *see* Ss. 346, 347, 348 and Ch. XXXII of the Code.

3. Magistrate not competent.—A Magistrate may not be competent to take cognisance of a case for several reasons. Thus he cannot take cognisance of a case where

(1) he has no *local* jurisdiction in respect of it.[1-a]

(2) he has no jurisdiction over the person of the accused as in the case of an European British subject under S. 29-A or of a Juvenile offender under S. 29-B.

(CODE OF 1872—S. 145.)

Procedure by Magistrate not empowered to hear complaint.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

(CODE OF 1861—Nil.)

Section 201—Note 3.

(1-a) (1932) 1932 Mad. 427 (428), *Rathinam Pillai* v. *Emperor* (Magistrate not having local jurisdiction must return complaint under this section).

(3) he is not empowered to try it under Schedule II, Col. 8 of the Code or,

(4) he is barred from trying it by the provisions of any special or local law under S. 29.

(5) sanction is necessary under Ss. 132, and 196 to 199 and the same has not been obtained.

(6) he is not empowered under S. 190.

(7) he is not empowered to commit for trial to a Court of Session under S. 206, or

(8) he has no jurisdiction over the offence of rape by a husband under S. 561.

Before the amending Act of 1923 the want of sanction under S. 195 of the Code where such sanction was necessary, was a bar to a Magistrate entertaining a complaint.[1] The amending Act has abolished the necessity for sanction in cases coming under S. 195 and therefore where there is a complaint in writing under the amended S. 476, the Magistrate is not incompetent to take cognisance of the same, if he had jurisdiction otherwise.

The question of jurisdiction in the above cases must be decided at the outset by a perusal of the complaint. It is on the terms of the complaint, that the Magistrate first has to inform himself as to the nature of the case and see whether *from the allegations* made in the complaint he has jurisdiction to entertain it.[2] This question the Magistrate himself must decide and should not seek or act on the advice of any other District or superior Magistrate.[3]

A Magistrate could not refuse, to take cognisance of a case, on any of the following grounds:—

(1) that though he is entitled to take cognisance of the charges named in the complaint, he is not entitled to take cognisance of a charge not named in the complaint but which could be made out from the allegations in the complaint.[4]

(2) that the offence merited greater punishment than he is empowered to inflict.[5]

(3) that the offence is a petty one cognisable by the Head of the village.[6]

4. "Shall return."—Where a Magistrate finds, he is not competent to take cognisance of a case on a complaint *made in writing* to him, he shall *return* the complaint to be presented to the proper Court having jurisdiction, with an endorsement to that effect.[1] He need not and should not examine the

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Note 3.

(1) (1901) 24 Mad. 337 (338, 339), *Queen* v. *Kuniyil Ram* (Want of previous sanction under S. 195).
(2) (1921) 1921 All. 12 (12), *Sheo Shankar* v. *Mohan* (Local jurisdiction).
(3) (1912) 13 Cri. L. Jour. 786 (786): 37 Bom. 144, *Emperor* v. *Abdul Rahim Momin*.
(4) (1931) 1931 All. 10 (11), *Sripat Rai* v. *Emperor* (Sch. II, Col. 8).
(1907) 7 Cri. L. Jour. 6 (7): 31 Mad. 43, *Krishna Pillai* v. *Krishna Konan*.
(5) (1888) Rat. 375 (375), *Empress* v. *Gema*.
(6) (1871-72) 7 Mad. H. C. R. App. xxxi.

Note 4.

(1) (1881) 2 Weir 323 (323, 324), Re *Munisami*.
(1923) 1923 Mad. 50 (51): 45 Mad. 839, Re *Mohideen*.
(1926) 1926 Pat. 400 (400): 5 Pat. 447, *Bengali Gope* v. *Emperor*.
(1906) 4 Cri. L. Jour. 213 (214) (Cal.), *Fani Bushan* v. *Kemp*.
[See however (1907) 7 Cri. L. Jour. 6 (7):

S. 201, Notes 4—5.

complainant in such a case.[2]

Where a Magistrate who had jurisdiction in two capacities, as the Head Quarters Magistrate and Railway Magistrate, subordinate in each capacity to a different High Court, and who received a complaint in one capacity and transferred it to his own file in the other capacity, it was held that he must be deemed to have returned the same under this section to be presented to the proper Court, and to have accepted it as represented.[3]

5. **Oral complaints.**—Sub-S. (2) which has been newly added in this Code in 1898, contemplates the presentation of *oral* complaint also.[1] *See also* S. 4 (1) (*h*).

In the case of oral complaints the Magistrate should *direct* the complainant to the proper Court.

See also Note 1, *supra*.

S. 202.

Postponement of issue of process.

202. (1) If the Chief Presidency Magistrate or any other Presidency Magistrate whom the Local Government may from time to time authorize on this behalf or any Magistrate of the first or second class, is not satisfied as to the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons, and may

Postponement of issue of process.

202.* (1) *Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him under section* 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself *or, if he is a Magistrate other*

*(CODE OF 1882—S. 202.)

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by an officer subordinate to such Magis-

Postponement of issue of process.

31 Mad. 43, *Krishna Pillai* v. *Krishna Konan* (Where it has been observed that he can *send* it to the Magistrate having jurisdiction. It is not clear under what section this could be done).

(2) (1905) 3 Cri. L. Jour. 53 (54): 28 All. 268, *Gullay* v. *Bakar*.

(1906) 4 Cri. L. Jour. 213 (214) (Cal.), *Fani* v. *Kemp*.

(3) (1930) 1930 Nag. 291 (293), *Diwan Singh* v. *Emperor*.

Note 5.

(1) (1924) 1924 Rang. 35 (36): 1 Rang. 549, *Dass* v. *Emperor*.

then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police station, except that he shall not have power to arrest without warrant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

S. 202.

than a Magistrate of the third class, direct an inquiry or investigation to be made by any *Magistrate* subordinate to him, or by a police-officer, or by such other person * * * as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(2) If *any inquiry or* investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a Police station, except that he shall not have power to arrest without warrant.

(2-A) *Any Magistrate inquiring into a case under this section, may, if he thinks fit, take evidence of witnesses on oath.*

(3) This section applies also to the police in the towns of Calcutta and Bombay.

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trate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

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This section applies to the police in the towns of Calcutta and Bombay.

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Postponement of issue of process.

146. If the Magistrate sees cause to distrust the truth of the complaint, he may postpone the issuing of the process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer, subordinate to such Magistrate, or of a local Police-officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

(CODE OF 1861—S. 180.)

Postponement of issue of process.

May dismiss the complaint.

180. If the Magistrate sees cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the person complained against, and direct a previous enquiry to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police-officer, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complaint. If such enquiry is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers vested by this Act in an officer in charge of a Police-station, except that he shall have no power to make an arrest.

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1. **Legislative History.**—

Changes made in 1869—

Under S. 180 of the Code of 1861, this provision was limited to cases triable by a Court of Session only.[1] Act, VIII of 1869, extended it to all cases.[2]

Changes made in the Code of 1872—

Under the Code of 1861 a Magistrate could direct an *inquiry* only while under the Code of 1872 he could also direct an *investigation.*

Changes made in the Code of 1882—

Section 202 of the Code of 1882 introduced many important changes:—

(1) The word *'Magistrate'* which was general was limited to the *Chief Presidency Magistrate, Magistrate of the first or second class,* and any other *Presidency Magistrate specially authorised.*

(2) The words "*of an offence of which he is authorised to take cognizance*" were added after the word *complaint* in order to restrict the scope of the word *complaint* to complaints of offences.

(3) The words "*when the complainant* has been examined" were newly added.

(4) The words "*record his reasons for distrusting the truth of the complaint*" were newly added and as a consequential change the

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Section 202—Note 1.

(1) (1867) 8 Suth. W. R. 12 (13), *Queen* v. *Harrak.*
(1868) 10 Suth. W. R. 49 (49, 50), Re *Fokto.*
(2) (1871) 16 Suth. W. R. 44 (44), *Queen* v. *Gour Mohun.*

S. 202, Note 1.

words "*sees cause to distrust*" were changed into "*sees reason to distrust.*"

(5) The words "*and either inquire into the case himself or*" were newly added.

(6) The words "*direct a previous inquiry or investigation*" were omitted and the words "*direct a previous local investigation*" were substituted thus taking away the power of inquiry except by himself. As a consequential change the words "*inquiry or*" were omitted in para. 2, also.

(7) The words "*or by such other person not being a Magistrate or Police-officer*" were substituted for the words "*or in such other mode*".

(8) The third para. which ran as "*this section applies to the police in the towns of Calcutta and Bombay*" was newly added.

Changes introduced in 1898—

There was only one important change introduced in the Code in 1898. The words '*is not satisfied as to*' were substituted for the words "*sees reason to distrust*".

Changes made in 1923—

The Criminal Procedure Amendment Act XVIII of 1923 made the following important changes:—

(1) The words '*any Magistrate*' were substituted for the words "*The Chief Presidency Magistrate . . . first or second class*".

(2) The words "*or which has been transferred to him under S.* 192" are new.

(3) The words "*if he thinks fit*" have been substituted for words "*if the Magistrate is not satisfied as to the truth of the complaint* in order to widen the scope of the section".

(4) The words "*inquiry or investigation*" have been re-inserted for the words "*previous local investigation.*" This change, also is made in para. 2, as a consequence.

(5) The words "*any Magistrate subordinate to him*" have been substituted for the words "*any officer subordinate to such Magistrate*".

(6) The words "*when the complainant has been examined*" were omitted and a proviso was added as follows:—

"*Provided that no such direction shall be made* (*a*) *unless the complainant has been examined on oath under the provisions of S.* 200 or (*b*) *where the complaint has been made by a Court under the provisions of this Code*".

(7) Sub-S. (2-A) was newly added,

Changes made in 1926—

By the Criminal Procedure Code (Amendment) Act, II of 1926, the proviso of 1923, was altered into the present proviso.

S. 202, Note 2.

2. Scope and object of the section.—Under this section a Magistrate who has taken cognizance of an offence or upon a transfer made to him under S. 192, may postpone the issue of process to the accused person in order to ascertain the truth or falsity of the complaint. This he can do either by enquiry into it himself or by directing an inquiry or investigation by a Magistrate subordinate to him or by any Police-officer or any other person.

The scope of Chap. XVI of the Code which contains this section is to separate unfounded from substantial cases even at the outset[1] and as such, the object of an inquiry or investigation under this section is to ensure that no person shall be compelled to answer a criminal charge unless the Court is satisfied that there is a *prima facie* case for proceeding and issuing a process against the accused person.[2] Such an inquiry or investigation is designed to afford the Court an opportunity of either confirming or removing any hesitation it may feel in respect of issuing process against the accused. The nature of the inquiry varies with the circumstances of each case and it is certainly not contemplated that it should be exhaustive. The degree of formality of the proceedings and the width and depth of the enquiry is entirely in the discretion of the Magistrate. The provision is enabling and not obligatory. As soon as the Magistrate has satisfied himself, that process should issue, its object is fulfilled.[3] The inquiry is not intended to supersede a regular trial.[4]

It is not necessary that a Magistrate should call for an inquiry under this section in every case. It is only when he *thinks fit*, that he may do so.[5] But it is generally advisable that an enquiry be held where the complainant is not speaking from his own knowledge.[6]

Where, however, such an inquiry is made obligatory as under S. 10 of the Child Marriage Restraint Act of 1929, the failure to do so vitiates the whole trial.[7]

A Magistrate acting under this section can only consider the report of any inquiry or investigation directed by him[8] and not any report made previously and not directed by him[9] or an inquest report made by another Magistrate under S. 176[10] or any previous departmental inquiry.[11] The purpose of

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Note 2.

(1) (1913) 21 Ind. Cas. 703 (704): 37 Mad. 181, *Sheikh Meeran Saib* v. *Ratnavelu Mudali.*

(2) (1868) 10 Suth. W. R. Cr. Cir. 1 (2).
(1927) 1927 Lah. 30 (31), *Gulabh Kan* v. *Gulam Md. Khan.*
(1927) 1927 Mad. 19 (20, 21): 49 Mad. 918, *Appa Rao Mudaliar* v. *Janaki Ammal.*
(1919) 1919 Oudh 395 (395): 22 Oudh Cas. 321, *Mahadei* v. *Ram Sahai.*
(1921) 1921 Pat. 85 (87), *Gawkaram Lal* v. *Sarjoo Saw.*
(1929) 1929 Pat. 644 (648): 9 Pat. 155, *Hema Singh* v. *Emperor.*
(1926) 1926 Sind 188 (189): 20 S. L. R. 43, *Atmaram Udhowdas* v. *Topandas.*

(3) (1930) 1930 Pat. 30 (32), *Paramand Brahamachari* v. *Emperor.*
(1911) 12 Cri. L. Jour. 385 (386): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor.*

(4) (1931) 1931 Bom. 524 (526): 55 Bom. 770, *Emperor* v. *Finan.*
(1919) 1919 Oudh 395 (395): 22 Oudh Cas. 321, *Mahadei* v. *Ram Sahai.*
(1919) 1919 Cal. 433 (436): 46 Cal. 807, *Bhairab Chandra Barna* v. *Emperor.*
(1930) 1930 Pat. 30 (32), *Paramand Brahmachari* v. *Emperor.*

(5) (1920) 1920 Pat. 270 (270, 271), *Sheikh Abdul Khalique* v. *Surja Singh.*

(6) (1921) 1921 Cal. 561 (563), *Sukumar Chatterji* v. *Mosi Zuddin Ahmed.*
(1906) 10 Cal. W. N. 1090 (1091), *Thakur Prasad Singh and Tirbeni Singh* v. *Emperor.*
(1934) 1934 Rang. 167 (168), *S. D. Vardon* v. *Hearsey.*

(7) (1931) 1931 Lah. 56 (56): 12 Lah. 383, *Mangal* v. *Kalu.*

(8) (1927) 1927 All. 136 (137), *Naubat* v. *Emperor.*

(9) (1914) 22 Ind. Cas. 165 (166) (All.), *Baqar* v. *Bansi.*

(10) (1932) 1932 Cal. 121 (122), *Surendranath Battacharjee* v. *Police Sergent.*

(11) (1887) 1887 Pun. Re. No. 22, p. 70 (72,

S. 202, Notes 2—5.

the inquiry under this section being only to decide whether to issue process to the accused or not, it is not competent for the Magistrate to treat the evidence recorded in such an inquiry as *evidence* in the case and forthwith put the accused on his defence and convict him.[12]

3. **"Any Magistrate".**—The section as it stood before the amendment of 1923, permitted only the Chief Presidency Magistrate, Presidency Magistrates authorised in this behalf and any Magistrate of the first and second class only to act under this section. But now the use of the words '*any Magistrate*' removes the restrictions on Third Class Magistrates and Presidency Magistrates. Now *any Magistrate* authorised to take cognizance of a complaint or to whom a case is transferred under S. 192 can act under this section.

4. **Presidency Magistrates.**—Before 1923, a Presidency Magistrate (other than the Chief Presidency Magistrate) not empowered by the Local Government, could not direct a local investigation under this section.[1] In Madras, the Local Government had invested all Presidency Magistrates with such power. Now, no such special vesting of power is necessary.

Where Presidency Magistrates have been declared by the Local Government under S. 21, sub-S. (2) to be subordinate to the Chief Presidency Magistrate, an *Additional* Chief Presidency Magistrate can, by virtue of S. 18, Cl. (4) make over a complaint to an ordinary Presidency Magistrate for inquiry and report under this section.[2]

5. **Complaint of an offence.**—The section, by its terms, applies only to cases where a Magistrate takes cognizance of an offence *on complaint* under S. 190-1-(*a*) and not otherwise.[1]

Therefore a Magistrate cannot direct an inquiry or investigation under this section in the following cases:—

(1) Cases in which he takes cognizance of the offence on a Police report, S. 190-1 (*b*)[2] or on information, S. 109-1 (*c*).[3]

(2) Petition under S. 107, which is not a complaint of an offence at all.[4] A Magistrate however in this case, has the right to call

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73), *Queen* v. *Rallia.*

(12) (1869) 1 N.-W.P. 306 (307), In re *Kewal Singh.*

Note 4.

(1) (1888) 12 Bom. 161 (163), In re *Janaki Das Garu Sitaram.*

(2) (1934) 1934 Cal. 405 (406): 61 Cal. 467, *Kanayalal Bengani* v. *Kanmull Lodha.*

Note 5.

(1) (1873) Rat. Un. Re. 77 (77).
(1913) 14 Cri. L. Jour. 218 (219) (All.), *Sarperaz Khan* v. *Emperor.*
(1924) 1924 Lah. 729 (730), *Jahangir* v. *Emperor.*

(2) (1899) 1899 All. W. N. 87 (89), *Queen* v. *Kandhaiya.*
(1913) 14 Cri. L. Jour. 387 (388) (Cal.), *Sarba Mahton* v. *Emperor.*
(1880) 1880 Pun. Re. No. 8, p. 15 (16), *Kudan* v. *Sonun.*
(1919) 51 Ind. Cas. 173 (176) (Pat.), *Iqbal Khan* v. *Emperor.*
(1902) 2 Weir 241 (242), In re *Rangachari.*
(1919) 1919 Pat. 319 (320), *Eqbal Khan* v. *Emperor.*
(1921) 1921 Pat. 302 (303), *Tiloki Mahton* v. *Emperor.*
(1913) 14 Cri. L. Jour. 297 (297): 40 Cal. 854, *Abdullah Mandal* v. *Emperor.*

(3) (1906) 4 Cri. L. Jour. 183 (191, 192) (Bom.), *Emperor* v. *Vishwanath Krishna Sathe.*
(1888) 1888 Pun. Re. No. 24, p. 43 (45), *Queen* v. *Narain Singh.*
(1894) 1894 Pun. Re. No. 15, p. 48 (49), *Fatteh Ali* v. *Empress.*
(1902) 2 Weir 241 (242), Re *Ranga Chari.*
(1921) 1921 Pat. 302 (303), *Tiloki Mahton* v. *Emperor.*
(1913) 14 Cri. L. Jour. 600 (601): 7 S. L. R. 75, *Imperator* v. *Shoukatmal.*

(4) (1932) 1932 All. 670 (671), *Laxmi Narain* v. *Emperor.*
(1928) 1928 Lah. 694 (694), *Hari Singh* v. *Jagta.*
(1926) 1926 Mad. 521 (522): 49 Mad. 315, *Sanjivi Reddi* v. *Kondagari Koneri Reddy.*

for a report from the Police, apart from the provisions of this section.[5] *See* Notes to S. 107, also.

(3) Petition under S. 488 for maintenance which is not a complaint of any offence.[6]

6. Complaint by Court or public servant.—Where the complaint is by a *Court*, it was formerly held that the Magistrate had no power to act under this section because there was already an inquiry and the accused was sent in custody under S. 476 and there was no issue of process to be postponed.[1] The proviso Cl. (*b*) of the amendment of 1923 also specifically made action under this section unnecessary.

This was found to cause many difficulties; also, cases might arise in which an inquiry or investigation should be made before a person is put on trial. Therefore the Legislature again by Act, II of 1926, amended the proviso, under which now, an inquiry or investigation may be directed even in the case of a complaint by a Court under S. 476.

As regards a complaint by a public servant, the section does not make any difference. The Magistrate has just as much right to investigate preliminarily under this section, whether the complaint is filed by a public servant or by any one else.[2]

7. "Authorised to take cognizance".—A Magistrate cannot act under this section unless he has authority to take cognizance of the offence mentioned in the complaint. Thus a Magistrate cannot take cognizance of an offence mentioned in S. 197 without the previous sanction of the Local Government and where he receives a complaint without such sanction, he cannot send the case to a Subordinate Magistrate for inquiry under this section.[1]

8. "Transferred to him under S. 192."—These words are new and were added by the Amendment Act of 1923 "to cover cases which have been transferred to a Magistrate under S. 192 as well as cases of which he has taker cognizance himself".[1] Before this amendment it was held that a Magistrate to whom a case had been transferred for disposal had no jurisdiction to direct an inquiry or investigation under this section.[2] Now this is no longer law and a

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[See (1928) 1928 Lah. 119 (203), *Mansa Neki* v. *Mt. Mam Kuar* (Where the question is left open).]

(5) (1932) 1932 All. 670 (671), *Laxmi Narain* v. *Emperor.*
(1891) 2 Weir 51 (51), *Ekambara* v. *Murugappa.*
(1926) 1926 Mad. 521 (522 to 526): 49 Mad. 315, *Sonjivi* v. *Koneri.*

(6) (1905) 2 Cri. L. Jour. 421 (422): 1905 P. R. 29, *Sardaran* v. *Amir Khan.*
(1928) 111 Ind. Cas. 669 (670) (Lah.), *Makhan Singh* v. *Mt. Harnamo.*
[See also (1888) 11 Mad. 199 (199), *Venkata* v. *Paramma.*]

Note 6.

(1) (1920) 1920 Nag. 64 (65), *Dewidin* v. *Narayana Rao.*
(1907) 5 Cri. L. Jour. 123 (128): 3 L. B. R. 234, *Nur Muhomed* v. *Ko Aung Gyi.*
(1909) 9 Cri. L. Jour. 41 (48): 32 Mad. 49, In re *Aiya Kannu Pillai.*

(2) (1921) 1921 Sind 48 (49): 15 S. L. R. 149, *Bassarmal Awatmal* v. *Emperor* (Public prosecutor).
(1930) 1930 Pat. 30 (31), *Parmanand Bramachari* v. *Emperor* (A Sub-Inspector of Police).

Note 7.

(1) (1931) 1931 Oudh 392 (393, 394), *Lala Bhagirath* v. *Saiyid Ali Hamid Sahib.*

Note 8.

(1) Report of the Select Committee of 1916.
(2) (1914) 22 Ind. Cas. 422 (422) (Cal.), *Mahamad Imamuddin* v. *Debendra Nath.*
(1920) 1920 Pat. 563 (565): 5 Pat. L. J. 47, *Ram Barai Singh* v. *Ram Pratap.*

S. 202, Notes 8—11.

Magistrate to whom a case has been transferred can act under this section.

9. **"May if he thinks fit."**—Under the Codes of 1872 and 1882, it was held that a Magistrate could not act under this section without discrimination[1] and unless he "sees cause or reason to distrust the truth of the complaint".[2] The Code of 1898 gave a little more latitude to the Magistrate's discretion and a Magistrate could act under this section if he was "*not satisfied as to the truth of a complaint*".[3] Even these words were considered too narrow and by the amendment of 1923 the Magistrate could act under this section on any ground "*he thinks fit*". It is thus entirely within the discretion of the Magistrate whether or not an inquiry or investigation under this section should be ordered.[4] A complainant has no *right* to require his complaint to be forwarded to the Police[5] or another Magistrate for investigation or inquiry.

10. **"For reasons to be recorded in writing".**—Where the Magistrate in any case in which he thinks fit, decides to act under this section, he is bound to record his reasons for doing so in writing.[1] As to the effect of a failure to so record the reasons, *see* Note 24, *infra*.

11. **"Postpone the issue of process".**—An order under this section is one by virtue of which the Magistrate decides to postpone the issue of process for compelling the attendance of the accused person, where, for any reason that he thinks fit, he wishes to hold an inquiry or direct an inquiry or investigation into the complaint. He can do this therefore only *before process is issued*. A

Morarji Jivraj v. *Emperor.*

Note 9.

(1) (1881) 1881 All. W. N. 23 (23), *Lallu* v. *Empress.*

(2) (1887) 9 All. 85 (87), *Empress* v. *Puran.*
(1896) Rat. 844 (846), *Empress* v. *Shidlingappa.*
(1873) 20 Suth. W. R. 17 (18), *Queen* v. *Abheen.*
(1879) 4 Cal. L. R. 134 (135), In the matter of *Biyogi Bhagut.*
(1886) 14 Cal. 141 (145), *Baidya Nath Singh* v. *Muspratt.*
(1888) 1888 P. R. No. 24, p. 43 (45), *Narain Singh* v. *Empress.*
(1897) 20 Mad. 387 (387), *Empress* v. *Kannappa Pillai.*
(1902) 2 Weir 241 (242), *Rangachari*, In re.
(1900) 1900 All. W. N. 187 (188), *Empress* v. *Tota Ram.*
[See (1884) 1884 Rat. 206 (206), In re *Chhatrasangji* (Non-existent civil proceedings not good ground for postponing investigation *sine die*).]

(3) (1902) 1902 All. W. N. 195 (195), *Empress* v. *Amta Duba.*
(1900) 27 Cal. 798 (800), *Jhummuck Jha* v. *Pattak Mandal* (Reason to doubt).
(1900) 27 Cal. 921 (924), *Mahdeo Singh* v. *Empress* (Reason not to believe).
(1901) 28 Cal. 652 (661), *Dwaraka Nath* v. *Beni Madhab* (Reason to doubt).
(1900) 4 Cal. W. N. 305 (306), *Budh Nath Mahato* v. *Empress.*
(1921) 1921 Pat. 85 (87), *Gawkaran Lal* v. *Sarjoo Saw* (In case of doubt).
(1910) 11 Cri. L. Jour. 351 (351) (All.), *Chhedi Kandu* v. *Emperor.*
(1913) 14 Cri. L. Jour. 493 (493) (All.), *Ram Pershad* v. *Moti.*
(1914) 22 Ind. Cas. 165 (166) (All.), *Begar* v. *Bansi.*

(4) (1933) 1933 Rang. 271 (272), *U Po Yone* v. *Emperor.*

(5) (1935) 1935 Bom. 76 (78): 59 Bom. 171,

Morarji Jivraj v. *Emperor.*

Note 10.

(1) (1887) 9 All. 85 (87), *Queen* v. *Puran.*
(1900) 1900 All. W. N. 187 (188), *Empress* v. *Tota Ram.*
(1900) 1900 All. W. N. 189 (189), *Queen* v. *Jeto Mal.*
(1902) 1902 All. W. N. 195 (195), *Emperor* v. *Amta Dube.*
(1887) 14 Cal. 141 (146), *Baidyanath* v. *Muspratt.*
(1902) 6 Cal. W. N. 843 (844), *Mrinal* v. *Emperor.*
(1929) 1929 Cal. 176 (177), *Ajoy Krishna* v. *S. G. Bose.*
(1887) 1887 Pun. Re. No. 33, p. 70 (72), *Rallia* v. *Ahsan Shah.*
(1928) 1928 Lah. 88 (89), *Jagindar Singh* v. *Agha Safdar Ali.*
(1897) 20 Mad. 387 (387), *Queen* v. *Kannappa Pillai.*
(1888) 2 Weir 244 (244), *Virabhadrayya* v. *Sorya Naraina.*
(1918) 1918 Pat. 652 (653), *Mushari Ram Manhari* v. *Raj Kishore Lal.*
(1926) 1926 Pat. 34 (35), *Ram Saran Singh* v. *Mohammad Jan Khan.*
(1926) 1926 Sind 194 (196), *M. H. Crowder* v. *L. A. Morrison.*
(1931) 1931 Sind 113 (113, 114), *Dharamdas Lilaram* v. *F. H. Pilchar.*
(1910) 11 Cri. L. Jour. 351 (351) (All.), *Chhedi Kandu* v. *Emperor.*
(1911) 12 Cri. L. Jour. 385 (385): 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor.*
(1912) 13 Cri. L. Jour. 749 (749): 6 S. L. R. 83, *Gaji* v. *Jumanshah.*
(1913) 14 Cri. L. Jour. 493 (493) (All.), *Ram Pershad* v. *Moti.*
(1916) 17 Cri. L. Jour. 396 (397) (Cal.), *Balailall Mookerjee* v. *Pasupati Chatterjee.*
(1917) 18 Cri. L. Jour. 765 (766): 1917 All. 91, *Madho Gin* v. *Rashid Ahmed.*

Magistrate therefore, who *after issue of process*[1] or when the accused is brought under a warrant[2] or after taking evidence[3] holds an inquiry or directs an inquiry or investigation, acts in contravention of the section. After the issue of process he must proceed with the trial. This rule applies equally to the successor of a Magistrate who has issued the process.[4]

Under certain circumstances, however, a Magistrate may properly direct an inquiry under this section even after the issue of process. Where, after the Magistrate issued processes against two accused, if one of them lays a cross-complaint, the Magistrate can properly *rescind the order to issue process* and send the cases to a Subordinate Magistrate for inquiry and report.[5]

When once the Magistrate postpones the issue of process, under this section, he is required to inquire into the case himself or to direct an inquiry or investigation. The fact that there was already a police investigation does not affect his proceedings.[6] Similarly where the Magistrate directs an inquiry under this section, he cannot issue process before he receives the report of the inquiry.[7]

12. Position of the accused.—A person complained against does not become an accused until it has been decided to issue process against him, and he is not entitled to be represented by a pleader during the preliminary enquiry which may be held under this section. If he chooses to attend the proceedings he may, of course, do so like any other member of the public but he has no *locus standi as a party*, the purpose of the law being clearly to exclude him until sufficient ground for proceeding against him has been made out by the complainant.[1] Proceedings under this section are not proceedings *inter partes* but they are instituted and conducted by the Magistrate in order that he may be able to satisfy himself whether there is or is not, any ground for issuing process and it is not until process is issued that the matter becomes a case.[2] Therefore the practice of issuing a notice to the accused before the issue of process[3] or of

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Note 11.

(1) (1912) 13 Cri. L. Jour. 749 (749): 6 S. L. R. 83, *Gaji* v. *Jumansheh.*
(2) (1874) 21 Suth. W. R. 44 (45), *Ramkant* v. *Jadub.*
(1902) 2 Weir 241 (242), *Re Rangachari.*
(3) (1896) 1896 All. W. N. 140 (141), *Empress* v. *Khurran Singh.*
(1900) 1900 All. W. N. 187 (188), *Empress* v. *Tota Ram.*
(1886) 9 Mad. 282 (282, 283), *Sadagopacharya* v. *Raghavachariyar.*
(4) (1886) 9 Mad. 282 (282, 283), *Sadagopacharya* v. *Raghavachariyar.*
(5) (1923) 1923 Cal. 662 (662), *Lalit Mohan Bhattacharjee* v. *Noni Lal Sarkar.*
(6) (1918) 1918 Pat. 350 (350, 351), *Sheonandan Mahton* v. *Emperor.*
(7) (1925) 1925 Cal. 989 (990), *Krishna Bala Dasi* v. *Niroda Bala Dasi.*

Note 12.

(1) (1908) 8 Cri. L. Jour. 20 (23): 4 Nag. L. R. 81, *Sheikh Chand* v. *Mohamed Hanif.*
(1911) 11 Ind. Cas. 311 (312): 38 Cal. 880, *Golap* v. *Bholanath.*
(1934) 1934 Rang. 167 (168), *S. D. Vardon* v. *Hearsey.*
(2) (1926) 1926 Sind 188 (189): 20 S. L. R. 43, *Atmaram Udhowdas* v. *Topandas.*
(1926) 1926 Pat. 34 (35), *Ram Saran Singh* v. *Mohammad Jankhan.*
(1933) 1933 Cal. 447 (448): 60 Cal. 1051, *Fanindra Kumar Das* v. *Rahat Bux Choudhury.*
(3) (1921) 21 Ind. Cas. 703 (705): 37 Mad. 181, *Sheikh Meeran* v. *Ramavelu.*
(1927) 1927 Mad. 19 (20, 21): 49 Mad. 918 (F. B.), *Appa Rao Mudaliar* v. *Janaki Ammal.*
(1927) 1927 Mad. 18 (18, 19): 49 Mad. 926, *Varadarajulu Naidu* v. *Kuppusami Naidu.*
(1913) 14 Cri. L. Jour. 57 (58): 40 Cal. 444, *Bhim Lal Shah* v. *Bisu Singh.*
(1931) 1931 Bom. 524 (525): 55 Bom. 770, *Emperor* v. *Finan.*
(1923) 1923 Cal. 198 (199), *Chandi Charan Mitra* v. *Manindra Chandra Roy.*
(1928) 1928 Lah. 97 (97), *Moti Lal* v. *Emperor.*
(1930) 1930 Rang. 156 (158): 8 Rang. 1, *Dhana Reddy* v. *Emperor.*
(1926) 1926 Sind 194 (196, 197): 21 S. L. R. 293, *M. H. Crowder* v. *L. A. Morrison.*
(1912) 13 Cri. L. Jour. 484 (485): 39 Cal. 1041, *Emperor* v. *Bhika Hossein.*

S. 202, Notes 12—13.

conducting the inquiry in his presence[4] or of hearing arguments on behalf of the accused[5] or of examining him[6] is undesirable and quite irregular and contrary to the spirit of the section and to the general principles of the Code, though such a procedure is not prohibited by the strict letter of the section[7] or may make the inquiry more complete and sometimes satisfy the Magistrate that the case is false.[8] However, if such a procedure is followed by the Magistrate he is not thereby committing an illegality.[9]

13. May inquire into the case himself or direct an inquiry or investigation.—Under this section as it stood before the amendment in 1923 a Magistrate must *himself* conduct the inquiry and cannot direct an *inquiry* to be made by any Subordinate Magistrate or a Police-officer or other person. These persons could only hold a local *investigation*.[1] But in *Amrit Majhi* v. *Emperor*[2] a doubt was raised whether the language of the section did not seem consistent with the long existing practice of referring complaints to Subordinate Magistrates for inquiry and report.

The amendment of 1923, now expressly empowers a Magistrate to direct an inquiry under this section to a Magistrate subordinate to him or an investigation to a Police-officer or such other person as he thinks fit, thus expressly adopting the view held in *Amrit Majhi's Case*.[3] A third Class Magistrate however, even under the amended section, must inquire into the case himself and has no power to direct any inquiry or investigation.

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(4) (1902) 6 Cal. W. N. 843 (844), *Mrinal* v. *Emperor*.
(1920) 25 Cal. W. N. xii (xii), *Baul* v. *Junior, S. I.*
(1911) 12 Cri. L. Jour. 385 (386): 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor*.
[But see (1913) 14 Cri. L. Jour. 3 (4), *Abdul Gaffar Beg* v. *Emperor* (Examination of complainant in presence of accused so as to enable him to cross-examine complainant, held necessary in the circumstances of the case).]

(5) (1925) 1925 Cal. 576 (577), *Bachoo Mia* v. *Anwar Nabi*.
(1912) 13 Cri. L. Jour. 125 (125) (Cal.), *Sandyal* v. *Kunjeshwar Misra*.
(1918) 1918 Pat. 652 (653), *Munshari Ram Manhari* v. *Rajkishore Lal*.
(1916) 17 Cri. L. Jour. 396 (397): 1917 Cal. 462, *Balailall Mookerjee* v. *Pasupati Chatterjee*.

(6) (1923) 1923 Lah. 663 (664), *Narayan Singh* v. *Crown*.
(1928) 1928 Lah. 88 (89), *Jagindar Singh* v. *Agha Safdar Ali Khan*.
[See also (1906) 3 Cri. L. Jour. 138 (140): 32 Cal. 1085, *Sat Narain Tewari* v. *Emperor* (Where it is implied).]
[But see (1934) 1934 Sind 143 (145), *Rewatmal Udhomal* v. *Sajanmal Nehrumal* (Magistrate not to issue notice to accused to show cause against his prosecution—But it is open to Magistrate to hear what the accused has to say and even to accept any documentary evidence on his behalf).]

(7) (1927) 1927 Mad. 18 (18, 19): 49 Mad. 926, *Varadarajulu Naidu* v. *Kuppusami Naidu*.

(8) (1926) 1926 Pat. 34 (35), *Ram Saran Singh* v. *Mahammad Jan Khan*.
(1927) 1927 Mad. 19 (20, 21): 49 Mad. 918, *Appa Rao Mudaliar* v. *Janaki Ammal*.
[See also (1911) 12 Cri. L. Jour. 207 (208) (Cal.), *Sheikh Akbar* v. *Prance*.]

(9) (1928) 1928 Bom. 290 (290): 52 Bom. 448, *Virbhan Bhagaji*, In re.
(1904) 1 Cri. L. Jour. 102 (103) (Bom.), In re *Tukaram Udaram*.
(1931) 1931 Pat. 302 (303), *Mahabir Baitha* v. *Emperor*.
(1931) 1931 Sind 113 (113, 114), *Dharamdas Lilaram* v. *Pilcher*.
(1934) 1934 Oudh 372 (373), *Lala Gobardan Das* v. *Lala Girdhari Lal*.

Note 13.

(1) (1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Hari Charan* v. *Srish Chandra*.
(1916) 17 Cri. L. Jour. 146 (147): 43 Cal. 173: 1916 Cal. 867, *Gangadhar Pradan* v. *Emperor*.
(1922) 1922 All. 211 (212): 44 All. 550, *Emperor* v. *Durga Prasad*.
(1920) 24 Cal. W. N. c (c), *Taranath De* v. *Emperor*.
(1912) 13 Cri. L. Jour. 482 (483): 40 Cal. 41, *Maniruddin Sarkar* v. *Abdul Rauf*.
(1912) 13 Cri. L. Jour. 484 (485): 39 Cal. 1041, *Emperor* v. *Bhika Hoosein*.
(1912) 13 Cri. L. Jour. 704 (705) (All.), *Baij Nath* v. *Raja Ram*.
(1920) 1920 Nag. 64 (66), *Devidin* v. *Narayan Rao*.
(1917) 1917 Pat. 15 (16, 17), *Baij Nath Singh* v. *Emperor*.

(2) (1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor*.

(3) (1919) 1919 Cal. 59 (60): 46 Cal. 854, *Amrit Majhi* v. *Emperor*.

S. 202. Notes 13—15.

Under this section, a Magistrate has the option of only one out of the two alternatives, namely, either to inquire into the case himself or direct an inquiry or investigation. He cannot have recourse to *both*. Where therefore a Magistrate chose to inquire into the case himself it was held that he could not direct a local investigation.[4] Similarly where he has ordered an investigation by another person, he cannot follow it up by an inquiry himself.[5] But it has been held in the Calcutta High Court that a Magistrate, *if he is dissatisfied* with the result of an investigation directed by him, may hold an inquiry himself.[6]

An inquiry under the section can be directed only to a *Subordinate Magistrate* and not to a superior Magistrate[7] or a Magistrate of the same class.[8]

The Subordinate Magistrate directed to inquire, need not be competent to entertain the complaint, he is asked to inquire into, provided the Magistrate who directs the inquiry is competent to entertain and dispose of the same.[9]

Once a Magistrate has directed an inquiry by a Subordinate Magistrate under this section, he cannot recall the proceedings before the inquiry is completed.[10] But it has been held that he can *stay* the proceedings.[11]

14. "Inquiry."—The inquiry contemplated by this section does not necessarily mean an inquiry by examining witnesses, or by holding an investigation into the case or in any particular form. The Magistrate can do it in any way he thinks proper.[1] He is at perfect liberty to look into the police-records and if he is satisfied that the complaint is groundless, he can dismiss the complaint.[2] But where he examines witnesses in such an inquiry and evidence which is opposed to the complainant's allegations is brought before him he should give an opportunity to the complainant to explain or to meet such evidence.[3] It is in the discretion of the Magistrate to allow the complainant to be represented by a vakil or not in such an inquiry.[4]

15. Evidence in the inquiry—Sub-S. (2-A).—The evidence in an inquiry held under this section need not be confined to the examination of the

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(4) (1922) 1922 All. 211 (212, 213): 44 All. 550, *Emperor* v. *Durga Prasad*.
(1928) 1928 Lah. 88 (89), *Jagindar Singh* v. *Agha Safdar Ali Khan*.
(1917) 18 Cri. L. Jour. 765 (765): 1917 All. 91, *Madho Gir* v. *Rashid Ahmad*.

(5) (1913) 14 Cri. L. Jour. 493 (494) (All.), *Ram Pershad* v. *Moti*.

(6) (1910) 11 Cri. L. Jour. 525 (526): 38 Cal. 68, *Haricharan Gorai* v. *Srish Chandra Sadhukan*.

(7) (1912) 13 Cri. L. Jour. 484 (485): 39 Cal. 1041, *Emperor* v. *Bhika Hossein*.

(8) (1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Ali Mohammad* v. *Emperor*.

(9) (1902) 6 Cal. W. N. 295 (297), *Surjya Hariani* v. *Emperor*.

(10) (1933) 1933 Nag. 374 (376), *Emperor* v. *Thulasi Das* (Inquiry not complete till all witnesses whom complainant wants to examine have been examined).

(11) (1934) 1934 Sind 143 (144), *Rewatmal Udhomal* v. *Sajanmal Mehrumal*.

Note 14.

(1) (1924) 1924 Pat. 797 (797), *Ramanand Lal* v. *Ali Hassan*.
[But compare (1934) 1934 Oudh 88 (89), *Sarjoo Prasad* v. *Ram Lal* (Dismissal of complaint after merely making some oral inquiries without examining any one on oath is illegal and irregular).]

(2) (1924) 1924 Pat. 797 (799), *Ramanand Lal* v. *Ali Hassan*.
(1869) 11 Suth. W. R. 54 (55), *Empress* v. *Rusick Monee*.
[But compare (1912) 13 Cri. L. Jour. 125 (125) (Cal.), *Sandyal* v. *Kunjeswar Misra* (He must give complainant 'opportunity' to prove case—Dismissal of complaint merely on basis of statements of accused's lawyer or of papers filed by accused with Police is improper).]

(3) (1928) 1928 Mad. 135 (136), *McCarthy* v. *Shannon*.
(1912) 13 Cri. L. Jour. 125 (125) (Cal.), *H. P. Sandyal* v. *Kunjeshwar Mistra*.

(4) (1871) 8 Bom. H. C. R. 202 (204), *Bindachari* v. *Dracup*.

S. 202, Notes 15—17.

complainant alone. The section leaves it to the discretion of the Magistrate to examine such witnesses and make such enquiries as he thinks fit.[1] There is nothing to prohibit him from examining witnesses whom he knows to be able to throw light on the matter or from importing even his own personal knowledge into it.[2]

Where a Magistrate enquiring into a case under this section examines witnesses, he may, under sub-S. (2-A), if he thinks fit, take the evidence of such witnesses *on oath*. This provision was added by the Amendment Act of 1923 to put an end to the long existing conflict of views as to whether such an inquiry is a *judicial proceeding* within the meaning of S. 476 so as to make the complainant liable to prosecution for making a false complaint or for perjury. The Calcutta[3] and Patna[4] High Courts held that such an inquiry was a *judicial proceeding* while the Madras High Court held that it was not.[5] The Lahore High Court doubted if it was a judicial proceeding.[6] The present sub-S. (2-A) gives effect to the Calcutta and Patna view and the Madras view is no longer correct. An inquiry under this section therefore is now a judicial proceeding.[7]

16. Magistrate holding inquiry, if disqualified from trying.—There is nothing in the Code which disqualifies a Magistrate who holds a preliminary inquiry under this section from trying the case himself when there is nothing to indicate that he initiated or directed the proceedings or took any personal interest in the matter of the complaint presented before him.[1] The fact that a Subordinate Magistrate expressed his opinion in submitting a report, in a case referred to him under this section, is no bar to his holding the trial on an order by the District Magistrate making over the case to him for the purpose.[2]

17. Investigation.—A Magistrate, may, if he thinks fit, direct an investigation by a Police-officer or by any other person for the purpose of ascertaining the truth or falsehood of the complaint. Before the amendment of 1923, the Magistrate could direct a *local* investigation even by a Subordinate Magistrate; but now see S. 4-1 (*l*).

The words "*local investigation*" were not restricted to the investigation of the physical features only but meant an inquiry into the truth or falsity of the complaint. The word 'local' was used with a view to hold the investigation in the locality for the convenience of the parties but the investigation was not confined to the investigation of the locality itself.[1] This is also evi-

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Note 15.

(1) (1893) Rat. 669 (669), In re *Kankuchand.*
(2) (1930) 1930 Mad. 443 (444), *Nagi Reddy* v. *Emperor.*
(3) (1909) 9 Cri. L. Jour. 295 (296): 36 Cal. 72, *Kanchan Garhi* v. *Ram Kishun Mundal.*
(1905) 2 Cal. L. Jour. 65-*n* (65-*n*), *Ambica Roy* v. *Emperor.*
(4) (1924) 1924 Pat. 138 (139), *Banshidar Marwari* v. *Emperor.*
(5) (1911) 12 Cri. L. Jour. 323 (324) (Mad.), Re *Kachimuder Labbai* (Ayling, J. contra at p. 325).
(1912) 13 Cri. L. Jour. 209 (212): 39 Mad. 750, *Bapu of Audimulam* v. *Bapu.*
(1902) 2 Weir 167 (167, 168), *Velu Nair* v. *Gnana Prakasam Pillai.*
(1900) 23 Mad. 223 (224), *Empress* v. *Venkataramanamma.*
(6) (1919) 1919 Lah. 37 (38), *Maqbul Ahmad* v. *Emperor.*
(7) (1904) 1 Cri. L. Jour. 118 (119) (Mad.), *Public Prosecutor* v. *Palliyathodi Rayan.*

Note 16.

(1) (1897) 24 Cal. 167 (168), *Ananda Chunder Singh* v. *Basu Mudh.*
(1923) 1923 Rang. 65 (65): 1 Bur. L. J. 32, *Mrs. May Bondville* v. *Emperor.*
(1898) 23 Cal. 328 (334), *Sudhama Upadhya* v. *Empress.*
(2) (1900) 4 Cal. W. N. 604 (605), *Beni Madhab Roy* v. *Rosaraj Gossami.*

Note 17.

(1) (1918) 1918 Pat. 172 (172, 173), *Munshi Mian* v. *Emperor.*
(1920) 1920 Nag. 64 (65), *Devi Din* v. *Narayana Rao.*

dent from the definition of the term in S. 4-1 (*l*) of the Code where the investigation by way of *collection of evidence* is to be conducted by a Police-officer or by any person other than a Magistrate. A local investigation therefore is merely a proceeding for the collection of evidence on the spot for the purpose of ascertaining if the complaint is true or false.[2] It can be ordered when there is a quarrel about boundaries or any matter of that kind.[3] S. 202, Notes 17—18.

The word 'local' has been deleted in 1923 indicating clearly that the investigation is not confined to mere inspection of the locality.

18. "Investigation by police."—

(1) *Trivial and non-cognizable cases.*—It is not advisable for Magistrates to make indiscriminate use of police agency for the purpose of ascertaining matters as to which they are bound to form their own opinion.[1-a] This is specially so in cases regarding offences not cognizable by the police.[1]

Similarly in trivial cases also except for special reasons, one or the other modes of inquiry permitted by the section should be adopted[2] as it is an abuse of the powers given by this section to refer such petty cases (*e. g.*, an assault of a petty character) to the police for inquiry, the proper course for Magistrates in such cases is to take action on the complaint at once.[3]

(2) *Cognizable cases.*—A police investigation under this section is different from the investigation referred to in S. 156 *ante*. A Magistrate in cognizable cases, after he has taken cognizance of an offence under S. 190-1 (*a*) (*i.e.*, on complaint) can only order an investigation and report under this section but cannot order an inquiry under S. 156, and direct the police to submit a charge-sheet. That means a Magistrate, cannot proceed under Chapter XIV after acting under Chapter XVI.[4] When a complaint is referred under this section by the Magistrate for investigation, the police need no more than make a report,[5] but this does not debar them from exercising their ordinary powers of arrest and investigation and from sending up the accused for trial under a charge-sheet.[6] The decision

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(2) (1920) 1920 Pat. 563 (565), *Ram Barai* v. *Ram Pratap*.
(3) (1912) 13 Cri. L. Jour. 704 (705) (All.), *Baij Nath* v. *Raja Ram*.

Note 18.

(1-a) (1933) 1933 Sind 339 (340): 27 Sind L. R. 387, *Mahliomal Dansing* v. *Gianchand Salamatrai*.
(1) G. R. and C. O., High Court of Patna (Cr.), Vol. I, Chap. IV, S. 12.
Rules and Orders, Lahore High Court (1931), Vol. III, Chap. I-B, para. 4.
[See also Cri. Cir. Judicial Commissioner, Central Provinces (1929), Circular No. 7, para. 5.
Police Regulations, Bengal (1928), Vol. I, S. 42.]
(2) Rules and Orders, Lahore High Court (1931), Vol. III, Chap. I-B, para. 4.
(3) (1894) 1894 Pun. Re. No. 19, p. 67 (67), *Ganesha* v. *Empress*.
[See also (1888) 12 Bom. 161 (163), In re *Jankidad Guru Sitaram*.]
(4) (1928) 1928 Cal. 24 (25): 54 Cal. 303, *Isaf Nasya* v. *Emperor*.
(1928) 1928 Pat. 359 (361), *Ulfat Khan* v. *Emperor*.
(1922) 67 Ind. Cas. 499 (499) (Pat.), *Rampabtar Singh* v. *Kasim Ali Khan*.
(5) (1931) 1931 Mad. 770 (770): 54 Mad. 598, *Gopal Naick* v. *Alagirisami Naick*.
(6) (1931) 1931 Mad. 770 (770): 54 Mad. 598, *Gopal Naick* v. *Alagirisami Naick*.
(1932) 1932 Lah. 579 (580): 33 P.L.R. 840, *Rashid Ahmad* v. *Emperor*.
(1933) 1933 Sind 136 (137): 27 S.L.R. 67, *Emperor* v. *Ghulam Nabi Allah Wadhayo*.
(1923) 1923 Pat. 547 (548, 549): 2 Pat. 379, *Emperor* v. *Bhola Bhagat*.
(1878) 2 Cal. L. R. 374 (376), *Bepuoola* v. *Nazin Sheikh*.

S. 202, Notes 18–19.

of the Bombay High Court in the following case[7] holding that the police are debarred from doing so, was dissented from and disapproved in the Madras, Lahore and Sind cases referred to above and, it is submitted, is not correct.

(3) *Where the accused is a Police-officer.*—If the accused is himself a Police-officer, it is not proper nor is it contemplated that the Magistrate should call for a report from the Police-officer, who is himself the accused[8] or from a superior or other Police-officer.[9] In such cases the Magistrate himself should hold the inquiry[10] or direct a local inquiry by a Magistrate.[11] Complaints against Police-officers should be handled with the greatest care. In such cases, the complainant should be given every facility to prove his allegations.[12]

It is not desirable that a complaint against a person who is alleged to have acted in collusion with the police should be handed over to the police for investigation.[12-a]

(4) *Report.*—The report called for under this section, should form part of the record[13] and as such a copy thereof can be given to the accused.[14] The report should be submitted to the same Magistrate who had ordered the investigation and not to another Magistrate.[15]

19. 'Such other person.'—The Magistrate may direct an investigation by *such other person as he thinks fit.* A clerk can be so directed.[1] '*Such other person*' under this section includes a panchayat within the meaning of the U. P. Village Panchayat Act.[2] A master is not a *fit person* to be directed to investigate and make a report in a case of complaint against his servant.[3]

It is illegal for a Magistrate to call upon the accused himself to make

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(1934) 1934 Sind 20 (21), *Atmaram* v. *Emperor.*

(7) (1929) 1929 Bom. 72 (73, 74): 53 Bom. 339, *Nur Mahomed Rajmahomed* v. *Emperor.*

(8) (1887) 14 Cal. 141 (146), *Baidyanath Singh* v. *Muspratt.*

(1920) 1920 Pat. 655 (656), *Har Narain Halwai* v. *Kariman Ahir.*

(9) (1884) 1884 All. W. N. 47 (47), *Jalaluddin* v. *Mohammad Khalil* (Other Police-officers).

(1920) 1920 All. 77 (78), *Harihar Prasad* v. *Emperor* (Superior Police-officers).

(1920) 1920 All. 91 (92), *Musammat Shama* v. *Eza Ahmad* (Superintendent of Police).

(1920) 1920 All. 125 (125), *Mewa Lal* v. v. *Emperor* (Another Police-officer).

(1900) 4 Cal. W. N. ccxxi (ccxxii), *Sarat Chandra* v. *Aghore* (Police).

(1928) 1928 Lah. 88 (89), *Jagindar* v. *Agha Sabdar Ali Khan* (Police).

(1919) 1919 Oudh 395 (395, 396): 22 Oudh Cas. 321, *Mt. Mahadei* v. *Ram Sahai* (Police).

(1905) 2 Cri. L. Jour. 51 (53) (Cal.), *Haladar Bhumij* v. *Sub-Inspector of Police* (District Superintendent of Police).

(10) *Ibid.*
[See also (1897) 20 Mad. 387 (388): 2 Weir 240, *Empress* v. *Kanappa Pillai.*]

(11) (1919) 1919 Pat. 495 (495), *Narain Singh* v. *Emperor.*

(12) (1926) 1926 Mad. 288 (288), *Devasikamani Mudaliar* v. *Narayana Prasad.*

(12-a) (1933) 1933 Sind 339 (340): 27 Sind L. R. 387, *Mahliomal Dansing* v. *Gianchand Salamatram.*

(13) (1887) 14 Cal. 141 (146), *Baidyanath* v. *Muspratt.*

(14) (1931) 1931 Mad. 429 (429), *Muthu Kumara Pillai* v. *Emperor.*

(15) (1918) 1918 Lah. 123 (124), *Thakar Singh* v. *Kirpal Singh.*

Note 19.

(1) (1909) 9 Cri. L. Jour. 295 (296): 36 Cal. 72, *Kanchan Garhi* v. *Ram Kishun Mundul.*

(2) See S. 72 (1) (*a*), U. P. Village Panchayat Act.
[See also (1926) 1926 All. 193 (193), *Kadhori* v. *Emperor.*]

(3) (1915) 28 Ind. Cas. 656 (656) (Cal.), *Emperor* v. *Rabbi.*

(1905) 10 Cal. W. N. xxxviii (xxxix), *Neckchand* v. *Emperor.*

a report and act upon it.[4]

S. 202, Notes 19—21.

20. Examination of the complainant—Proviso.—The proviso to sub-S. 1 makes it obligatory on the Magistrate to examine the complainant on oath, before directing an inquiry or investigation under this section save in the case where the complaint is by a Court. Under this section before it was amended in 1923 such an examination was a pre-requisite, whether the Magistrate intended to make a personal inquiry himself or whether he intended to make a direction for an inquiry or investigation. The present proviso requires such examination to be made only where a *direction* for enquiry is to be made and not where the Magistrate intends to make a personal inquiry himself.

A complaint therefore cannot be sent for inquiry or investigation unless the complainant has been examined on oath[1] and if any report of such an enquiry or investigation is called for without such examination, and is made, it is without jurisdiction and cannot form the basis of any further action and a complainant who was not examined cannot be prosecuted with regard to his complaint, dismissed on such a report.[2]

21. Powers of the inquiring or investigating officer.—

1. A *Magistrate* inquiring into a case can exercise all the powers of a Magistrate including the power of taking evidence of witnesses on oath. But he has not the powers of a Police-officer to keep an accused in custody for the purpose of an inquiry.[1]

2. A *Police-officer* making an investigation under this section has all the powers conferred on him under Chapter XIV. He

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(4) (1887) 14 Cal. 141 (146), *Baidyanath* v. *Muspratt*.
(1898) Rat. 954 (955), Re *Subba Rao Ramachandra*.
(1899) 3 Cal. W. N. 17 (18), *Satyacharan* v. *Chairman of Uttarpara Municipality*.
(1920) 1920 Pat. 655 (656), *Harnarayan Halwai* v. *Kariman Ahir*.
[But see (1906) 3 Cri. L. Jour. 327 (328): 28 All. 421, In re *Dukhi Kewalt* (Where the order calling for a report was considered as an order to show cause and hence not illegal).]

Note 20.

(1) (1924) 1924 All. 664 (664), *Rekha Chamma* v. *Emperor*.
(1884) 1884 All. W. N. 47 (47), *Jalaluddin* v. *Md. Khalil*.
(1900) 1900 All. W. N. 189 (189), *Empress* v. *Jeto Mal*.
(1902) 1902 All. W. N. 195 (195), *Emperor* v. *Amta Dube*.
(1886) Rat. 368 (369), In re *Bai Kashi*.
(1898) Rat. 954 (955), In re *Subrao Ramchandra*.
(1887) 12 Bom. 161 (163), Re *Janki Das*.
(1886) 13 Cal. 334 (336), *Umer Ali* v. *Saffer Ali*.
(1900) 27 Cal. 798 (800), *Jhumuck* v. *Pathuk*.
(1901) 28 Cal. 652 (661), *Dwarkanath* v. *Beni*.
(1902) 29 Cal. 410 (412), *Kuldip* v. *Budhan*.
(1879) 4 Cal. L. R. 134 (135), In re *Biyogi Bhagat*.
(1929) 1929 Pat. 473 (475), *Bharat Kishore* v. *Judhistir*.
(1914) 1914 Sind 159 (159): 8 S. L. R. 21, *Emperor* v. *Nathu Mehar*.
(1906) 3 Cri. L. Jour. 471 (473) (Cal.), *Ram Adhin Chowdhry* v. *Wahed Ali*.
(1910) 11 Cri. L. Jour. 351 (351) (All.), *Chedi Kandu* v. *Emperor*.
(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor*.
(1888) 2 Weir 244 (244), *Virabhadrayya* v. *Vyricherla*.
(1919) 1919 Pat. 319 (320), *Iqbal Khan* v. *Emperor*.
(1921) 1921 Sind 84 (84): 15 Sind L. R. 200, *Mulchand Pamandar* v. *Kussoomal Ramchand*.

(2) (1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Ali Mohamad* v. *Emperor*.
(1900) 27 Cal. 921 (924), *Mahadeo* v. *Empress*.
(1903) 30 Cal. 923 (925, 926), *Lokenath* v. *Sanyasi*.
(1900) 4 Cal. W. N. 305 (306), *Budhnath Mahato* v. *Empress*.
(1935) 1935 All. 745 (745), *Bhagwan Das* v. *Emperor*.
[But see (1934) 1934 Pat. 156 (157, 158), *Raghunandan Lal* v. *Emperor* (Failure to examine complainant is only irregularity—User of forged document in course of Police inquiry directed by Magistrate is used in course of proceeding before Magistrate's Court and offence cannot be taken cognizance of without complaint under S. 476).]

Note 21.

(1) (1930) 1930 All. 259 (259, 260): 52 All. 457, *Anand Behari Lal* v. *Emperor*.

S. 202, Notes 21—23.

can make a full inquiry from the complainant and his witnesses and the defendant and his witnesses.[2]

3. *Any other person* directed to make an investigation has all the powers of an Officer-in-charge of the Police-station except the power of arrest without warrant,[3] *i.e.*, the powers conferred under Ss. 55, 56, 94, 127, 128, 153, 156 and 157 *supra*; the power to arrest without warrant remain with the Magistrate and a Police-officer.[4]

22. **Police in the towns of Calcutta and Bombay—Sub-S. 3.**—*See* notes to S. 1 *supra*.

23. **Revision.**—If any irregularity in procedure under this section has not resulted in a miscarriage of justice, the High Court will not make any order in revision, which can result only in harassment to the parties and the waste of public time.[1] The following are instances of such irregularities where the High Court will not interfere unless there is a failure of justice.

1. The omission of the Magistrate to record reasons for postponing issue of process.[2]
2. Requiring the accused to attend at the enquiry or his examination thereat, and allowing of cross examination and arguments *inter parties*.[3]
3. Omission to examine the complainant under the proviso.[4]
4. Mere inadequacy of the inquiry; the High Court will not interfere with the details of an inquiry or investigation.[5]
5. Where the Magistrate has exercised his discretion under this section to postpone the issue of process[6] or where the Magistrate does not record the statements of witnesses examined before him but had the statements made before the police.[7]

Where however, in a case where the inquiry is made by the police in a perfunctory manner and the report is considered by the Magistrate also in a perfunctory manner the High Court will interfere and insist on the provisions

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(2) (1907) 5 Cri. L. Jour. 83 (84): 33 Cal. 1282, *Debi Bux Shroff* v. *Jutmal Dungarwal*.
(3) (1928) 1928 Bom. 290 (291): 52 Bom. 448, In re *Virbhan Bhagaji*.
(4) (1932) 1932 Pat. 72 (78), *Raghunath Puri* v. *Emperor*.

Note 23.

(1) (1918) 1918 Pat. 350 (351), *Sheonandan Mahton* v. *Emperor*.
(2) (1917) 18 Cri. L. Jour. 765 (766) (All.), *Madhogir* v. *Rashid Ahmad*.
(1931) 1931 Bom. 524 (525): 55 Bom. 770, *Emperor* v. *Finan*.
(1929) 1929 Cal. 176 (177), *Ajoy Krishna Sarkar* v. *S. G. Bose*.
(1901) 2 Weir 244 (245), *Venkatasulu Naidu* v. *Durvasa Rangayan*.
(1902) 25 Mad. 546 (548), *Emperor* v. *Alagiriswami*.
(1909) 10 Cri. L. Jour. 117 (118) (Mad.), *Rangammal* v. *Krishnamachari*.
(1911) 12 Cri. L. Jour. 463 (464) (Mad.), *Arula Kotiah*, In re.
(1918) 1918 Pat. 652 (653), *Mushari Ram Manhari* v. *Raj Kishore Lal*.
(1926) 1926 Pat. 34 (34), *Ramsaran* v. *Md. Jan Khan*.
(1931) 1931 Sind 113 (113, 114), *Dharamdas Lila Ram* v. *Pilchar*.
(3) (1928) 1928 Lah. 97 (97), *Motilal* v. *Emperor*.
(1918) 1918 Pat. 652 (653), *Ram Manhari* v. *Raj Kishore Lal*.
(1931) 1931 Pat. 302 (303), *Mahabir* v. *Emperor*.
(1926) 1926 Pat. 34 (35), *Ram Saran* v. v. *Md. Jan Khan*.
(1926) 1926 Sind 188 (189): 20 S. L. R. 43, *Atmaram* v. *Topandas*.
(4) (1914) 1914 Sind 159 (159): 8 S. L. R. 21, *Emperor* v. *Nathu Mehar*.
(1929) 1929 Pat. 473 (475), *Bharat Kishore* v. *Judhistir*.
[But see (1919) 1919 Pat. 319 (320), *Eqbal Khan* v. *Emperor* (An earlier case, not referred to in the Full Bench decision cited above and holding that it is an illegality).]
(5) (1930) 1930 Pat. 30 (32), *Parmanand Brahmachari* v. *Emperor*.
(6) (1923) 1923 Lah. 663 (664), *Narayan Singh* v. *Crown*.
(7) (1925) 1925 Pat. 584 (584), *Tilakdhari Singh* v. *Misri Singh*.

of the section being strictly complied with, though where the inquiry has been carefully made and considered, it will refuse to interfere.[8] S. 202. Note 23.

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after examining the complainant and considering the result of the investigation (if any) made under S. 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Dismissal of complaint.

S. 203.

203.* The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, *after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under* S. 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Dismissal of complaint.

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*(CODE OF 1882—S. 203.)

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under S. 202, there is, in his judgment, no sufficient ground for proceeding.

Dismissal of complaint.

(CODE OF 1872—S. 147, Para. 1.)

147. The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

Dismissal of complaint.

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(CODE OF 1861—Ss. 67 and 180.)

Magistrate how to proceed on complaint.

67. * * * * *

If in the judgment of such Magistrate there be no sufficient ground for proceeding, he shall dismiss the complaint.

Postponement of issue of process.

180. * * * *

Nothing contained in this section shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

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(8) (1918) 1918 Pat. 350 (351), *Sheonandan Mahton* v. *Emperor*.

S. 203, Note 1.

SYNOPSIS.

	Note No.
I SCOPE OF THE SECTION	1
II "MAY DISMISS THE COMPLAINT"	2
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(2) ORDERS ON COMPLAINTS NOT TO BE DELAYED ..	4
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Other Topics.

Competency of Courts to dismiss complaints. See Note 6.

Duty of Magistrate before dismissing the complaint. See Note 8, Note 5, Pts. 3-5.

Examination of the complainant. See Note 8.

Power to rehear the same or fresh complaint. See S. 403.

1. Scope of the section.—This section gives large powers to a Magistrate to dismiss a complaint *without issuing a process.*[1] It does not apply where process *has been issued,* the proceeding in such cases falling under the next chapter.[2] Nor does it apply where the proceeding is not one which is initiated on a *complaint,*[2-a] *e.g.,* proceedings under S. 107[3] or S. 552[4] of the Code.

The materials on which the Magistrate is to act are expressly limited by the section to—

(1) the statement on oath (if any) of the complainant, and

Section 203—Note 1.

(1) (1887) 14 Cal. 141 (144), *Baidyanath* v. *Muspratt.*
(1871) 6 Mad. H. C. App. xv (xv).
(1864) Suth. W. R. 33 (33), Re *Huronath.*
(1934) 1934 All. 51 (52): 56 All. 285, *Bhagwan Das* v. *Emperor.*
(1934) 1934 Pat. 548 (549), *Jotindra Nath Mukerji* v. *Radha Krishna Budhia.*

(2) (1891) Rat. 544 (545), *Empress* v. *Budhunbhai.*
(1868) 10 Suth. W. R. 61 (61), *Beelash* v. *Makroo.*
(1897) 20 Mad. 388 (388), *Empress* v. *Sinnai Goundan.*
(1886) Weir 3rd Edn. 879 (880), *Muttusell Muttiriyan.*

(2-a) (1932) 1932 Cal. 287 (287), *Sheikh Abdullah* v. *Emperor* (Application to have Police investigation expedited is not complaint and this section does not apply to such application).
(1905) 2 Cri. L. Jour. 421 (422): 1905 Pun. Re. 29, *Sardaran* v. *Amir Khan* (Application under S. 488—Section does not apply).

(3) (1924) 1924 Lah. 630 (630), *Shamsuddin* v. *Ram Dayal.*
(1928) 1928 Lah. 694 (694), *Hari Singh* v. *Jagta.*
(1931) 1931 Lah. 185 (185), *Kirpa Ram* v. *Durga Das.*

(4) (1902) 4 Bom. L. R. 609 (611), *Thakore Das Munchharam* v. *Bhagwan Das Madhavdas.*

(2) the result of any investigation or inquiry under S. 202[5] and anything outside it must be discarded.[5-a]

S. 203, Notes 1—2.

Thus the Court cannot consider the statements of witnesses examined by the Police[5-b] or the evidence adduced in a counter case[5-c] or the result of a Police inquiry not ordered by the Magistrate[5-d] or on the result of an inquiry on a previous petition[5-e] or on the result of investigation ordered under S. 202 but not held in compliance with its terms[5-f] again the Court cannot ordinarily permit the opposite party to appear and argue that process should not issue. Where, however, the complainant has obtained an order for the seizure of the opposite party's books and for restraining him from operating on his banking account, the opposite party can appear and ask that such orders should be vacated.[6] Where a complaint relates to an offence for the prosecution of which previous sanction under S. 197 is necessary it has been held that the proper procedure where such sanction does not exist is to *dismiss* the complaint under this section.[6-a] (*See* Notes under S. 197).

This section does not apply to complaints under the Merchant Shipping Act (XXI of 1923) which cannot therefore be dismissed under this section.[7]

2. "May dismiss the complaint".—Where a complaint is made to a Magistrate he has either to dismiss it under this section or issue process under S. 204, *infra*.[1] He cannot pass any other kind of order. Thus he cannot direct the Police to submit a charge-sheet to some other Magistrate[2] or submit the complaint to the District Magistrate, after disbelieving the complaint.[3]

Where a Magistrate, dismisses a complaint under this section, there must be a specific order to that effect.[4]

The following orders have been held to be dismissals of complaints under this section:—

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(5) (1932) 1932 Cal. 697 (697), *J. K. Sinha* v. *Hemanta Kumar Sinha.*
[See also (1889) 13 Bom. 600 (603), In re *Ganesh Sathe.*
(1900) 27 Cal. 921 (924), *Mahadeo Singh* v. *Empress.*
(1926) 1926 Cal. 795 (797): 53 Cal. 606, *Subal Chandra Namadas* v. *Ahadullah Sheikh.*
(1867) 8 Suth. W. R. 12 (13), *Empress* v. *Harak.*]

(5-a) (1907) 6 Cri. L. Jour. 85 (85, 86) (Bom.), *Mustafa* v. *Motilal.*

(5-b) (1876) 25 Suth. W. R. 10 (10), *Syed Nissar* v. *Ramgolam.*

(5-c) (1924) 1924 Cal. 813 (814), *Garibulla* v. *Sadar.*
(1933) 1933 Sind 395 (395), *Maughammal Vishindas* v. *Emperor* (Dismissal after merely seeing Police papers without giving complainant opportunity to substantiate his charges is bad).

(5-d) (1930) 1930 Rang. 226 (227), *Maung Ko* v. *Maung Set.*
(1868) 9 Suth. W. R. 21 (21), *Baroda Kant* v. *Kali.*

(5-e) (1914) 22 Ind. Cas. 165 (166) (All.), *Baker* v. *Banji.*

(5-f) (1886) 9 All. 85 (87), *Empress* v. *Puran.*
(1900) 27 Cal. 921 (924), *Mahadeo Singh* v. *Empress.*
(1901) 4 Oudh Cas. 127 (132), *Ram Sarup* v. *Emperor.*
(1888) 2 Weir 244 (244), *Virbhadrayya* v. *Viricherla.*
(1899) 4 Cal. W. N. 305 (306), *Budhnath* v. *Empress.*
(1920) 1920 Pat. 655 (656), *Har Narain Halwai* v. *Kariman Ahmir.*
(1921) 1921 Pat. 302 (303), *Tiloki Mahaton* v. *Emperor.*
(1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Ali Mohammad* v. *Emperor.*
(1916) 35 Ind. Cas. 828 (829): 1917 Cal. 462, *Balai Lal* v. *Pashupati.*

(6) (1932) 1932 Cal. 697 (697), *J. K. Sinha* v. *Hemanta Kumar Sinha.*

(6-a) (1934) 1934 Rang. 238 (239): 12 Rang. 530, *Kyaw Htin* v. *Ah Yoo.*

(7) (1933) 1933 Cal. 647 (647), *Jafar Ali* v. *James Finlay and Company.*

Note 2.

(1) (1927) 1927 Mad. 19 (20): 49 Mad. 918 (F. B.), *Appa Rao Mudaliar* v. *Janikiammal.*
(1886) 13 Cal. 334 (336), *Umer Ali* v. *Safer Ali.*
(1930) 1930 Rang. 226 (227), *Maung Ko* v. *Maung Set.*

(2) (1928) 1928 Cal. 24 (25): 54 Cal. 803, *Basanta Kumar* v. *Khirode Chandra.*

(3) (1902) 6 Cal. W. N. 843 (844), *Mrinal* v. *Emperor.*

(4) (1869) 12 Suth. W. R. 53 (54), *Empress* v. *Bullias.*
(1928) 1928 Bom. 290 (291): 52 Bom. 448, In re *Virbhan Bhagaji.*

S. 203, Notes 2—4.

(1) An order refusing to issue process on a complaint.[5]

(2) An endorsement on a complaint. "Enter as false no prosecution".[6]

(3) An order staying proceedings against some accused while proceeding with the case against others; in this case there is dismissal of the complaint so far as the foremen are concerned.[7]

(4) An order holding the complaint to be false and calling upon the complainant to show cause against his prosecution.[8]

The following orders have been held not to be dismissals of complaints under this section:—

(1) Where a charge is made to the Police and is repeated in a complaint before the Magistrate, and the Magistrate passes a departmental order to the Police "show as false" but no order is passed on the complaint itself.[9]

(2) A direction to the Police after a complaint was referred to them that the complaint may be struck off the Police file.[10]

(3) An order expunging a charge from the list of reported offences.[11] In this case there is no complaint at all to be dismissed.

(4) An endorsement on the complaint "Notice is discharged".[12]

(5) A refusal to take cognizance of an offence for want of sanction under S. 195.[13]

(6) An order that the "accused is warned".[14]

(7) An order of reference to arbitration, as it is not in the powers of a Magistrate to make such a reference.[15]

(8) An order withdrawing process once issued.[15-a]

3. **Magistrate.**—The word "Magistrate" must mean a Magistrate to which the Code applies. The Code does not apply to proceedings before Village Magistrates. (*See* S. 1, *ante*) and a dismissal by such Magistrate of such a proceeding is not dismissal of a complaint under this section.[1]

4. **Orders on complaint not to be delayed.**—There is nothing in the Code to show that the Magistrate must, *at once,* consider the complaint.[1] He must, however, pass orders as expeditiously as possible; it will be improper to

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(5) (1902) 29 Cal. 457 (459), *Girish Chunder Ghose* v. *Emperor.*
(1923) 1923 Cal. 198 (199), *Chandi Charan* v. *Manindra* (Where it was so assumed).
[But see (1907) 11 Cal. W. N. ccxviii (ccxix), *Akhoy Kumar* v. *Debnath.*
(1900) 27 Cal. 658 (660), *Her Kishore* v. *Jugal Chunder* (In this case the prosons against whom process was refused, were not mentioned in the complaint).]

(6) (1918) 1918 Pat. 270 (271), *Sadhu Charan Roy* v. *Balaiswami.*

(7) (1898) 2 Cal. W. N. 290 (291, 292), *Inderjit Singh* v. *Thakur Singh.*

(8) (1917) 37 Ind. Cas. 36 (37): 1917 Pat. 15, *Baijnath* v. *Emperor.*

(9) (1879) 4 C. L. R. 413 (416), *Nasibunnissa* v. *Sheik Erad.*
(1879) 4 C. L. R. 534 (536, 537), *Sheikh Erad* v. *Nasibunnissa.*

(10) (1911) 12 Cri. L. Jour. 463 (464) (Mad.), In re *Arula Kotiah.*

(11) (1881) 5 Bom. 405 (407), *Government of Bombay* v. *Shidapa.*

(12) (1928) 1928 Bom. 290 (291): 52 Bom. 448, In re *Virbhan Bhagaji.*

(13) (1901) 24 Mad. 337 (339), *Emperor* v. *Kuniyli Ranu.*

(14) (1918) 23 Cal. W. N. xlviii (xlviii), *Thomas* v. *Edmonda.*

(15) (1866) 1 Agra H. C. R. 45 (46), *Sheonund* v. *Maha.*

(15-a) (1907) 6 Cri. L. Jour. 367 (369) (Cal.), *Panchoo* v. *Khoosdel.*

Note 3.

(1) (1927) 1927 Mad. 695 (696), *Rama Naidu* v. *Venkataswami Naidu.*

Note 4.

(1) (1917) 1917 Pat. 141 (142), *Nawazi* v. *Jadu.*

delay the passing of orders for months.[2] As to the disposal of counter complaints, *see* the undermentioned case.[3]

5. **'Sufficient ground for proceeding'.**—The question whether there is sufficient ground for proceeding must, as has been seen in Note 1, already, be based upon the materials referred to in the section namely, the statement on oath of the complainant and the result of any investigation or inquiry under S. 202. Where the facts alleged in the complaint constitute an offence and there are no circumstances apparent in the examination of the complainant, such as contradictions, variations, or serious and unexplained delay in instituting proceedings, justifying the Court in concluding that the complaint is false there would be a *prima facie* case for proceeding.[1] Where, on the other hand the allegations contained in the complaint and in the complainant's oral statement, disclose no criminal offence,[2] or are self-contradictory so as to be self-destructive or are physically impossible or involve an extreme degree of improbability, and so forth; as well as in cases, in which the allegations made, though nothing can be said *a priori* of their possibility or probability, are practically incapable of proof, there can be no sufficient ground for proceeding.[2-a]

Where the complaint shows only a *civil dispute* as to title or as to other Civil claims the Criminal Court ought not to deal with them but should dismiss the complaint.[3] The dividing line between Criminal and Civil liability is some-

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(2) (1917) 37 Ind. Cas. 639 (639) (All.), *Sallimullah* v. *Brijhan.*

(3) (1922) 1922 Pat. 618 (618), *Lalji Singh* v. *Nauranji Lal* (Disposal of one may be postponed pending disposal of other).

Note 5.

(1) (1908) 8 Cri. L. Jour. 342 (343): 11 Oudh Cas. 261, *Muhammad Salamat-ul-lah* v. *Lala Sital Prasad.*

(1913) 21 Ind. Cas. 171 (171, 172) (Cal.), *Ram Chandra* v. *Haji.*

(1915) 31 Ind. Cas. 650 (650, 651): 1916 Mad. 713, *Basavana Gowd* v. *Krishna Rai Naidu.*

(1872) 16 Suth. W. R. 65 (66), *Mahomed Jan* v. *Khadi Sheik.*

(1871) 16 Suth. W. R. 39 (40), *Isser Chunder* v. *Peari* (Where *prima facie* case made out, Magistrate must proceed).

(1876) 25 Suth. W. R. 35 (35), *Queen-Empress* v. *Thakoor Ram* (Complaint not to be dismissed merely because complaint is not explicit).

(2) (1910) 11 Cri. L. Jour. 205 (209) (Lah.), *Abdur Razak* v. *Gaurinath.*

(1887) 14 Cal. 141 (146), *Baidyanath* v. *Muspratt.*

(1928) 1928 Lah. 945 (946), *Amarnath* v. *Emperor.*

(1875) Weir 3rd Edn. 873 (874).

(1933) 1933 Rang. 297 (298), *Maung Ba Yone* v. *Ma Hla Kin.*

(2-a) (1910) 11 Cri. L. Jour. 205 (209) (Lah.), *Abdur Razak* v. *Gaurinath.*

[See (1930) 1930 Lah. 62 (63), *Suraj Bhan* v. *Emperor* (Criminal Court not to go behind findings of Civil Court).

[See (1921) 63 Ind. Cas. 464 (464) (Lah.), *Kapur Chand* v. *Ugar Sain* (It is absurd to expect a Court to take any notice of a complaint of cheating except when it is put in by the person actually defrauded).]

(3) (1870) 2 N.-W.P. 202 (203), *Empress* v. *Kishen.*

(1880) 3 All. 283 (286), *Raunak* v. *Harbans.*

(1923) 1923 All. 544 (544), *Hukum Chand* v. *Emperor.*

(1865) Rat. 3 (3), *Reg.* v. *Raghoo.*

(1918) 1918 Bom. 186 (187): 42 Bom. 664, Re *Khema.*

(1918) 1918 Bom. 256 (256), *Bai Samarth* v. *Emperor.*

(1921) 1921 Bom. 435 (437): 45 Bom. 110, *Emperor* v. *Yellappa.*

(1864) 1 Suth. W. R. 25 (25), *Empress* v. *Sheikh Meerun.*

(1874) 21 Suth. W. R. 41 (42), *Joy Kuran* v. *Man.*

(1878) 4 Cal. 10 (13), *Empress* v. *Abdool.*

(1878) 4 Cal. 374 (375), *Lal Das* v. *Nekunjo.*

(1905) 9 Cal. W. N. 974 (981), *Hari* v. *Emperor.*

(1907) 11 Cal. W. N. 887 (889), *Surya Prasad* v. *Mohabir.*

(1923) 38 Cal. L. Jour. 7 (9), *Bhabni* v. *Hari.*

(1919) 1919 Cal. 59 (61): 46 Cal. 854, *Amrit Majhi* v. *Emperor.*

(1920) 1920 Cal. 624 (629), *Lucas* v. *Official Assignee.*

(1921) 1921 Cal. 426 (428), *Amjad* v. *Suresh.*

(1924) 1924 Cal. 908 (911), *Jones* v. *Emperor.*

(1933) 1933 Cal. 149 (150), *Rama Iyer* v. *Das Gupta.*

(1920) 24 Cal. W. N. lxxx (lxxx), *Jagrup* v. *Emperor.*

(1921) 1921 Lah. 185 (186), *Khusi Ram* v. *Emperor.*

(1923) 1923 Lah. 329 (330), *Karam Chand* v. *Mathara Das.*

S. 203, Note 5.

times indistinguishable and the Magistrate should thoroughly examine the complainant to see if any criminal offence is made out.[4] If the allegations disclose a criminal offence the complaint ought not to be dismissed even if a civil remedy is obtainable.[5]

A Magistrate cannot dismiss a case off-hand unless a *prima facie* case of any kind is not made out.[5-a] Where a *prima facie* case is made out, the following are not sufficient grounds on which a complaint can be dismissed:—

(1) The fact that besides the complainant, other persons could complain against an accused.[6]

(2) The fact that a libellous publication complained of is a mere republication.[7]

(3) The withdrawal of the complaint by the complainant in a warrant case which is non-compoundable.[8]

(4) The absence of personal injury to the complainant and the complainant being a mere tool of another person.[9]

(5) The fact that the complainant had no personal knowledge of the facts of the complaint.[10]

(6) The fact that the complainant is of low caste.[11]

(7) The fact that the charge might be laid to the Police in the first instance.[12]

(1925) 1925 Lah. 289 (290), *Ladha Singh* v. *Zaman.*
(1925) 1925 Lah. 599 (600), *Tulsi* v. *Emperor.*
(1927) 1927 Lah. 145 (146), *Ishar Das* v. *Emperor.*
(1887) 1887 Pun. Re. No. 50, p. 131 (132), *Gulzar* v. *Empress.*
(1916) 17 Cri. L. Jour. 7 (7) (Lah.), *Pars Ram* v. *Jalal Din.*
(1862) 1 Mad. H. C. R. 66 (67, 68), Ex parte *P. Varadarajalu Naidu.*
(1885) 8 Mad. 140 (147), In re *Paul De Cruz.*
(1924) 1924 Mad. 31 (31), *Tiruvengadachariar* v. *Chokkalingam.*
(1923) 1923 Rang. 157 (158), *Maung Shwe Ku* v. *Emperor.*
(1905) 2 Cri. L. Jour. 47 (49) (Cal.), *Cassem* v. *Jones.*
(1905) 2 Cri. L. Jour. 326 (327): 32 Cal. 431, *Dowalat* v. *Emperor.*
(1905) 2 Cri. L. Jour. 754 (755): 28 Mad. 304, *Algaraswami Tevan* v. *Emperor.*
(1905) 2 Cri. L. Jour. 836 (847) (Cal.), *Har Bhuimali* v. *Emperor.*
(1905) 2 Cri. L. Jour. 851 (854) (Cal.), *Godai Shaha* v. *Emperor.*
(1906) 3 Cri. L. Jour. 98 (102), *Maun Ghela Amarchand* v. *Jadeja Meruji Maungsingji* (Kathiawar).
(1906) 4 Cri. L. Jour. 227 (228, 229) (Cal.), *Hiranand* v. *Emperor.*
(1911) 12 Cri. L. Jour. 50 (55): 1910 P. R. 33, *Emperor* v. *Bishen Das.*
(1913) 18 Ind. Cas. 404 (406): 40 Cal. 281, *Anathnath Dey* v. *Emperor.*
(1913) 18 Ind. Cas. 688 (688) (Lah.), *Anant Singh* v. *Emperor.*
(1913) 21 Ind. Cas. 899 (900) (Lah.), *Shib Das* v. *Emperor.*
(1914) 23 Ind. Cas. 657 (660) (P. C.), *Lanier* v. *King.*
(1916) 35 Ind. Cas. 966 (967): 1917 Mad. 831, In re *Bakir Ali Khan Sahib.*
(1922) 67 Ind. Cas. 499 (499) (Pat.), *Rampabitar Singh* v. *Kasim Ali Khan.*
(1923) 71 Ind. Cas. 789 (791), *Keemchand* v. *Emperor* (Peshawar).
(1926) 1926 Jour. 105 (3) (105), *Abdul Qadir* v. *Emperor.*
(1892) 1 Weir 490 (490), *Jagannathan,* In re.
(4) (1920) 1920 All. 274 (275): 42 All. 522, *Emperor* v. *Mohan Singh.*
(1921) 1921 Pat. 85 (87), *Gawkaran Lal* v. *Sarjoo Saw.*
(5) (1868) 10 Suth. W. R. 40 (40), *Kosal Singh* v. *Toolsee Chowdhry.*
(1911) 12 Cri. L. Jour. 123 (124) (Mad.), *Narayanaswami Chetty* v. *Vadivelu Chetty.*
(1933) 1933 All. 42 (42), *Lal Bahadur* v. *Emperor.*
(1926) 1926 Sind 194 (198), *Crowder* v. *Morrisson.*
[See (1868) 9 Suth. W. R. 22 (22), *Madhub Kyburto* v. *Keshub Singh* (Civil proceeding no bar to Criminal proceedings).]
(5-a) (1923) 1923 Lah. 663 (664), *Waryam* v. *Emperor.*
(1924) 1924 Pat. 379 (380), *Chhediupadhya* v. *Emperor.*
(6) (1927) 1927 All. 69 (70), *Behari Lal* v. *Ganga Din.*
(7) (1888) 12 Bom. 167 (168), In re *Howard.*
(8) (1889) 13 Bom. 590 (598), In re *Ganesh Narain Sathe.*
(9) (1889) 13 Bom. 600 (603), In re *Ganesh Narayan.*
(10) (1893) Rat. 669 (669), In re *Kankuchand.*
(11) (1865) 2 Suth. W. R. 35 (36), *Empress* v. *Nobin Dome.*
(12) (1870) 14 Suth. W. R. 36 (36), *Meer Mahomed* v. *Brass.*

(8) The fact that the complaint was not preferred by a person more responsible than the one who preferred it.[13]

(9) The fact that there is no possibility of a conviction.[14]

(10) The fact that the person complained against has been exonerated in a previous departmental inquiry in which the complainant has no concern.[15]

(11) The fact that the complaint is cognizable by another Magistrate.[16]

(12) The fear that the entertainment of the complaint would encourage hundreds of such complainants and would stir up old religious feelings of animosity between communities.[17]

(13) Reasons arising out of the Magistrate's own personal knowledge of the affair, or conjecture, or out of knowledge acquired prior to the making of the complaint.[18]

(14) The fact that the result of the proceeding would be undesirable or the motive or conduct of the complainant are discreditable or malicious.[19]

(15) The fact that a previous complaint has been dismissed under S. 259.[20]

A complainant has a right to an adjudication on the point whether there is a sufficient ground for proceeding before his complaint is dismissed.[21] The decision whether there is *sufficient ground* for dismissing a complaint must be reached by the exercise of discretion based on judicial considerations.[22]

6. Who can dismiss a complaint.—

Under this section a complaint may be dismissed by—

(1) the Magistrate before whom a complaint is made,

(2) the Magistrate to whom it has been transferred,[1]

(3) the successor of the Magistrate who recorded the complaint and ordered inquiry.[1-a]

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(13) (1872) 18 Suth. W. R. 55 (56), *Boodhoo* v. *Ramdayal.*

(14) (1902) 29 Cal. 410 (411, 412), *Kuldip Sahai* v. *Budhan Mahton.*

(1919) 1919 Cal. 78 (79), *Fazlu Rahman* v. *Abidhar.*

(1926) 1926 Cal. 795 (796): 53 Cal. 606, *Subal Chandra* v. *Ahadulla.*

(15) (1887) 1887 Pun. Re. No. 33, p. 70 (72, 73), *Ballia* v. *Ahsan.*

(16) (1873) 7 Mad. H. C. R. App. xxxi (xxxii).

(17) (1891) Rat. 562 (562, 563), *Empress* v. *Ram Chandra.*

(18) (1907) 6 Cri. L. Jour. 85 (85) (Bom.), *Mustafa Rahim* v. *Motilal Chuni Lal.*

(19) (1913) 14 Cri. L. Jour. 633 (634): 38 Mad. 512, *Gangu Reddi* v. *Samarapathy Mudali.*

(1889) 13 Bom. 600 (604), In re *Ganesh Narain.*

(1926) 1926 Sind 194 (196), *Crowder* v. *Morrison.*

(1891) Rat. Un. Re. Cr. Cas. 549 (550), *Empress* v. *Manji.*

(1934) 1934 Nag. 135 (136), *Chamru Sao* v. *Bhaironprasad* (Motive of complainant no ground for dismissal).

(20) (1914) 1914 Sind 44 (44): 8 S. L. R. 196, *Bulchand* v. *Chandoomal.*

(21) (1871) 15 Suth. W. R. 53 (54), *Tuki* v. *Kisto.*

(1871) 16 Suth. W. R. 77 (77), In the case of *Bishoo Barik.*

(1900) 27 Cal. 126 (130, 131), *Charoobala Dalve* v. *B. Nath.*

(1913) 14 Cri. L. Jour. 633 (634): 38 Mad. 512, *Gangu Reddy* v. *Samarapathy Mudali.*

(22) (1913) 14 Cri. L. Jour. 633 (634): 38 Mad. 512, *Gangu Reddy* v. *Samarapathy Mudali.*

(1926) 1926 Cal. 795 (797): 53 Cal. 606, *Subal Chandra Nama Das* v. *Ahadullah Sheikh.*

Note 6.

(1) (1926) 1926 Cal. 470 (477): 53 Cal. 850, *Emperor* v. *Colin Mackenzia Mackay.*

(1-a) (1905) 2 Cal. L. Jour. 65 (*n*), *Ambika Roy* v. *Emperor.*

S. 203, Notes 6—7.

Even if the complaint is transferred to a superior Magistrate solely for the purpose of transferring it to another, the Magistrate to whom it is sent for transfer, can dismiss a complaint under this section.[2]

The Magistrate to whom the complaint is transferred, cannot however dismiss the complaint without giving notice to the complainant, of such transfer.[3]

7. **Effect of dismissal.**—A dismissal of a complaint after hearing the complainant and after considering the result of an investigation under S. 202 amounts to a legal determination of the complaint[1-a] and the complainant can be prosecuted for making a false charge under S. 182 or S. 211, Penal Code.[1] But until a complaint is dismissed under this section or otherwise disposed of, no proceedings can be taken under S. 182 or S. 211, Penal Code.[2] This rule is not based on any statute but is only a precautionary rule of safety in respect of prosecutions under S. 182 or S. 211 of the Penal Code. So while a prosecution under those sections, might, in certain circumstances be delayed or even set aside in accordance with the practice, this practice could *per se*, be no ground for setting aside a conviction under S. 211 or S. 182, before the disposal of the case.[3]

A mere dismissal under this section, does not afford a ground for proceeding under S. 211.[4] The complainant must be afforded an opportunity to prove his case before being prosecuted under S. 211 or S. 182;[5] but where he has had such an opportunity, and the dismissal of the complaint is made only after hearing him and taking such steps as are prescribed by the Code, it cannot be

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(2) (1924) 1924 All. 666 (666), *Gobind Prasad Singh* v. *Ram Das*.
(3) (1894) 3 Cal. W. N. cclxxxv (cclxxxv), *Kali Singh* v. *Jhari Lal*.

Note 7.

(1-a) (1902) 6 Cal. W. N. 295 (296), *Surjya Harini* v. *Emperor*.
(1878) 2 Cal. L. R. 315 (316, 317), Re *Choolhaie*.
(1) (1902) 6 Cal. W. N. 295 (296, 297), *Surjaya Harini* v. *Emperor*.
(2) (1883) 5 All. 387 (389), *Empress* v. *Jamni*. (S. 182).
(1893) 15 All. 336 (338), *Empress* v. *Raghu Tiwari*.
(1899) 1899 All. W. N. 90 (90, 91), In re *Gajadhar*.
[See also (1928) 1928 All. 333 (333), *Ram Das* v. *Ganga Ram*.
(1926) 1926 Bom. 284 (285), *Pampappa Ballabrao Desai*, In re (S. 211).
(1871) 16 Suth. W. R. 77 (77), In re *Bishoo Barik* (S. 211).
(1900) 27 Cal. 921 (925), *Mahadeo* v. *Empress* (S. 211).
(1879) 4 C. L. R. 413 (416), *Musibunissa Bibee* v. *Sheik Erad Ali*.
(1879) 4 C. L. R. 534 (537), *Sheikh Erad Ali* v. *Nusibunnissa*.
(1905) 2 Cal. L. Jour. 228 (230): 33 Cal. 1, *Jogendranath* v. *Bahu Ballabh* (S. 211).
(1899) 3 Cal. W. N. 490 (491), *Sheikh Kutab Ali* v. *Emperor* (S. 211).
(1899) 3 Cal. W. N. 758 (759, 760), *Gunamony* v. *Empress* (S. 211).
(1901) 5 Cal. W. N. 254 (255), In re *Sahiram Behara* (S. 211).
(1932) 1932 Cal. 383 (383), *Lachmi Shaw* v. *Emperor*.
(1932) 1932 Cal. 550 (551), *Charles Jhons* v. *Emperor*.
(1929) 1929 Pat. 92 (92), *Gokhi Mian* v. *Mahmad Dafadar* (S. 211).
(1906) 4 Cri. L. Jour. 68 (69) (Cal.), *Gati Mandal* v. *Emperor* (S. 211).]
(3) (1930) 1930 Pat. 622 (623): 9 Pat. 126, *Suchit Raut* v. *Emperor*.
[See also (1931) 1931 Pat. 302 (303), *Mahabir Baitha* v. *Emperor*.]
(4) (1927) 1927 All. 107 (108), *Din Mohammed* v. *Emperor*.
(1887) 10 Mad. 232 (236) (F.B.), *Empress* v. *Sheikh Beari*.
Oudh S. C. 294, *Faghfur Mirza* v. *Maharaja Bhagowti Prasad*.
(5) (1886) 8 All. 38 (39), *Empress* v. *Ganga Ram*.
(1920) 1920 All. 125 (125), *Mewa Lal* v. *Emperor*.
(1898) 22 Bom. 596 (603), *Imperatrix* v. *Jijibhai Govind*.
(1870) 13 Suth. W. R. 37 (38), *Empress* v. *Heera Lal Ghose*.
(1876) 25 Suth. W. R. 10 (10), *Syed Nissar Hussein* v. *Ram Golam Singh*.
(1881) 6 Cal. 496 (498), *Government* v. *Karimdad*.
(1881) 6 Cal. 584 (585), *Empress* v. *Shibo Bihara*.
(1881) 7 Cal. 87 (88), In re *Sokhiva Bibi*.
(1881) 7 Cal. 208 (211), *Gyan Chunder* v. *Protab Chunder*.
(1887) 14 Cal. 707 (720) (F.B.), *Empress* v. *Sham Lall*.
(1900) 27 Cal. 921 (925), *Mahadeo Singh* v. *Empress*.
(1879) 4 Cal. L. R. 134 (136), In re *Biyogi Bhagut*.
(1880) 7 Cal. L. R. 382 (384), *Russick Lall Mullick*.

said that he has not been given an opportunity of establishing the truth of his complaint.[6]

Where the dismissal under this section is illegal for want of the examination of the complainant under S. 200, the complainant cannot be prosecuted for bringing a false charge.[7]

As to whether an order for compensation can be made against the complainant when a complaint under this section is dismissed, *see* Note 7 to S. 250, *infra*, and as to a suit for malicious prosecution, *see* Notes to S. 204, *infra*.

8. **Dismissal without examining complainant.**—The "statement on oath" referred to is the examination of the complainant under S. 200.[1] Where the complainant is present but not examined under S. 200 of the Code, the material on which the Court could say whether there is sufficient ground or not, is not availed of by the Court, and consequently the Court cannot dismiss the complaint.[2] But when the complainant is *absent* on the dates on which the matter

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(1905) 2 Cal. L. Jour. 228 (230): 33 Cal. 1, *Jogendranath* v. *Bahu Ballabh*.
(1902) 6 Cal. W. N. 295 (297), *Surjya Harini* v. *Emperor*.
(1907) 6 Cri. L. Jour. 42 (42, 43): 29 All. 587, *Emperor* v. *Tula*.
(1907) 6 Cri. L. Jour. 340 (341) (All.), *Emperor* v. *Sheo Ghulam*.
(1921) 59 Ind. Cas. 369 (370) (All.), *Sheo Balak* v. *Emperor*.
(1933) 1933 Pat. 499 (500), *Gopal Singh* v. *Raghunath*.

(6) (1902) 6 Cal. W. N. 295 (297), *Surjya Hariani* v. *Emperor*.
(1884) 7 Mad. 292 (294), *Ramaswamy* v. *Empress*.
(1919) 1919 Pat. 530 (531), *Emperor* v. *Makund Patel*.
(1907) 5 Cri. L. Jour. 491 (492): 1907 P. R. 2, *Chiragh Din* v. *Emperor*.
(1910) 11 Cri. L. Jour. 338 (338) (Bom.), *Rachappa Tippansa*, In re.

(7) (1924) 1924 Bom. 321 (321): 48 Bom. 360, In re *Ningappa Royappa*.
(1926) 1926 Bom. 284 (285), *Pampappa Ballalrao Desai*, In re.
(1924) 1924 All. 664 (664), *Rekha Chamar* v. *Emperor*.
(1899) 4 Cal. W. N. 305 (306), *Budhnath* v. *Emperor*.
(1901) 4 Oudh Cas. 127 (132), *Ram Sarup* v. *Emperor*.

Note 8.

(1) (1932) 1932 Sind 58 (58, 59): 25 S. L. R. 468, *Hashim Moosa* v. *Boodh*.

(2) (1924) 1924 Bom. 321 (321): 48 Bom. 360, In re *Ningappa*.
(1903) 30 Cal. 923 (925), *Lokenath Patra* v. *Sanyasi Charan Marina*.
(1871) 3 N.-W. P. 272 (273), In re *Ram Churn*.
(1884) 1884 All. W. N. 47 (47), *Jalaludin* v. *Muhammad Khalil*.
(1888) Rat. 365 (365), In re *Hari Purshottam Vaidya*.
(1888) 12 Bom. 161 (163), In re *Jankidas*.
(1889) 13 Bom. 590 (597), In re *Ganesh Narain*.
(1889) 13 Bom. 600 (603), In re *Ganesh Narain Sathe*.
(1870) 14 Suth. W. R. 36 (36), *Ameer Mahomed* v. *Brass*.
(1869) 3 Beng. L. R. App. Cr. 53 (54), *Dulali Bewa*.
(1886) 13 Cal. 334 (336), *Umer Ali* v. *Safer Ali*.
(1886) 14 Cal. 141 (144), *Baidyanath* v. *Muspratt*.
(1900) 27 Cal. 126 (130, 131), *Charoobala Dabee*.
(1900) 27 Cal. 921 (923), *Mahadeo Singh* v. *Emperor*.
(1903) 30 Cal. 923 (925, 926), *Lokenath Patra* v. *Sanyasi Charan*.
(1879) 4 Cal. L. R. 134 (136), In re *Biyogi*.
(1879) 4 Cal. L. R. 534 (536, 537), *Sheikh Erad Ali* v. *Nusibunissa*.
(1880) 7 Cal. L. R. 382 (384), In re *Russick Lal Mallick*.
(1881) 8 Cal. L. R. 289 (291), Re *Chukradar*.
(1899) 3 Cal. W. N. 17 (18), *Satya Charan Ghose* v. *Chairman of the Utterparah Municipality*.
(1899) 3 Cal. W. N. cclxxxv (cclxxxv), *Kali Singh* v. *Jhanlal*.
(1900) 4 Cal. W. N. 305 (306), *Budhnath Mahato* v. *Empress*.
(1902) 6 Cal. W. N. 295 (296), *Surjya Hariani* v. *Emperor*.
(1919) 1919 Cal. 78 (79), *Rammal* v. *Kakal Koli*.
(1926) 1926 Cal. 795 (796): 53 Cal. 606, *Subal Chandra* v. *Abdullah*.
(1868) 4 Mad. H. C. 162 (164), *Rangaswami Goundan* v. *Sabapathy Goundan*.
(1901) 4 Oudh Cas. 127 (132), *Ram Sarup* v. *Emperor*.
(1921) 1921 Pat. 205 (205), *Karlick Pathak* v. *Emperor*.
(1923) 1923 Pat. 539 (540), *Nand Kishore Misser* v. *Kalika Missir*.
(1900-1902) 1 L. B. R. 125 (125), *Crown* v. *Hga Yaung*.
(1892-1896) 1 U. B. R. 270 (270), *Empress* v. *Maung Shwe Bau*.
(1905) 2 Cri. L. Jour. 51 (53) (Cal.), *Haladhar Bhumji* v. *Sub-Inspector of Police, Howrah*.
(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor*.
(1911) 12 Cri. L. Jour. 539 (541): 1912 P. R. 2, *Ali Muhammad* v. *Emperor*.
(1881) 1881 All. W. N. 23 (23), *Empress* v. *Lallu*.
(1887) 1 Weir 188 (188), Re *Gulbala*.
(1867) 8 Suth. W. R. 12 (13), *Queen* v. *Harrak Chand Nowlaka*.

S. 203, Notes 8—9.

comes up for examination of the complainant, it is clear that an order dismissing the complaint is justified.[3]

9. "**And the result of the investigation or inquiry (if any) into S. 202**".—Where an inquiry is ordered under S. 202, and in that inquiry the complainant says that he has witnesses to prove his case, he should be given an opportunity of proving his case, before the complaint is dismissed on the basis of the result of such inquiry.[1] But where in such inquiry the complainant declines to prove his case *ex parte*, it cannot be said that the Magistrate is wrong in dismissing the complaint under this section.[2]

Where the inquiry ordered under S. 202, is found to have been insufficient, the Court of revision may set aside the dismissal of the complaint based on the result of such inquiry, and may order a further inquiry.[3] In complaints against Police-officers and other Government Official it would be a proper exercise of discretion if the Magistrate orders an inquiry into the matter giving the complainant every opportunity to prove his allegations.[4]

The words "if any" clearly show, that this section empowers the Magistrate to dismiss a complaint without any investigation or inquiry under S. 202, *ante*, if after examining the complainant he considers there is no sufficient reason for proceeding.[5]

The words "if any" were omitted from the Code under the Amending Act of 1923, but were restored again to the section by an Amending Act in 1926. The reasons for re-insertion are given in the statement of objects and reasons of the 1926 Amending Act as follows: "The Calcutta High Court in a recent decision (in the case of *Srish Chandra Bose* v. *Modan Lal Surma,*) has held that under S. 203, an investigation or an inquiry under S. 202, is necessary in all cases, because the words "if any" have been omitted from S. 203, after the words "investigation or inquiry." No such change was intended by the Amendment made by Act XVIII of 1923 and the proposed addition is made to clear this matter".

[But see (1935) 36 Cri. L. Jour. 1035 (1035) (All.), *Ram Gir* v. *Ravi Saran Singh* (Dismissal of complaint without examining complainant was mere *irregularity*).]

(3) (1928) 1928 Cal. 569 (570), *Ramprosad Maitra* v. *Emperor*.

Note 9.

(1) (1915) 28 Ind. Cas. 999 (1000): 1916 Mad. 639, *Solainath Pillai* v. *Murugiah Moopan*.

(1906) 4 Cri. L. Jour. 213 (214) (Cal.), *Fani Bhushan* v. *F. E. Kemp* (It is illegal for a Magistrate to dismiss a complainant sitting in his private room and without hearing the complainant).

[See also (1929) 1929 Cal. 191 (192): 55 Cal. 1280, *Mahim Chandra Roy* v. *Watson*.]

(2) (1872) 17 Suth. W. R. 3 (3), *Shibu* v. *Noshee*.

(3) (1928) 1928 Lah. 119 (120), *Mausa Neki* v. *Mt. Mam Kaur*.

[See also (1920) 1920 All. 77 (78), *Harihar Prasad* v. *Emperor*.

(1927) 1927 Bom. 436 (436, 437), *Dhondu Bapu* v. *Emperor*.

(1919) 1919 Cal. 725 (725), *Purna Chandra De* v. *Ambica Charan Adhikari*.]

(4) (1920) 1920 All. 77 (78), *Harihar Prasad* v. *Emperor* (Police-officer).

(1926) 1926 Mad. 288 (288), *Devasikamani Mudali* v. *Narayan Prasad* (Police-officer).

(1924) 1924 Oudh 174 (174), *Balda Basi* v. *Nasir Ali Khan* (Police-officer).

(1898) Rat. 954 (955), In re *Subrao Ramachandra* (A Government officer).

(1921) 59 Ind. Cas. 369 (370): 1920 All. 303, *Sheo Balak* v. *Emperor* (Government officer).

(5) (1917) 1917 Pat. 141 (142), *Nawasi Singh* v. *Jadu Dhanuk*.

(1918) 1918 Pat. 350 (350), *Sheonandan Mahton* v. *Emperor*.

(1925) 1925 Pat. 704 (705), *Dukhiram Raut* v. *Jamuna Kuer*.

(1868) 10 Suth. W. R. 49 (49, 50), In re *Fokto Shah*.

(1868) 10 Suth. W. R. 50 (50), *Batool Nushyo* v. *Bhugloo*.

(1881) 7 Cal. 208 (211), *Gyan Chunde* v. *Protap*.

[See also (1869) 11 Suth. W. R. 54 (54, 55), *Empress* v. *Russick Monee*.

(1871) 16 Suth. W. R. 44 (44), *Empress* v. *Gour Mohan*.]

S. 203, Notes 10—14.

10. Shall record his reasons for so doing.—A Magistrate should record his reasons for dismissing a complaint under this section.[1] The object of this requirement is to enable the High Court, to consider whether the discretion vested in the Magistrate has been properly exercised or not.[2] This is an imperative provision of law and where no reasons are recorded, the order of dismissal is without jurisdiction.[3]

It has been held that reasons stated in a Police report on the basis of which an order of dismissal is made, are sufficient if the report itself is part of the order.[4]

11. Second Complaint.—A dismissal under this section is a dismissal without trial. As to whether such a dismissal, is a bar to the re-hearing of the complaint or to the entertainment of a second complaint, *see* S. 403, *infra*, and Notes thereunder.

12. Further inquiry.—As to ordering of a "further inquiry" into a complaint dismissed under this section, *see* Note 9, above and S. 436, *infra* and Notes thereto.

13. Abatement.—S. 306, of the Succession Act, 1925, (S. 89 of the Probate and Administration Act, 1881), provides that "all demands whatsoever and rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code or other personal injuries not causing the death of the party; and except also cases where after the death of the party the relief sought could not be enjoyed or granting it would be nugatory."

It has been held that this section has no application to *criminal prosecutions* and that such prosecutions do not abate by reason of the death of the person injured or of the complainant.[1]

14. Appeal.—Under S. 404, no appeal will lie from any order, unless specifically provided for by the Code and no appeal is provided from an order of dismissal under this section. Further inquiry alone is provided for in S. 436.

Note 10.

(1) (1887) 14 Cal. 141 (146), *Baidyanath Singh* v. *Musupratt*.
(1912) 13 Cri. L. Jour. 482 (483): 40 Cal. 41, *Maniruddin Sarkar* v. *Abdul Raut*.
(1924) 1924 Pat. 436 (437), *Chaudhury Mandar* v. *Emperor*.
(1926) 1926 Pat. 57 (57), *Harnandandas* v. *Atul Kumar Prasad*.
(1912) 11 Cri. L. Jour. 331 (331) (Mad.), *Ahmed Bee* v. *Ameena Bee*.
(1913) 14 Cri. L. Jour. 493 (494) (All.), *Ram Prosad* v. *Moti*.
(1909) 13 Cal. W. N. ccxviii (ccxviii), *Bhairab Chandra* v. *Prasanna*.
(2) (1887) 14 Cal. 141 (146), *Baidyanath Singh* v. *Musupratt*.
(3) (1912) 13 Cri. L. Jour. 482 (483): 40 Cal. 41, *Maniruddin Sarkar* v. *Abdul Rauf*.
(1926) 1926 Pat. 57 (58), *Harnandan* v. *Atul*.
(4) (1910) 11 Cri. L. Jour. 331 (331) (Mad.), *Ahmed Bee* v. *Ameena Bee*.

Note 13.

(1) (1924) 1924 All. 666 (667), *Musa* v. *Emperor*.
(1922) 1922 Lah. 227 (228): 2 Lah. 27, *Hazara Singh* v. *Emperor* (Dissenting from 18 Cri. L. Jour. 688 (688) and 1919 Lah. 409 (409)).
(1924) 1924 Lah. 72 (72, 73): 4 Lah. 7, *Emperor* v. *Manj Din*.
(1921) 1921 Mad. 278 (278): 44 Mad. 417, *Muhammad Ibrahim Sahib* v. *Shaik Dawood*.
(1915) 30 Ind. Cas. 1001 (1001): 1916 Mad. 1034, *Ramasamier, In re*.
(1869) 2 Weir 235 (235).

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

S. 204. **204***. (1) If in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

Issue of process.

(2) Nothing in this section shall be deemed to affect the provisions of S. 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

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*(CODE OF 1882—S. 204.)

CHAPTER XVII.

Of the commencement of Proceedings before Magistrates.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Issue of process.

Nothing in this section shall be deemed to affect the provisions of section 90.

(CODE OF 1872—S. 147, Para. 3, Ss. 148 and 149.)

147. * * * *

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the accused person to appear before himself or some other Magistrate having jurisdiction.

Issue of process.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period of not exceeding six months, or with both, the

In what cases a summons may issue.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2

Magistrate may issue his summons directed to such person, requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

In what cases warrant may issue on complaint.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session, that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

(CODE OF 1861—Ss. 67, 248 and 257.)

Magistrate how to proceed on complaint.

67. The Magistrate before whom such complaint is duly made shall, if it appear to him that there is sufficient ground for proceeding, issue his summons, or in cases in which a warrant may issue, his warrant for causing the person accused to appear before himself or some other Magistrate having jurisdiction.

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CHAPTER XIV.

Of cases triable by the Magistrate in which a warrant on complaint may issue.

Cases in which Magistrate may issue a warrant.

Summons instead of warrant.

248. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected to have committed any offence triable by such Magistrate, and punishable under the Indian Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such Magistrate to issue his warrant to apprehend such person. Provided that in any such case the Magistrate, to whom such complaint shall be made, may, for any sufficient reason, instead of issuing his warrant in the first instance, issue his summons, requiring the person complained against to appear to answer to such complaint.

CHAPTER XV.

Of cases triable by the Magistrate in which a summons on complaint shall ordinarily issue.

Summons shall issue.

257. Whenever a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed or is suspected to have committed any offence triable by such Magistrate and punishable under the Indian Penal Code with imprisonment for a period not exceeding six months, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

When warrant may issue.

Provided that, if the Magistrate shall be satisfied or have reason to believe that the accused person is about to abscond, he may, instead of issuing a summons, issue his warrant in the first instance for the arrest of such accused person.

S. 204, Notes 1—2.

SYNOPSIS.

	Note No.
MAGISTRATE TAKING COGNIZANCE ONLY CAN ISSUE PROCESS.	3
THE MAGISTRATE MUST HAVE TAKEN COGNIZANCE OF AN OFFENCE	4
"SUFFICIENT GROUND FOR PROCEEDING"	5
"IN THE OPINION OF THE MAGISTRATE"	6
ISSUE OF PROCESS	7
OMISSION TO ISSUE PROCESS ..	8
NOTICE IF A "PROCESS"	9
ORDER DIRECTING SUMMONS IF A JUDGMENT.. ..	10
ORDER DIRECTING SUMMONS IF CAN BE RECALLED ..	11
"IF HE HAS NOT JURISDICTION HIMSELF"	12
"SOME OTHER MAGISTRATE HAVING JURISDICTION" ..	13
"PROVISIONS OF S. 90"—SUB-S. (2)	14
PROCESS-FEE	15
REVISION	16
PROCESS UNDER SPECIAL OR LOCAL ACTS.	17

Other Topics.

Caution and discretion must be used in issuing process. See Note 5.

Duty of the Magistrate before issuing the process. See Note 4.

"He shall issue his summons." See Note 7, Pts. 1-3.

Power to cancel warrant issued and issue summons. See S. 75, Note 9.

Process must issue if complaint is believed. See Note 7, Pt. 1.

Superior officer cannot order process to issue. See Note 3, Pts. 3 and 4.

1. Legislative changes.—

(1) The words "if he has not jurisdiction himself" in sub-S. (1) are new.

(2) Sub-S. (3) is new.

2. Scope of the section.—Where the Magistrate does not dismiss the complaint under S. 203, *supra* but is of opinion that there is sufficient ground for proceeding, he has to commence proceedings against the accused by compelling his attendance before the Court. This section relates to the procedure for effecting such attendance.[1]

The Magistrate, under this section is empowered to issue summons to an accused in summons cases. In warrant cases, he may issue a warrant, or if he thinks fit, summons only; this is the only section authorising any Magistrate to issue such process to an accused, whether he takes cognizance on a private complaint or on a police report[2] or any information or knowledge other than a complaint or police-report.[3] This section applies where the Magistrate takes cognizance of offences not only under the Indian Penal Code but under *any law* other than the Penal Code.[4]

Section 204—Note 2.

(1) (1867) 8 Suth. W. R. 65 (65), *Empress* v. *Nudas Muhton*.

(2) (1932) 1932 Pat. 72 (76, 77, 78), *Raghunath Puri* v. *Emperor*.

(3) (1869) 11 Suth. W. R. 1 (1), *Bisseshur* v. *Harprasad*.

(4) (1872-1892) 1872-1892 L. B. R. 486, *Empress* v. *Nga Son Gaung* (Offence under the Gambling Act XVI of 1867).

(1876) 25 Suth. W. R. 20 (21), *Empress* v. *Golam Arabee* (Offence under Police Act V of 1861).

For form of summons, *see* S. 68 and Sch. V, form I.
For form of warrant, *see* S. 75 and Sch. V, form II.

S. 204, Notes 3—4

3. Magistrate taking cognizance only can issue process.—S. 190, *ante*, mentions the ordinary ways in which a Magistrate takes cognizance of an offence. Unless he 'takes cognizance' as specified therein a process cannot be issued under this section.[1] A 'Magistrate taking cognizance' on a complaint is the officer who has heard the complaint made. He is the proper officer to issue a process because it is he who can best exercise a discretion with regard to the *prima facie* merits of the complaint.[2] Therefore, a District or superior Magistrate cannot order process to issue when a joint or subordinate Magistrate to whom a case has been made over for disposal[3] or who has taken cognizance of the complaint[4] has failed or refused to issue process but has not disposed of the case. If he wants to do so, he must remove the case to his own file and then issue process.

Under this section a Magistrate to whom a case has been transferred under S. 192 after the examination of the complainant can issue process though he has not himself examined the complainant.[4-a]

Although it is only the Magistrate who has taken cognizance of the offence who may *direct issue* of a process, a Magistrate, who is the "presiding officer" within the meaning of Ss. 68 and 75 *supra* may *sign* the process, even if he may not have taken cognizance of the offence and directed issue of the process.[5]

4. The Magistrate must have taken cognizance of an offence.—It is only a Magistrate taking cognizance of an *offence* that can issue a process under this section. Where, therefore, no offence has been committed but the Magistrate gets information as to the possibility of an offence being committed the matter is only one for the interference of the police, and not one for the Magistrate to issue process.[1]

If, on a complaint, it should appear to the Court that the act imputed amounted to an offence under the Indian Penal Code or any other Penal law in force, it is the duty of the Court to proceed with the matter, even if a civil suit would be an appropriate remedy.[2] But where the acts as alleged do not disclose any *offence* it will be an abuse of the process of the Court, to allow criminal proceedings to proceed.[3]

Note 3.

(1) (1871) 8 Bom. H. C. R. 113 (115), *Reg.* v. *Jafar Ali.*
(1902) 6 Cal. W. N. 926 (926, 927), *Bhaman Singh* v. *Haluman Mandal.*
(2) (1873) 19 Suth. W. R. 28 (28), In re *Raghoo Parirah.*
(1928) 1928 Cal. 24 (25): 54 Cal. 808, *Isaf Nasya* v. *Emperor* (In directing police investigation under S. 202 Magistrate cannot direct police to submit charge-sheet to another Magistrate).
(3) (1903) 30 Cal. 449 (451, 452): 57 Cal. 1336, In re *Bisseeswar Lal Brijlal.*
(1905) 2 Cri. L. Jour. 524 (530, 532): 32 Cal. 783, *Ajablal* v. *Emperor.*
(1906) 4 Cri. L. Jour. 213 (214) (Cal.), *Fani Bhusan* v. *F. E. Kemp.*
(4) (1900) 27 Cal. 658 (660), *Hari Kishore Das* v. *Jugal Chunder Kabyarathna.*
(1900) 27 Cal. 798 (800), *Jhumuk Jha* v. *Patluk Mandal.*
(1900) 27 Cal. 979 (980, 981), *Golapdi* v. *Empress.*
(1902) 6 Cal. W. N. 843 (844), *Mrinal Kanti Ghose* v. *Emperor.*
(1899) 4 Cal. W. N. 242 (244), *Moul Singh* v. *Mahabir Singh.*
(1908) 7 Cri. L. Jour. 202 (204): 1908 P. R. 4, *Shivnath* v. *Emperor.*
(4-a) (1899) 3 Cal. W. N. cclxxxv (cclxxxv), *Kali Singh* v. *Jhari.*
(5) (1932) 1932 Pat. 175 (176), *Kartick Chandra Maity* v. *Emperor* (Issue of warrant).
(1932) 1932 Pat. 171 (175), *Kartick Chandra Maity* v. *Emperor* (*Per* Scroope, J.—Dhavle, J.—Dissenting).

Note 4.

(1) (1875) Rat. 90 (91), In re *Fate Ali.*
(2) (1867) 8 Suth. W. R. 65 (65), *Empress* v. *Nudas Muhton.*
(1926) 1926 Cal. 795 (797): 53 Cal. 606, *Subal Chandra Namadas* v. *Ahadullah Sheikh.*
(3) (1928) 1928 Lah. 945 (946), *Amarnath*

S. 204, Notes 4—5.

An application for maintenance under S. 488 *infra* is not a complaint in respect of any *offence* and therefore a Magistrate dealing with it cannot dismiss it under sub-S. (3) of this section.[4]

Even where an offence is disclosed there must be definite evidence of an offence within the jurisdiction of the Magistrate receiving the complaint.[5] The Court is not limited to the sections or offences mentioned in the complaint. The fact that the complainant did not specifically and in terms accuse any one under any section of the Code, does not matter, if the facts stated in the complaint and his sworn statement, constitute an offence, triable by the Magistrate who receives the complaint.[6]

5. "**Sufficient ground for proceeding**".—A Magistrate taking cognizance of an offence is bound to issue process under this section only if, in his opinion, there is *sufficient ground for proceeding*.[1] The stage at which the sufficiency of the ground for proceeding is to be considered, is, in the case of a complaint, after the examination of the complainant under S. 200 *ante*.[2] If the facts alleged in the complaint and the complainant's statement show a sufficient ground for proceeding process should issue[3] otherwise not.[4] It is not necessary in all cases that before issuing process, the Magistrate should have held any inquiry.[5]

A *prima facie* case means that there is sufficient ground for proceeding.[6] Where therefore a *prima facie* case is made out, the Magistrate should issue process[7] even if he considers that a civil remedy is more

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v. *Emperor*.
(4) (1893) 16 Mad. 234 (234), *Ponnammal*, In re.
(5) (1908) 7 Cri. L. Jour. 391 (395) (All.), *Babu Lal* v. *Ghansham*.
(6) (1899) 26 Cal. 786 (789), *Jagat Chandra Mazumdar* v. *Empress*.

Note 5.

(1) (1900) 27 Cal. 985 (988), *Durga Das* v. *Umesh Chandra* (Allegations not disclosing any offence—Case not to be proceeded with).
(1864) Suth. W. R. (Gap.) 33 (34), Re *Huronath*.
(1900-02) 1900-02 Low. Bur. Rul. 286 (287), *Mokun Maistry* v. *Valoo Maistry*.
See case in foot-note (7).
(2) (1871) 3 N.-W.P. 272 (273), In re *Ramchuran*.
(1917) 18 Cri. L. Jour. 890 (891) (Pat.), *Jhuna Lal Sahu* v. *Emperor* (See also notes 13 to 16 to S. 200 and the decisions noted thereunder).
(1906) 3 Cri. L. Jour. 81 (83) (Cal.), *Saroda Charan* v. *Emperor*.
(1902) 2 Weir 241 (242), Re *Rangachari*.
1864) Suth. W. R. Gap. 33 (34), *Huronath Roy*.
(1898) Rat. Un. Re. Cr. Cas. 954, In re *Subrao*.
(1888) Rat. 368 (369), *Empress* v. *Phakeera*.
(1871) 3 N.-W.P. 272 (273), In re *Ram Churan*.
(1864) Suth. W. R. Gap. No. 37 (37), *Rujeeb Mundle* v. *Lochun Mundle*.
(1870) 14 Suth. W. R. 36 (36), *Ameer Mahomed* v. *G. Brass*.
(1868) 4 Mad. H. C. R. 162 (164), *Rangaswami* v. *Sabapathi*.
(1914) 1914 Cal. 479 (480): 42 Cal 19, *Abhayeshwari* v. *Kishori Mohan Bannerji*.
(3) (1912) 13 Cri. L. Jour. 609 (611, 612) (Cal.), *Pulin Behari Das* v. *Emperor*.
(4) (1917) 18 Cri. L. Jour. 626 (626) (Cal.), *Jogesh Chandra Sarkarm* v. *Abdul Gani* (Allegations in complaint not substantiated by examination on oath).
(1864) Suth. W. R. Gap No. 33 (34), *Huronath*.
[See also (1910) 11 Cri. L. Jour. 525 (527): 38 Cal. 68, *Hari Charan Gorai* v. *Srish Chandra Sadhukhan*.]
(5) (1920) 1920 Pat. 270 (270, 271), *Abdul Khalique* v. *Surja Singh*.
(6) (1931) 1931 Cal. 607 (611, 613, 615), *Sher Singh* v. *Jitendranath Sen*.
(7) (1926) 1926 Cal. 795 (798): 53 Cal. 606, *Subal Chandra Namadas* v. *Abdullah Sheikh*.
(1915) 16 Cri. L. Jour. 477 (478, 479): 39 Mad. 561, In re *S. Kuppuswamy Iyer*.
(1914) 22 Ind. Cas. 165 (166), (All.), *Baqar* v. *Bansi*.
(1913) 14 Cri. L. Jour. 571 (571) (Cal.), *Ramchandra Saha* v. *Haji Meah Haji Abdullah*.
(1926) 1926 Sind 194 (196), *Crowder* v. *Morrison*.
(1930) 1930 Pat. 30 (32), *Parmanand* v. *Emperor*.
(1926) 1926 Cal. 795 (796, 797): 53 Cal. 606, *Suban Chandra Namadas* v. *Ahadullah Sheikh*.
(1901) 28 Cal. 652 (661) (F.B.), *Dwarkanath* v. *Beni*.
(1889) 13 Bom. 590 (598), In re *Ganesh Narayan*.
(1911) 12 Cri. L. Jour. 385 (385): (1910) 1 U. B. R. 73, *Nga Tha Tu* v. *Emperor*.

appropriate.[8] It was however held in the undermentioned case[8-a] that even if there was a *prima facie* case the Magistrate *may in his discretion* refuse to issue process. S. 204, Note 5.

There cannot be said to be sufficient grounds in the following cases for issue of process:—

1. Where the complaint is made on information and not on personal knowledge.[9] In such cases the Court should satisfy itself on inquiry that there is a case for the issue of process.[10]
2. Where the allegations made in the complaint are not substantiated by the statement on oath.[11]
3. Where the allegations disclose a dispute purely of a civil nature.[12]

The following are not sufficient grounds for refusing issue of process:—

(*a*) Where a *prima facie* case, is made out but in the Magistrate's opinion there is no chance of conviction and no useful purpose will be served by the enquiry.[13]

(*b*) Avoidance of religious ill-feeling.[14]

(*c*) The fact that the offence is cognizable by the police in the first instance.[15]

(*d*) The fact that the Magistrate thinks that it is unlikely that the proceedings will result in a conviction though the fact that another person accused upon the same facts for the same offence has been acquitted may properly be taken into consideration in determining whether upon the materials before the Magistrate there is sufficient ground for proceeding.[16]

Where from the examination of the complainant it appears that there is reason for the issue of process against all the accused, the Magistrate should not refuse to issue process against some of the accused and issue process

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(1917) 18 Cri. L. Jour. 321 (322): 1917 L. B. 30, *Maung Kala* v. *Nga Kin Mya* (Complaint under S. 497, I. P. C. should not be dismissed simply because it appears that complainant and his wife have been living apart for more than a year previous to the complaint).

(8) (1911) 12 Cri. L. Jour. 123 (124) (Mad.), *Narayanaswami* v. *Vadivelu Chetty*.

(1868) 10 Suth. W. R. 40 (40), *Kosal Singh* v. *Toolsee Chowdhry*.

(1867) 8 Suth. W. R. 65 (65), *Empress* v. *Nubas Muhton*.

(1872) 4 N.-W.P. 23 (25), *Queen* v. *Hurpershad*.

(1907) 5 Cri. L. Jour. 13 (14) (Cal.), *Chamru Sahu* v. *Emperor*.

(1926) 1926 Sind 194 (198), *Crowder* v. *Morrison*.

(8-a) (1931) 1931 Cal. 607 (615), *Sher Singh* v. *Jitendranath Sen* (Where 1926 Cal. 759 is dissented from by Lort Williams, J.).

(9) (1906) 4 Cri. L. Jour. 217 (213) (Cal.), *Thakur Prosad Singh* v. *Emperor*.

(10) (1906) 4 Cri. L. Jour. 217 (218) (Cal.), *Thakur Prosad Singh* v. *Emperor*.

(11) (1917) 18 Cri. L. Jour. 626 (626) (Cal.), *Jogesh Chandra Sarkara* v. *Abdul Gani*.

(12) (1923) 1923 All. 544 (544), *Hukum Chand* v. *King-Emperor*.

(1923) 1923 Lah. 329 (330), *Karam Chand* v. *Mathara Das*.

(1927) 1927 Lah. 145 (146), *Ishar Das* v. *Emperor*.

(1924) 84 Ind. Cas. 351 (351) (Lah.), *Ladha Shah* v. *Zaman Ali*.

(1923) 1923 Rang. 157 (157, 158), *Maung Shwe Ku* v. *Emperor*.

(1923) 24 Cri. L. Jour. 714 (715) (Cal.), *Bhatbani Prosad* v. *Haricharan Bhattacharjee*.

(1887) 1887 Pun. Re. No. 50, p. 132, *Gulzar* v. *Empress* (Civil remedy is proper in cases involving doubt whether act done is criminal offence or civil wrong).

[See (1922) 67 Ind. Cas. 499 (499), *Rampalitar Singh* v. *Kasim Ali Khan* (Process not to be issued merely because in Magistrate's opinion it may be desirable to ascertain the truth).]

(13) (1902) 29 Cal. 410 (411, 412), *Kuldip* v. *Budhan*.

(14) (1891) Rat. 562 (563), *Empress* v. *Ramachandra*.

(15) (1870) 14 Suth. W. R. 36 (36), *Ameer Mohamed* v. *G. Brass*.

(16) (1926) 1926 Cal. 795 (797, 798): 53 Cal. 606, *Subal Chandra* v. *Ahadulla*.

[See (1933) 1933 Cal. 552 (553), *Mokhan Lal Pal* v. *Sakhi* (The fact that the matter has been compounded with other co-accused is no ground for refusing process).]

S 204, Notes 5—7.

only against the others. He must issue process against all.[17]

Stay of proceedings.—The practice of rushing into Criminal Courts when civil proceedings are pending should be discouraged and the result of such a pending suit should be awaited before proceeding.[18] But this rule is not a strict rule of law, but only a rule dictated by prudence and its application must depend on the merits of each case.[19] Similarly where there were two counter complaints, the Magistrate was justified in staying proceedings in one pending the disposal of the other.[20]

6. **"In the opinion of the Magistrate."**—In deciding on the sufficiency of the ground for proceeding, the Magistrate must be guided by his own independent opinion and not by that of others such as Police-officer.[1]

7. **Issue of process.**—This section provides that, when a Magistrate who receives a complaint neither dismisses it under S. 203 nor postpones issue of process under S. 202 process for the attendance of the accused *shall issue*.[1] The use of the word *shall* with reference to a summons and *may* with reference to warrants indicates that ordinarily a summons shall be issued in the first instance in all cases. Even in warrant cases the Magistrate, may, in his discretion issue a summons in the first instance instead of a warrant.[2] This discretion should be so used as not to subject accused persons to the indignity of arrest unless there is real need for it.[3]

If the Magistrate issues a warrant in a case in which he ought to have issued summons, the error is not a ground for setting aside the proceedings.[4] The Magistrate in such cases can cancel the warrant and issue a summons.[5]

Process should ordinarily issue against all the accused who are *prima facie* shown to have committed an offence and a Magistrate will be exercising a wrong discretion if he were to issue process to some only and not to all of the accused named in the complaint[6] though in proper cases, there is nothing

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(17) (1920) 1920 Nag. 255 (259, 260): 16 N. L. R. 9, *Govinda Saru Bhaji* v. *Emperor.*
(1900) 4 Cal. W. N. 560 (562), *Bishan Dayal* v. *Chedi Khan.*
(18) (1911) 12 Cri. L. Jour. 615 (616) (Lah.), *Paras Ram* v. *Crown.*
(1927) 1927 Lah. 744 (745), *P. F. Linton* v. *Emperor.*
(1862-63) 1 Mad. H. C. R. 66 (67, 68), *Varadarajulu Naidu.*
(1922) 1922 Lah. 424 (424), *Janki Das* v. *Emperor.*
(1925) 1925 Mad. 39 (42): 47 Mad. 722, *Ramanatham Chettiar* v. *Sivarama Subramania Iyer.*
(1921) 1921 Pat. 495 (495), *Haribux Ram* v. *Gopali Ram* (Same issues between same parties involved in District Registrar's Court).
(1913) 14 Cri. L. Jour. 128 (128) (Lah.), *Anant Singh* v. *Emperor.*
(1928) 1928 Notes 49 (c), *Phuman* v. *Emperor.*
(1873) 20 Suth. W. R. 60 (61), *Sheikh Koreem Bux* v. *Sheikh Moormut* (The civil suit having been disposed of the criminal case could not be dismissed).
(19) (1930) 1930 Lah. 802 (803), *Lorind Singh* v. *Emperor.*
(20) (1922) 1922 Pat. 618 (618), *Lalji* v. *Naurangi.*
(1930) 1930 Pat. 30 (32), *Parmanand Brahmachari* v. *Emperor.*
(1923) 24 Cri. L. Jour. 245 (247), *Keem Chand* v. *Emperor* (Peshawar).

Note 6.

(1) (1868-69) 4 Mad. H. C. R. 162 (165), *Rangaswamy* v. *Sabapathi.*
(1868) 9 Suth. W. R. 21 (21), *Borodakant Mookerjee* v. *Kali Bhuttacharjee.*

Note 7.

(1) (1900) 27 Cal. 798 (800), *Jhumuck Jha* v. *Pathuk Mandal.*
(1900) 27 Cal. 921 (924), *Mahdeo* v. *Empress.*
(1922) 23 Cri. L. Jour. 403 (403), *Muthukumaraswamy Nadar* v. *Mahammad Rowther.*
(1913) 14 Cri. L. Jour. 493 (494) (All.), *Ramprasad* v. *Moti.*
(2) (1893) 21 Cal. 588 (589), *Basumoti* v. *Budram.*
(3) (1892-1896) Vol. I, Upp. Bur. Rul. 31.
(4) (1864) 1 Suth. W. R. 16 (16), *Aneef Putney* v. *Ramsunder Chuckerbutty.*
(5) (1908) 8 Cri. L. Jour. 187 (187): 1 S. L. R. 69, *Imperator* v. *Mussammat Janat.*
(1913) 14 Cri. L. Jour. 604 (604): 7 S. L. R. 40, *Crown* v. *Zali Khan.*
(6) (1900) 4 Cal. W. N. 560 (562), *Bishendoyal* v. *Chedi Khan.*
(1920) 1920 Nag. 255 (259, 260): 16 Nag. L. R. 9, *Govinda Sambaji Mali* v. *Emperor.*

irregular or illegal for a Magistrate to issue process piecemeal for the various accused persons.[7] The Magistrate however, is not bound, when the police-report discloses one offender only, to issue process against any witnesses, who may afterwards, be found during trial to be accomplices.[8] S. 204, Notes 7—8.

When once the Magistrate issues process under this section, proceeding commences and it should go on in due course unless something occurs to show that the Magistrate has for some cause or other, made a wrong exercise of his discretion.[9] The question of commencement of proceedings becomes relevant in suits for damages for malicious prosecution or for prosecution for giving false complaint, etc. Prosecution commences when proceedings commence under this section and proceedings commence when process is issued against the accused. So unless process is issued, there is no cause of action in either of the proceedings referred to above.[10] The view that a prosecution commences even when a complaint is made[11] is, it is submitted, not well founded and is not an accepted one.

Where *A* and *B* are jointly accused of an offence but the Magistrate issues *process* only against *A*, *B* is competent to give evidence as a witness at the trial of *A*.[12]

8. Omission to issue process.—Where a Magistrate without issuing any process at all to the accused, convicts him, the conviction is illegal.[1] But where the accused appears in Court of his own accord, without a summons, he is entitled to require that the case be proceeded with and the mere omission to issue summons becomes immaterial in such a case.[2]

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(7) (1928) 1928 Lah. 541 (542), *Alam* v. *Emperor.*

(8) (1925) 1925 Rang. 122 (126): 3 Rang. 11, *Joseph* v. *Emperor.*

(9) (1873) 19 Suth. W. R. 28 (28), *Empress* v. *Ramkanoo.*

(1874) 21 Suth. W. R. 44 (45), *Ramkant Sirkar* v. *Jadub Chunder Dass Byragee.*

(10) (1920) 1920 All. 208 (209): 42 All. 305, *Azmat Ali* v. *Qurban Ahmad.*

(1932) 1932 All. 386 (389), *Basant Rai* v. *Lala Ganga Ram.*

(1891) Rat. 544 (545), *Empress* v. *Budhunbhai.*

(1910) 6 Ind. Cas. 877 (877, 878): 37 Cal. 358, *De Rozario* v. *Gulab Chand Anundjee* (5 Bom. L. R. 940 dissented from).

(1911) 11 Ind. Cas. 311 (312): 38 Cal. 880, *Golap Jan* (Approving *Yates* v. *The Queen*, L. R. 14 Q. B. D. 648).

(1913) 21 Ind. Cas. 703 (705): 37 Mad. 181, *Meeran Saib* v. *Ratnavelu Mudali.*

(1926) 1926 Mad. 521 (524): 49 Mad. 315, *Sanjivi Reddi* v. *Kondagari Koneri Reddi.*

(1926) 97 Ind. Cas. 351 (352) (Mad.), *Arunachala Mudaliar* v. *Chinna Munuswami Chetty.*

(1897) 1 Q. B. 159, *Thorpe* v. *Priestnall* (Approved in 6 Ind. Cas. 877 (877)).

(1931) 1931 All. 665 (665): 53 All. 771, *Ali Mohamed* v. *Zakir Ali.*

(1929) 1929 Pat. 271 (271, 272): 8 Pat. 285, *Subhag Chamar* v. *Nandlal Sahu* (Mere fact that plaintiff (accused) was present at enquiry does not alter position).

(1910) 7 Ind. Cas. 255 (256) (Cal.), *Gopal Jain* v. *Bhola Nath.*

(1915) 28 Ind. Cas. 273 (276): 1914 Lah. 531: 1915 Pun. Re. 1, *Godharam* v. *Debidas* (But this does not conclude the matter—Held in circumstances of case plaintiff was entitled to damages).

[See also (1933) 1933 Pat. 292 (292, 293): 12 Pat. 292, *Zahiruddin Mahomed* v. *Buahu Bibi* (Where it was held that proceedings commenced even by the mere order for the issue of process, though it was not issued).]

11) (1877-78) 2 Bom. 481 (487), *Imperatrix* v. *Lakshman.*

(1903) 5 Bom. L. R. 940 (945): 28 Bom. 226, *Ahmedbhai Habibhai* v. *Framji Edulji Bamboat.*

(1834) 6 C. & P. 423, *Clarke* v. *Postan* (Distinguished as a mere dictum in 6 Ind. Cas. 877 (877). Referred to and not approved in 11 Ind. Cas. 311 (312)).

12) (1882) 10 Cal. L. R. 553 (554), *Mohesh Chander Kopali* v. *Mohesh Chunder Dass.*

[See also (1935) 1935 Bom. 186 (188): 59 Bom. 355, *Keshav Vasudeo Kartikar* v. *Emperor.*]

Note 8.

(1) (1891) 15 Mad. 83 (87), *Empress* v. *Erugadu.*

(2) (1902) 26 Bom. 552 (557), In the matter of *Lakshman Govind.*

(1868) Rat. 8 (9), *Reg.* v. *Sadasivapa* (Following *Tuner* v. *Post Master-General*, 34 L. J. M. C. 10).

(1919) 1919 Lah. 389 (390): 1919 P. R. 5, *Emperor* v. *Mt. Ruri.*

34 L. J. M. C. 10, *Turner* v. *The Post Master General* (Followed in 5 Bom. H. C. 29 (30)).

S. 204, Notes 9—15.

9. **Notice if a "process."**—A mere notice to the person complained against that a preliminary enquiry will be held does not amount to a summons. The issue of such a notice is neither contemplated by the Code nor included in the forms in Schedule V.[1]

10. Order directing summons if a judgment.—An order directing issue of summons under this section is not a judgment. So where a Magistrate issued summons to an accused and the accused appeared and filed a cross-complaint, it was held that it was open to the Magistrate to rescind the order as to summons and send the complaints for enquiry under S. 202.[1]

11. Order directing summons if can be recalled.—An order issuing summons under this section, not being a judgment within the provisions of S. 369 *infra* there is nothing in the Code which forbids the Magistrate to reconsider such order on sufficient ground and recall the summons.[1]

12. "If he has not jurisdiction himself."—A process is for attendance of the accused before the Magistrate issuing it; but there are cases where the Magistrate issuing process has no jurisdiction to try the case as for example under S. 29-A *supra* in cases of complaint against an European British subject. Provision is made here, for the attendance of the accused, in such cases, before another Magistrate having jurisdiction.

13. "Some other Magistrate having jurisdiction."—"Some other Magistrate having jurisdiction" means having jurisdiction to enquire into and try the case, the power to take cognizance being distinct from jurisdiction.

14. "Provisions of S. 90"—Sub-S. (2).—*See* Notes to S. 90, *supra*.

That section provides for the issue of warrant in lieu of or in addition to summons, in summons cases, under circumstances stated therein.

15. Process fee.—Sub-Section (3) is new and enables a Magistrate to dismiss a case for default of payment of such fees for process as are payable and ordered, within a reasonable time. Even before this provision was inserted there existed the practice of dismissing the complaint for non-payment of process fees, as one for default of prosecution[1] though such a dismissal was held to be illegal in warrant cases.[2] The legislature has given effect to that practice by the addition of this sub-section.

Where a complaint was against two persons, but the complainant paid process fees for summons against one only, the other must be discharged, under

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Note 9.

(1) (1913) 21 Ind. Cas. 703 (704): 37 Mad. 181, *Sheikh Meeran Saib* v. *Ratnavelu Mudali.*
(1927) 1927 Mad. 18 (18): 49 Mad. 926, *Varadarajulu Naidu* v. *Kuppuswamy.*
(1927) 1927 Mad. 19 (20, 21): 49 Mad. 918 (F.B.), *Appa Rao Mudaliar* v. *Janakiammal.*
(1923) 1923 Cal. 198 (199), *Chandi Charan* v. *Manindra Chandra Roy.*
(1928) 1928 Mad. 1198 (1198), *Ramabhandra Odayar* v. *Emperor.*
(1918) 1918 Pat. 652 (653), *Mushari Ram Manhari* v. *Raj Kishore Lal.*

Note 10.

(1) (1923) 1923 Cal. 662 (662), *Lalit Mohon* v. *Nani Lal Sarkar.*

Note 11.

(1) (1923) 1923 Cal. 662 (662), *Lalit Mohan* v. *Nani Lal.*
[But see (1907) 6 Cri. L. Jour. 367 (369) (Cal.), *Panchu Ghosh* v. *Khoslal Sarkar* (Withdrawal of processes without taking evidence held improper).]

Note 15.

(1) (1889) Rat. 491 (491), *Empress* v. *Bhika.*
(1886) 2 Weir 252, Re *Ponnammal.*
(2) (1893) 2 Weir 323 (323), Re *Palannagari.*
[See (1872) 1872 Pun. Re. No. 21, p. 29, *Khan Singh* v. *Hukum Singh* (Charge of cheating—Complaint not to be dismissed for failure to deposit expenses of producing accused after warrant has been issued).

this sub-section, if no summons is taken against him.[3]

S. 204, Note 15.

The process fee referred to in this sub-section is only for the attendance of the accused at the commencement of proceedings and cannot be ordered for the presence of the accused on the date of judgment and a dismissal of the complaint under this sub-section for non-payment of process fees for such summons is not legal.[4]

Ordinarily, under this section the complainant must pay process fee only for summoning the accused in all cases.[5] In cases of private complaints, the Court, could insist upon the complainant paying not only the process fees for summoning the witnesses but also their diet money and travelling expenses under the head "*other fees payable*" before issuing process for them.[6] In the case of a non-cognizable warrant case, neither the complainant nor the accused can be compelled to pay process fees for *witnesses* though the complainant must pay process fees for summoning the accused.[7]

The section applies to Magistrates taking cognizance of *offences* and this rule as to payment of process-fees, refers therefor only to cases when an 'offence' is disclosed. An application for maintenance under S. 488 should not be dismissed under this sub-section, for failure to pay process-fees, as an order for maintenance is not a conviction for an offence.[8]

Where a complaint was dismissed under this sub-section in a *de novo* trial after charges had already been framed it was held that it amounted merely to a discharge and not an acquittal, and that a second trial on same facts would not be barred.[9] See further S. 403 *infra*.

Where a complaint is dismissed under this sub-section, the High Court, Sessions Judge or District Magistrate may under S. 436 direct a further enquiry and in such a case notice to show cause why a further enquiry should not be ordered, is neither desirable nor necessary.[10]

Where on the date fixed, a Magistrate is unable to record evidence and he has to adjourn the case, the witnesses should be given notice to appear on the adjourned date and a party should not be required to repeatedly summon his witnesses on payment of process fees. A dismissal of the complaint for default under this sub-section when the Magistrate fails to give such notice is not justifiable.[11]

As to the fees payable, *see* S. 20 of the Court-Fees Act, VII of 1870, and rules framed by the High Courts thereunder.

See also the undermentioned case.[12]

See (1870) 4 Bom. 276 (277), In re *Lakshman Govind* (Complaint of criminal breach of trust—Process fee not to be asked for).]

(3) (1902) 26 Bom. 552 (557), In the matter of *Lakshman Govind Nirgude*.

(4) ((1925) 1925 All. 392 (393), *Bhimmi* v. *Pershadi*.

(5) (1926) 1926 Rang. 13 (14), *Emperor* v. *Mg. San Nyein*.

(6) (1928) 1928 Oudh 226 (227): 3 Luck. 363, *Ram Dulari* v. *Mushtaq Ahmad*.

(7) (1926) 1926 Rang. 13 (14), *Emperor* v. *Mg San Nyein*.

(8) (1893) 16 Mad. 234 (234), Re *Ponnammal*.

(9) (1931) 1931 Nag. 39 (40): 27 Nag. L. R. 13, *Sheoraj Sai* v. *Dani*.

[But see 38 Mad. 585: 25 Ind. Cas. 1001 (1002, 1003): 1915 Mad. 23 (Where it was held that after a charge is framed, there can be no discharge but only an acquittal and a second complaint on the same facts would be barred by S. 403).]

(10) (1922) 1922 Pat. 54 (54), *Sheonarain Singh* v. *Rampertab Rai*.

(11) (1912) 13 Cri. L. Jour. 176 (176) (Lah.), *Balmukund* v. *Nanak Chand*.

(12) (1892-96) 1892-96 U.B.R. Vol. 1, 131 (131), *Empress* v. *Balo To* (Processes issued on the complaint of a municipal officer are not exempt from the payment of court-fees).

S. 204, Notes 16—17.

16. Revision.—The High Court has ample revisional powers to interfere with the proceedings under this section and can exercise its powers at any stage of the proceedings and quash the same, though it will interfere only in cases of an exceptional nature as where neither the complaint nor the prosecution disclosed a case against the accused, but process has been issued under the section.[1]

Where a Magistrate, having followed the procedure laid down, has exercised a discretion judicially, in issuing a process[2] or where the error, omission, or irregularity in the issue of process is one which is curable under S. 537 *infra*[3] the High Court will not interfere.

17. Process under special or Local Acts.—See the undermentioned case.[1]

S. 205.

205*. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

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*(CODE OF 1882—S. 205.)

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Note 16.

(1) (1899) 1899 All. W. N. 212 (213), *Empress* v. *Clifton*.
(1896) 20 Bom. 543 (545, 546), *Empress* v. *Nageshappa*.
(1873) 20 Suth. W. R. 23 (28, 29), *Abdul Kadi Khan* v. *Magistrate of Purneah*.
(1894) 22 Cal. 131 (139), *Chandi* v. *Abdur Rahman*.
(1897) 25 Cal. 233 (235), *Chota Lal Das* v. *Anant Pershad*.
(1899) 26 Cal. 786 (791), *Jagat Chandra Mozumdar* v. *Empress*.
(1910) 11 Cri. L. Jour. 525 (527): 38 Cal. 68, *Haricharan Gorai* v. *Srish Chandra Sadukhan*.
(1915) 16 Cri. L. Jour. 477 (477, 478): 39 Mad. 561, In re, *Kuppuswamy Iyer*.
(1932) 1932 Pat. 72 (78), *Raghunath Puri* v. *Emperor*.
(2) (1926) 1926 Cal. 795 (797): 53 Cal. 606, *Subal Chandra* v. *Ahadullah Sheikh*.
(1869) 11 Suth. W. R. 54 (54, 55), *Empress* v. *Russick Monee*.
(3) (1907) 6 Cri. L. Jour. 240 (251): 31 Bom. 611, *Emperor* v. *Jeevanje* (An order under S. 476 by a Magistrate to whom the case has been sent for enquiry and report only and not for disposal).
(1875) 23 Suth. W. R. 63 (64), *Eastern Bengal Railway* v. *Kalidas Dutt* (Omission to examine the complainant before issuing summons).
(1917) 18 Cri. L. Jour. 366 (367) (Pat.), *Phagu Sahu* v. *Emperor* (Issue of process without examination of the complainant. See also Note 16, S. 200).
(1912) 13 Cri. L. Jour. 609 (611) (Cal.), *Pulin Behary Das* v. *Emperor* (Issue of process on insufficient materials).
(1864) 1 Suth. W. R. 16 (16), *Aneef Putney* v. *Ramsoonder Chukerbutty* (Issue of warrant instead of summons in the first instance).
1 Sind 118, *Abdul Hakim* (Dismissal of a complaint for want of an offence after issuing process).
(1929) 1929 Lah. 867 (867), *Muhammad Sadiq* v. *Delhi Electric Supply* (Mention of wrong section in summons but accused informed of correct section on his appearance).

Note 17.

(1) (1908) 8 Cri. L. Jour. 185: 1 Sind L. R. 67, *Imperator* v. *Pamin* (Gambling Act, IV of 1887).

SYNOPSIS.

	Note No.
I LEGISLATIVE CHANGES	1
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III "WHENEVER A MAGISTRATE ISSUES A SUMMONS" ..	3
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S. 205, Note 1.

Other Topics.

Dispensation with attendance of accused when incapable of remaining before the Court. See S. 540-A.

No exemption when warrant is issued. See Note 3, Pts. 1 and 2.

Record of reasons for refusing leave under the section. See Note 4, Pt. 3 (a).

1. Legislative Changes.—

Changes introduced in 1872—

Under the Code of 1861, it was doubtful where the Court could dispense with the personal attendance of the accused in cases in which a *warrant* was ordinarily issuable on complaint. Section 151 of

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But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

(CODE OF 1872—S. 151.)

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient cause, dispense with the personal attendance of the accused person, and permit him to appear by an agent duly authorized to act in his behalf.

Magistrate may dispense with personal attendance of accused.

But it shall be in the discretion of such Magistrate, at any stage of the proceedings, to direct the personal attendance of the accused person.

(CODE OF 1861—S. 261.)

261. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person complained against, and permit him to appear by an Agent duly authorized to act in his behalf. Provided that it shall be at the discretion of the Magistrate at any stage of the proceedings to direct the personal attendance of such person.. When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of the Agent if the accused person has been permitted to appear by Agent, or the accused person may be required to attend to hear such sentence.

Magistrate may dispense with personal attendance of accused.

S. 205, Notes 1—3.

the Code of 1872 made it clear that the Court could do so "in cases of whatever nature in which the Magistrate thinks fit to issue a summons".

Changes introduced in 1882—

(1) The words "*in cases of whatever nature*" of the Code of 1872 were substituted by the words "*whenever.....issues a summons*".

(2) The words "*by his pleader*" were substituted for the words *by an agent duly authorised.* This is consequent on the definition of "*pleader*" newly added to the Code of 1882 in S. 4 (*n*). That definition included any person duly authorised.

(3) The words "*and if necessary.....provided*" were newly added.

Changes introduced in 1898—

The section remains unchanged since 1882.

2. **Scope.**—The general principle of the Code is that an accused person cannot be proceeded against *ex parte.*[1] This section provides an exception to this general rule by enacting that the Magistrate may dispense with the *personal* attendance of the accused in a particular class of cases, namely those in which he issues a *summons.* At any stage of the proceedings, however, the Magistrate enquiring into, or trying the case can direct the personal attendance of the accused if his presence is found necessary.

This section applies only to *Magistrates* and not to Courts of Session or the High Court. But S. 353, *infra* shows that the latter Courts have got similar power to dispense with the personal attendance of the accused.[2] The High Court can also under its inherent powers recognised by S. 561-A, dispense with such attendance.[3] *See also* S. 116, *ante* and S. 540-A, *infra.*

3. **"Whenever a Magistrate issues a summons".**—The section applies only when a Magistrate has issued a *summons.* It does not therefore apply where a *warrant* has been issued[1] or the accused has been arrested without a warrant.[2] Where, however, a *summons has been issued in the first instance* and thereafter the accused is brought in under a warrant of arrest, the section would apply.[3] A summons can under S. 204, *ante,* be issued even in cases in which a warrant is ordinarily issuable; this section will apply even to such cases if a summons has been issued.[4] Even where a warrant has been issued, the Magis-

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Section 205—Note 2.

(1) (1875) 24 Suth. W. R. 25 (26), *Tariney Churn Bose.*

(2) (1922) 1922 Mad. 79 (79): 45 Mad. 359, *Kandaswami Devi* v. *Emperor* (Court of Session).
(1912) 13 Cri. L. Jour. 464 (464) (Bom.), *Emperor* v. *King* (High Court).
(1914) 23 Ind. Cas. 489 (491) (Cal.), *Rajarajeswari Debi* v. *Emperor.*
[See also (1867) 7 Suth. W. R. 78 (78), In re *Nistarinee* (Application for dispensing with personal attendance held inadmissible, apparently on the ground that there was no good reason to do so).]

(3) (1930) 1930 Nag. 61 (62, 63): 26 N. L. R. 50, *Mt. Saji* v. Mt. *Bhini.*

Note 3.

(1) (1909) 13 Cal. W. N. cl, *Sashi* v. *Ashutosh.*
(1917) 18 Cri. L. Jour. 975 (976): 1917 Pun. Re. No. 36, *Sardar.*
(1880) 1880 Pun. R. No. 18, p. 31, *Jiwan Beg* v. *Empress.*

(2) (1924) 1924 Pat. 46 (47): 2 Pat. 793, *Abdul Hamid* v. *Emperor.*

(3) (1930) 1930 Nag. 61 (62): 26 N. L. R. 50, *Mt. Saji* v. *Mt. Bhini.*

(4) (1894) 21 Cal. 588 (589, 590), *Basumati Adhi Karim* v. *Budram.*

trate may cancel the warrant and issue a summons, in which case, this section will become applicable.[5]

4. "Dispense with".—The words "may, if he sees reason so to do" show that the Magistrate has a *discretion* to dispense with the personal attendance of the accused or not as he thinks fit. The discretion will, however, be used liberally especially in trivial cases such as a prosecution for a municipal offence,[1] or where the accused is a pardanashin lady[2] or where the accused is too ill to attend Court.[3] In such cases if the permission is refused, reasons for such refusal should be recorded.[3-a]

A Magistrate can dispense with the personal attendance of the accused as often as he pleases.[4]

It is not necessary that there should be an *express order* dispensing with the personal attendance. But it is advisable that the fact should be noted in the records and not be left for implication.[5]

5. Bond from the accused.—Where the personal attendance of an accused is dispensed with, a recognizance bond, may be taken from him binding him to appear either in person or by pleader, and if the pleader neglects to attend when the case is called on, the bond may be forfeited and the accused made liable for the payment of the penalty. The bond cannot be taken from his pleader nor can his pleader be bound by such a bond to attend.[1]

6. Pardanashin lady.—Where a Magistrate issues a summons to a *pardanashin* woman who is accused of an offence, he should, as a general rule, dispense with her personal attendance and permit her to appear by pleader at least until such time as he has before him some legal and satisfactory evidence indicative of her having committed a breach of the law.[1] Such an order should not be refused merely because—

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(5) (1908) 8 Cri. L. Jour. 454 (454) (Lah.), *Mt. Prem Kuar* v. *Maistnamnath*.

Note 4.

(1) (1913) 18 Cal. W. N. xxxi, Re *Surendranath*.
(2) (1883) 6 All. 59 (60), *Rahim Bibi*.
(1927) 1927 All. 149 (150), *Mt. Tirbeni* v. *Mt. Bhagwati*.
(1894) 21 Cal. 588 (590), *Basumoti Adhikarini* v. *Budram Kalita*.
(1910) 11 Cri. L. Jour. 197 198): 3 S.L. R. 167, *Emperor* v. *Mahomed*.
(1914) 23 Ind. Cas. 489 (491) (Cal.) *Raja Rajeswari Debi* v. *Emperor*.
(3) (1902) 6 Cal. W. N. lix, *Kiran*.
(1912) 13 Cri. L. Jour. 464 (464) (Bom.), *Emperor* v. *King*, (High Court dispensing with the attendance).
(3-a) (1883) 6 All. 59 (60), *Rahim Bibi*.
(4) (1910) 14 Cal. W. N. cxxxi., *Devendra* v. *Narendra*.
(1917) 21 C. W. N. (N.) clxviii (clxviii), Re *Sukhlata*.
(5) (1926) 1926 Bom. 218 (221): 50 Bom. 250, *Dorabshah Bomanji Dubash* v. *Emperor*.

Note 5.

(1) (1868-69) 5 B. H. C. R. 64 (65), *Reg* v. *Lallubhai Jassubhai*.

Note 6.

(1) (1883) 6 All. 59 (60), In the matter of the petition of *Rahim Bibi*.
(1922) 1922 Mad. 79 (79): 45 Mad. 359, *Kandamanidevi* v. *Emperor*.
(1908) 8 Cri. L. Jour. 454 (455) (Lah.) *Mt. Premkuar* v. *Maisham Nath*.
(1914) 1914 Sind 51 (51): 7 S. L. R. 161, *Bachal* v. *Emperor*.
(1927) 1927 All. 149 (150), *Tirbeni* v. *Bhagwati*.
(1914) 23 Ind. Cas. 489 (491) (Cal.), *Rajrajeswaridevi* v. *Emperor*.
(1917) 21 Cal. W. N. (N) clxviii, Re *Sukhlata*, (Attendance dispensed with till the conclusion of the case).
(1931) 1931 Sind 37 (38), *Mt. Asu* v. *Emperor*.
(1909) 9 Cri. L. Jour. 158 (160) (Lah.), *Mt. Habbo* v. *Emperor* (Until the case has reached the stage at which personal attendance is clearly and legally required in the interests of justice).
(1910) 11 Cri. L. Jour. 197 (198): 3 S. L. R. 167, *Crown* v. *Mahomed Wd. Kadu*, (Until it becomes necessary).

S. 205, Notes 6—7.

(1) the Magistrate thinks that she is not *pardanashin*.[2]

(2) other women belonging to the same class that observed *pardah* had appeared in Court.[3]

(3) she is the daughter of a prostitute, if she is married to a respectable husband in whose family women observe *pardah*.[4]

The Court will extend the privilege of *pardah* to women who though not strictly *pardah*, are yet not accustomed generally to appear before the public.[5] This section is one which should be freely utilised in Sindh where so much prejudice exists against the appearance of females generally in public.[6]

As to the right of a *pardanashin* woman to be exempted from personal attendance.

(1) where she is a complainant, *see* S. 200, *supra*.

(2) where she is a witness, Ss. 503 and 506, *infra*.

7. "**Permit him to appear by his pleader**".—Although the *personal* attendance of the accused may be dispensed with under this section, it is essential that he should be *represented* by his pleader. The reason is that it is necessary that some one should be present at the trial to look after the interests of the accused, and the law considers that such interests will be completely safeguarded if his pleader is in attendance.[1]

The words "appear by pleader" in their ordinary acceptance mean "represented by pleader", that is, having a pleader to act and to plead.[2]

The appearance by a pleader involves the performance of all acts that devolve upon the accused in the course of the trial[3] such as the following:—

(1) pleading guilty or not guilty under S. 255 and in cases falling under Ss. 242 and 243,[4]

(2) filing a written statement embodying the plea of the accused.[5]

(3) making the necessary answers to an examination under S. 342,[6]

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(2) (1910) 11 Cri. L. Jour. 197 (198): 3 S. L. R. 167, *Emperor* v. *Mahomed*.
(3) (1927) 1927 All. 149 (149, 150), *Mt. Tribeni* v. *Mt. Bhagwati*.
(4) (1913) 14 Cri. L. Jour. 3 (4) (Lah.). *Abdul Gaffar Beg* v. *Emperor*.
(5) 2 Hyde 88, *Kistomohun Mookerjee* v. *Adermoney Dabee*.
(6) (1931) 1931 Sind 37 (38), *Mt. Asu* v. *Emperor*.
(1910) 11 Cri. L. Jour. 197 (198): 3 S. L. R. 167, *Crown* v. *Mahomed Wd. Kadu*.
(1913) 14 Cri. L. Jour. 272 (272): 6 S. L. R. 206, *Emperor* v. *Jamal Khatun*.
(1913) 14 Cr. L. Jour. 604 (604): 7 S. L. R. 40, *Emperor* v. *Zali Khan*.

Note 7.

(1) (1928) 1928 Cal. 27 (32), *Hari Narayan* v. *Emperor*.
(2) (1928) 1928 Cal. 27 (32), *Hari Narayan* v. *Emperor*.
(3) (1926) 1926 Bom. 218 (219): 50 Bom. 250, *Emperor* v. *Dorabshah*.
(1913) 14 Cri. L. Jour. 272 (272): 6 S. L. R. 206, *Mt. Jamal*.
(4) (1926) 1926 Bom. 218 (220): 50 Bom. 250, *Emperor* v. *Dorabshah* [Following *Rex* v. *Thompson*, 1909 3 K.B. 614, *Vessel* v. *Wilson*, (1853) 22 L. J. Q. B. 221, *Reg.* v. *Aves*, (1871) 24 L. T. 64 distinguishing *Emperor* v. *Sursing*, (1904) 6 Bom. L. R. 861.]
(1909) 2 K. B. 614, *Rex* v. *Thompson* (Cited with approval in 1926 Bom. 218).
[But see (1904) 1 Cri. L. Jour. 939 (939) (Bom.), *Emperor* v. *Sursingh Mathura Das* (Distinguished in 1926 Bom. 218).]
[But compare (1925) 1925 Oudh 305 (306), *Municipal Board* v. *Thulasi Ram*.]
[See also (1890) 1890 Pun. Re. No. 2, p. 3, *Shib Ram* v. *Simla Municipal Committee*.]
[But see (1871) 15 Suth. W. R. 42 (42), *The Queen* v. *Roopa Gowalla* (Accused should plead by his own mouth—Case under 1861 Code).]
(5) (1917) 21 C. W. N. clxviii, Re *Sukhlata*.
(6) (1926) 1926 Bom. 218 (220): 50 Bom. 250, *Emperor* v. *Dorab Shah*.
(1927) 1927 Rang. 73 (73): 4 Rang. 506, *Maung Po Nyein* v. *Haka Singh*.

(4) hearing a deposition of a witness read over, under S. 360 (1),[7]

(5) hearing of a judgment, the sentence being one of fine or acquittal under S. 366 (2).[8]

Form No. 1 of Schedule 5 of the Code, shows that the summons to an accused person, may itself direct whether the accused is to appear in person or by pleader. In other words, the Magistrate may, even at the time of issuing summons, dispense with the personal attendance of the accused and permit him to appear by pleader.[9] When a summons is sent as in Form No. 1 of Schedule V, containing the words "you are hereby required to appear in person or by pleader" and the accused sends his pleader who requests for permission to dispense with the personal attendance of the accused, the Magistrate, cannot proceed against the accused for disobedience of the summons even though he refuses to grant the permission. If he wants his personal attendance, an order directing such attendance should be made.[10]

The power to dispense with the personal attendance of the accused can be exercised by the Magistrate only so far as his *own Court* is concerned. He cannot, for instance, grant or refuse permission to appear through a pleader in the Sessions Court to which he commits the accused.[11]

8. "**Pleader**".—Under the Codes of 1861 and 1872, the Court could, when dispensing with the personal attendance of the accused, permit him to appear by an *agent duly authorised*.[1] Under the present Code, the Court can permit him to appear only by his *pleader*. But the definition of the word "*pleader*" as now given in S. 4 (*r*) *ante*, is very wide and includes *any person appointed by the accused with the permission of the Court* to act in the proceedings against him.[2] In order that a person, other than a pleader authorised by law to practise in the Court, should be a "pleader" within the meaning of S. 4 (*r*), it is necessary that

(1) he should have been appointed by the accused to act for him, *and*

(2) the Court should permit him to so act.

The appointment and the permission need not however be express but may be implied from the circumstances of the case.[2-a]

Where the father-in-law of the accused who was unwell appeared in Court on her behalf and the trying Magistrate thereupon proceeded with the case, it was assumed that the Magistrate must have given the necessary permission.[3]

It is however generally advisable that something should be noted on the record to show that the person who represents the accused has been duly appointed by him and the Court has given the requisite permission for his

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(1913) 14 Cri. L. Jour. 272 (272): 6 S. L. R. 206, *Mt. Jamal*.

(1934) 1934 Bom. 212 (212), *Emperor* v. *Jaffar-cassum Moosa*.

(7) (1928) 1928 Cal. 27 (32), *Harinarayan Chandra*.

(8) (1926) 1926 Bom. 218 (219): 50 Bom. 250, *Emperor* v. *Dorabshah*.

(9) (1926) 1926 Bom. 218 (219): 50 Bom. 250, *Emperor* v. *Dorabshah*.

(10) (1900) 27 Cal. 985 (988, 989), *Durga Das* v. *Umesh Chandra*.

(11) (1865) 2 Suth. W. R. 50 (50), *Hurnath Roy*.

Note 8.

(1) (1862) 1862 Rat. 1 (2), *Reg.* v. *Ramachandra*.

(2) [See (1926) 1926 Bom. 218 (222): 50 Bom. 250, *Emperor* v. *Dorabshah*.]

(2-a) [See (1926) 1926 Bom. 218 (221): 50 Bom. 250, *Emperor* v. *Dorabshah*.]

(3) (1884) 1884 Rat. 206 (207), *Chandrabhaga*.

S. 205, Notes 8—10.

appearance in place of the accused.[4]

In the absence of an *appointment* by the accused of any person to represent him, the mere permission of the Magistrate will not entitle any person to act as a pleader for the accused, and the Magistrate would have no jurisdiction to proceed with the case in the absence of the accused.[5]

Illustrations.

(1) *X*, the estate agent of the accused appeared in Court and was permitted by the Magistrate to represent the accused. It was, however, not clear that he was appointed by the accused to act for him in the proceeding, it was held that the accused could not be convicted on the plea of "guilty" made by the agent.[6]

(2) The accused, a woman, was absent from her village and apparently without her knowledge, her mother-in-law appeared in Court on her behalf and was permitted to act for the accused. It was held that the conviction was not sustainable.[7]

9. **Applicability to security proceedings.**—This section applies to proceedings under S. 106 in Chapter VIII-A for the reason that the person against whom the proceedings are taken is an accused person. But it does not apply to proceedings under Ss. 107 to 110, in Chapter VIII-B.[1] Inasmuch as, in such proceedings, the persons proceeded against are not accused persons. But independently of this section, S. 116 provides for dispensing with the personal attendance of the persons proceeded against in such cases.

10. **At any stage of the proceeding.**—Where the Court has allowed the accused to appear by pleader, but thinks it necessary or desirable that the accused should be present in person for any particular purpose, such as for examination by the Court under S. 342 or for pleading to a charge under S. 255, he may order the personal appearance of the accused.[1] Where the accused is convicted and the sentence is not one of fine only, the Magistrate must, under S. 366, sub-S. (2), direct the personal attendance of the accused for hearing the judgment.[2] Though at any time, the Magistrate can revoke the permission given to the accused to appear by a pleader, yet he should not do so in a trivial case such as an Income-Tax prosecution and on a trivial ground such as that the accused objects to the case being tried by that Magistrate and wants a transfer of his case to some other Magistrate.[3]

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(4) (1926) 1926 Bom. 218 (222): 50 Bom. 250, *Emperor* v. *Dorabshah*.

(5) [See (1924) 1924 Pat. 46 (47): 2 Pat. 793, *Abdul Hamid* v. *Emperor*.]
[See also (1930) 1930 Nag. 61 (63): 26 N. L. R. 50, *Mt. Sarji* v. *Mt. Bhimi*.
(1924) 1924 Rang. 383 (383), *Ma Kin* v. *Emperor* (Accused absent throughout the proceeding and a co-accused allowed to represent him).]

(6) (1926) 1926 Bom. 218 (222, 223): 50 Bom. 250, *Emperor* v. *Dorabshah*.

(7) (1884) Rat. Un. Cr. C. 205, *Empress* v. *Virhi*.

Note 9.

(1) (1903) 2 Weir 54 (55), *Tayakat Vasudeven Tirunambu*.

Note 10.

(1) (1926) 1926 Bom. 218 (219): 50 Bom. 250, *Emperor* v. *Dorabshah*.
(1918) 43 Ind. Cas. 407 (407): 1918 Pat. 152, *Jewraj* v. *Dullanji*.
(1934) 1934 All. 693 (694), *Ishwar Das* v. *Bhagwan Das*.
[See (1934) 1934 Bom. 212 (212), *Emperor* v. *Jaffar Cassum Moosa* (Magistrate not *bound* to require personal attendance of accused for examination under S. 342).]

(2) (1922) 1922 Mad. 79 (79): 45 Mad. 359, In re *Kandaswamy*.
(1914) 23 Ind. Cas. 489 (491) (Cal.), *Raja Rajeswari Debi* v. *Emperor*.
(1927) 1927 Rang. 73 (73): 4 Rang. 506, *Maung Po Nyein* v. *Haka Singh*.
(1913) 14 Cri. L. Jour. 272 (272): 6 S. L. R. 206, *Mt. Jamal*.

(3) (1923) 24 Cri. L. Jour. 902 (903) (Cal.), *Dwijendra* v. *Emperor*.

11. Revision.—Where the Magistrate, has refused to excuse the personal attendance of an accused person, the High Court will in proper cases interfere in revision and will dispense with his presence.[1] **S. 205, Note 11.**

The High Court will not, however, interfere where the irregularity alleged is the mere omission of the Magistrate to make a record that he has given permission to the accused to appear by his pleader,[2] or where the case itself is an extremely trivial one.[3]

But where there is a complete absence of jurisdiction as where the Magistrate dispenses with the presence of the accused in a case in which a *warrant* has been issued, the High Court will set aside the order giving such permission.[4]

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206*. (1) Any Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, or any Magistrate (*not being a Magistrate of the third class*) empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court. **S. 206.**

Power to commit for trial.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

***(CODE OF 1882—S. 206.)**

CHAPTER XVIII.

Of Inquiry into cases triable by the Court of Session or High Court.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Power to commit for trial.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Note 11.

(1) (1884) 6 All. 59 (60), *Rahim Bibi* (Purdanashin lady).
(1927) 1927 All. 149 (150), *Tirbeni* v. *Mt. Bhagwati* (Purdanashin lady).
(1914) 23 Ind. Cas. 489 (491) (Cal.), *Raj Rajeswari Debi* v. *Emperor* (Purdanashin lady).
(1902) 6 Cal. W. N. lix (lix), *Kiranchandra Roy* (Extreme illness and distance of Court from house).
(2) (1926) 1926 Bom. 218 (221): 50 Bom. 250, *Emperor* v. *Dorabshah*.
(3) (1884) Ratanlal, 206, *Empress* v. *Chandrabhaga*.
(4) (1924) 1924 Pat. 46 (47): 2 Pat. 793, *Abdul Hamid* v. *Emperor*.

S. 206.

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Procedure where some offences are triable by one Court and others by Court of Session. See Note 6, Pt. 12.

Scope and applicability of section. See Notes 5 and 6.

(CODE OF 1872—S. 143.)

143. The Magistrate of the District, any Magistrate of a Division of a District, any Magistrate of the first class, or, any Magistrate duly empowered in that behalf, may commit any person to the Court of Session for any offence triable by such Court.

Who may commit for trial.

(CODE OF 1861—Ss. 37 and 38.)

37. It shall be competent to the Magistrate of the District, or to any other officer exercising the powers of a Magistrate, to hold the preliminary enquiry into any cases triable by a Supreme Court of Judicature, and to commit or hold to bail persons to take their trial before such Court, and to exercise all the powers necessary for such purpose.

Commitment for trial before Supreme Court.

38. The Local Government may empower any Subordinate Magistrate of the first or second class not vested with such power by any law for the time being in force, to hold the preliminary enquiry into cases triable by the Court of Session, or by any Supreme Court of Judicature, and may empower such Subordinate Magistrate to commit, or hold to bail, persons to take their trial before such Court of Session or Supreme Court, and to exercise all the powers necessary for such purpose.

Subordinate Magistrate may be empowered to prepare cases for trial before the Court of Session or Supreme Court.

S. 206, Notes 1—3.

1. **Chapter XVIII—General.**—S. 193 *ante* provides that a Sessions Judge can take cognizance of a case in the exercise of his original jurisdiction only when the accused has been *committed* for trial before him. S. 194 *ante* provides that the High Court may take cognizance of offences upon commitment made to it. This chapter specifies the Magistrates who may pass orders of committal; and prescribes the procedure to be followed by them for the purpose.

The inquiry prescribed by the Chapter is called a *preliminary inquiry*; and before a Magistrate commits a case for trial to a Sessions Court he must hold such a preliminary inquiry into the facts alleged against the accused[1] and satisfy himself that there is a real case for trial.[2]

The object of such an inquiry is twofold. Firstly, in order to prevent the committal of cases in which there is no reasonable ground of conviction, so as, on the one hand, to save the accused from the prolonged anxiety of undergoing a trial for offences that cannot be brought home to him, and, on the other, to save the time of the Court being wasted over cases in which the evidence would obviously not justify a conviction.[3] Secondly, in order to provide that no person shall be committed for trial without being previously made acquainted with the facts and circumstances of the offence imputed to him and without being given a fair opportunity of meeting them.[4]

2. **Legislative Changes.**—

(1) The words "subject to the provisions of S. 443" which originally occurred in the section have been omitted in view of the amendment of S. 443 effected by the Criminal Procedure Code (Amendment) Act XVIII of 1923.

(2) The words "(Not being a Magistrate of the third class)" were newly introduced into the section by the said Amending Act XVIII of 1923.

3. **"Magistrates empowered in this behalf."**—As the section now stands the following Magistrates have powers of committal:—

(1) Presidency Magistrates.
(2) District Magistrates.
(3) Sub-divisional Magistrates.
(4) Magistrates of the First-class.

Section 206—Note 1.

(1) (1915) 31 Ind. Cas. 347 (349, 350) (Bom.), *Emperor* v. *Bai Mahalakshmi*.
(2) (1905) 2 Cri. L. Jour. 534 (541) (Cal.), *Sheobux Ram* v. *Emperor*.
(3) (1882) 5 All. 161 (162), *Luchman* v. *Julala*.
(1889) 1889 All. W. N. 135 (136), *Queen-Empress* v. *Dukes*.
(1922) 1922 Mad. 43 (44), *Ponniah Thirumali Vandaya* v. *Emperor*.
(1912) 13 Cri. L. Jour. 778 (780): 36 Mad. 321, *Sessions Judge of Coimbatore* v. *Immudi Kumaragangayya*.
(1865) 3 Suth. W. R. 10 (10), *Queen* v. *Cassy Mull*.
(1870) 14 Suth. W. R. 16 (17), *Queen* v. *Kristo Debia*.
(1895) 1895 Ratanlal 746, *Queen-Empress* v. *Vaja Raiji*.
(4) (1881) 4 Mad. 227 (228), *Queen-Empress* v. *Chinna*.
(1912) 13 Cri. L. Jour. 877 (884): 6 L. B. R. 129, *Emperor* v. *Channing Arnold*.
(1873) 19 Suth. W. R. Cr. 30 (31), *Queen* v. *Taraknath*.
(1874) 22 Suth. W. R. 14 (16), *Queen* v. *Musst. Itwarya*. (So that the enquiry and committal must be for the offence with which the accused is charged and not for any other offence in respect of which no inquiry was held).
(1881) 3 Mad. 351 (353), *Mutirakal* v. *The Queen* (Do.).

S. 206, Notes 3—5.

and (5) Magistrates of the Second-class, if they are specially empowered by the Local Government in this behalf.[1]

Before the Criminal Procedure Code (Amendment) Act XVIII of 1923 even Magistrates of the Third-class could be empowered to commit and in Madras all Magistrates had been so empowered to commit[2] except Thasildar Magistrates of Taluqs, where there were stationary Sub-Magistrates.[3] The introduction of the words "not being a Magistrate of the third class" shows that third-class Magistrates cannot now be so empowered.

The British Consul at Zanzibar is a Magistrate empowered to commit accused for trial to the High Court of Bombay.[4]

A District or Sub-divisional Magistrate to whom a Sub-Magistrate has submitted the case under S. 349 has got the power to commit the case to the Court of Session;[5] but he has no power to send the case back to the Sub-Magistrate with directions to commit it.[6]

A Magistrate having power to commit does not lose the power merely because he has been specially appointed to *try* the accused.[7]

A Presidency Magistrate's jurisdiction to commit a case is not ousted by the fact that the coroner has held an inquiry and has drawn up an inquisition under Act IV of 1871.[8]

4. Effect of committal by Magistrate having no power of committal.—*See* S. 532, *infra*.

5. **"May Commit."**—The procedure laid down in Chapter XVIII is not confined to cases exclusively triable by a Court of Session but is also applicable to cases which in the opinion of the Magistrate ought to be tried by such Court.[1] In other words;

(1) If the case is one exclusively triable by a Court of Session the Magistrate *must* proceed under this chapter and cannot *try* the case himself.[2]

Note 3.

(1) *Calcutta Gazette*, 1873, Pt. I, p. 67. *Calcutta Gazette*, 1891, Pt. I, p. 1000. *Punjab Gazette*, 1873, p. 75. *Punjab Gazette*, March 9, 1883.
(2) *Fort St. George Gazette*, 1873, p. 717.
(3) *Fort St. George Gazette*, 1893, Pt. I, p. 579.
(4) (1878-79) 3 Bom. 334 (339), *Empress* v. *Dossaji Gulam Hussein*.
(5) (1880) 4 Bom. 240 (246), *Imperatrix* v. *Abdulla*.
(6) (1886) 10 Bom. 196 (197), *Queen-Empress* v. *Havia Tellata*.
(7) (1931) 1931 Bom. 517 (519), *Bhat* v. *Emperor*.
(8) (1892) 16 Bom. 159 (161), *Queen-Empress* v. *Md. Rajuddin*.
(1904) 1 Cri. L. Jour. 13 (18, 19 and 20): 31 Cal. 1, *Emperor* v. *Jogeshwar Parsi*.
(1891) Ratanlal 540 (541), *Queen-Empress* v. *John Paul*.

Note 5.

(1) (1884) 6 All. 477 (479), *Ramsundar* v. v. *Nirotam*.
(2) (1898) Ratanlal 953 (953), *Queen-Empress* v. *Bhikhi*.
(1910) 11 Cri. L. Jour. 196 (197) (Mad.), In re *Arumugam*.
(1922) 1922 All. 345 (346), *Hasan Raza* v. *Emperor* (In an appeal from a conviction by a Magistrate if the Sessions Judge is of opinion that the charge was triable by a Sessions Court, the proper course for him is to direct the accused to be committed for trial).
(1914) 1914 Oudh 361 (363), *Keasarimal* v. *Emperor* (Where a person is charged with two offences one of which is triable by a Court of Session and the Magistrate passed an aggregate sentence without specifying the sentences for each of the offences, the High Court, on a verbal objection before it for the first time as to the legality of the sentence, set aside the conviction and sentences in respect of the offence exclusively triable by a Court of Session after apportioning the sentence between the two offences).
(1868) 9 Suth. W. R. 5 (5), *Puran Telu* v. *Bhuttoo Dome*.
(1889) Ratanlal 476 (477), *Empress* v. *Jobania* (Magistrate not to ignore aggravating circumstances and try case himself).
[See (1930) 1930 All. 280 (280), *Balkishen* v. *Emperor* (It is not the duty of the Court to go out of the way to find that a case exclusively triable by a Court of Session might arise from facts before him).
(1866) 6 Suth. W. R. 2 (2), *Queen* v. *Sohoy Dome*.
(1866) 6 Suth. W. R. 49 (49), *Shamboo Roy* v. *Ajail Aheer*.
(1887) 12 Mad. 54 (55), In re *Madurai*.

S. 206, Note 5.

And when the facts *prima facie* disclose such an offence the Magistrate should commit the case and will not be justified in trying the case for deciding whether it constitutes a lesser offence.[3]

(2) Conversely, if the offence is not of a nature triable by a Court of Session at all, this chapter will not apply and the Magistrate *must* try the case himself.[4]

(3) If the offence is one triable both by a Court of Session and by himself, the Magistrate has a discretion to decide whether to try the case himself or to proceed under this chapter.[5] As to the proper exercise of discretion in such cases, *see* Note 6 *infra*. Even in cases not triable by the Magistrate but triable by a Court of Session or by some other Magistrate, he has a discretion to decide whether to proceed under this chapter or to send the case for trial by the proper Magistrate.[6]

If at the time a Magistrate is asked to take cognizance of a case, he is *ab initio* convinced that the case ought to be tried by a Court of Session he must commence proceedings under this chapter. But there is nothing to prevent a Magistrate who started with the *trial* of a case from subsequently deciding to commit it for trial by a Sessions Court.[7] In such cases the proceedings need not be started afresh but the Magistrate may proceed from where he left and continue the enquiry under this chapter.[8]

(1892-96) 1 U. B. R. 231 (231), *Empress* v. *Nyan Nyein* (Magistrates ought not to give themselves jurisdiction by trying cases under S. 354, I. P. Code, which properly come under Ss. 376 and 511, I. P. Code).

(1872) 18 Suth. W. R. 8 (9), In re *Tarinee Prosad Banerjee* (But in this case where the Magistrate had *tried* the case, the High Court declined to interfere in revision as there was no injustice caused to any one).

(1897-1901) 1 U. B. R. 84 (84), *Empress* v. *Nga Lu* (Practice of minimising seriousness of offences in order to assume jurisdiction condemned).

(1911) 12 Cri. L. Jour. 20 (20), *Jamal Mahomed Rowther* v. *Moideensa Rowther* (Aggravating circumstances not to be ignored).]

[See also (1871) Weir 3rd Edn. 701 (702), *H. C. Proceedings 12th July*, 1871.

(1910) 11 Cri. L. Jour. 639 (640): 1910 Pun. Re. 31, *Lekharaj* v. *Crown* (Fact that offence exclusively triable by Sessions Court involves minor offence triable by Magistrate does not empower him to try case).

(1872-92) 1872-92 Low. Bur. Rul. 158 (160), *Empress* v. *Nga Than Bo* (Do.).]

(3) (1892) 5 C. P. L. R. 38, *Empress* v. *Atmaram Hajan*.

(1892) 5 C. P. L. R. 48 (49), *Empress* v. *Sonhar*.

(4) (1897) 19 All. 465 (466), *Queen-Empress* v. *Schade*.

(1906) 3 Cri. L. Jour. 94 (95) (All.), *Emperor* v. *Dharam Singh* (To commit summons cases to the sessions is illegal).

(1864) 1 Suth. W. R. 14 (14), Re *Mahadeo Muchi* (Commitment in cases under Chap. VIII is illegal).

(1864) 1 Suth. W. R. 5 (5), *Indrobeer Thaba*, In re (S. 29 of Police Act, 1861 makes offence triable only by Magistrate).

(1870) 5 Mad. H. C. R. 277 (279), *Regina* v. *Dhonoghue*.

(5) (1925) 1925 Pat. 755 (759), *Bengal Nagpur Railway Company* v. *Shaikh Makbul*.

(1900-1902) 1 Low. Bur. Rul. 158 (159), *Crown* v. *Hoogson* (The power to try the case or to commit it to a Sessions Court is not taken away from Magistrate by the provisions of Ss. 8 (1) (*a*) and (*b*) of the Lower Burma Courts Act, 1900).

(1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman* (The committal of a case triable exclusively by the Court of Sessions is not illegal merely because the committing Magistrate is himself empowered under S. 30 to try the case).

(1930) 1930 All. 280 (280), *Balkishen* v. *Emperor* (It is not incumbent upon a Magistrate to go out of his way to find that a case exclusively triable by a Court of Session might arise from facts before him, if they were proved).

(6) (1884) 6 All. 477 (479), *Ramsundar* v. *Nirotam* (Complaint of offence under S. 392, I. P. Code, brought before Second Class Magistrate having power to commit offence not *triable* by Second Class Magistrate—Same Magistrate deciding to hold inquiry and discharging accused under this Chapter—Held, that though offence was not triable by Magistrate yet discharge by him was legal).

(7) (1912) 13 Cri. L. Jour. 877 (882, 884, 885 and 888): 6 L. B. R. 129 (F.B.), *Emperor* v. *Channing Arnold*.

(1914) 1914 Mad. 643 (644), In re *Chinnavan* (He must then stop proceeding with the case as a trial and instead commit the case under the provisions of Chap. XVIII).

(8) (1880) 2 All. 910 (912), *Empress of India*

S. 206, Notes 5—6.

A first-class Magistrate conducted a preliminary inquiry under this chapter and after taking all the evidence in the case, made over the case to a Deputy Commissioner with special power under S. 30. It was *held* that the Magistrate was bound to have either committed or discharged the accused and that it was *irregular* on his part to have handed over the case in the manner he did.[9]

6. **"Triable by such Court"—Not only exclusively but also from the nature of the case.**—It has been seen in Note 5, *supra*, that in cases exclusively triable by a Court of Session, the procedure prescribed by this chapter must be adopted and that in cases not so exclusively triable, the Magistrate has a discretion to decide whether to proceed under this chapter or to try the case himself. In the latter class of cases, the Magistrate must proceed under this chapter if in his opinion the case *ought* to be tried by a Court of Session.[1] Thus in the following cases the Magistrate should not try the case himself but commit it for trial by the Sessions Court:—

(*i*) If in the opinion of the Magistrate the case involves an offender who deserves greater punishment than he is authorised to inflict.[2] In such cases, the Magistrate must be of that definite opinion. If that is not his opinion,[3] or if the maximum sentence for the offence could be given by himself,[4] the commitment would be illegal.

(*ii*) If the case involves complicated questions of law and fact.[5]

(*iii*) If the case involves grave or serious offences.[6]

On the other hand a committal will be improper if made merely because the witnesses for the defence are not in attendance,[7] or on the ground that it is the wish of the parties or in accordance with the terms of a Government circular.[8]

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v. *Ilahi Baksh*.
(1930) 1930 Cal. 666 (668), *Panchanan Sarkar* v. *Emperor*.
(1921) 1921 All. 148 (148), *Damarcha* v. *Emperor*.
(9) (1903) 7 Cal. W. N. 457 (460), *Amirkhan* v. *Emperor*.

Note 6.

(1) (1884) 6 All. 477 (479), *Ramsundar* v. *Nirdtam*.
(2) (1889) 11 All. 393 (395), *Queen-Empress* v. *Khalak*.
(1913) 14 Cri. L. Jour. 304 (304) (All.), *Emperor* v. *Baldeo*.
(1887) 14 Cal. 355 (356), *Queen-Empress* v. *Chandu Gowala*.
(1897) 24 Cal. 429 (432), *Queen-Empress* v. *Kaije Mullah Mandal*.
(1871) 15 Suth. W. R. 58 (59), *Queen* v. *Sheogolam Das*.
(3) (1914) 1914 Sind 94 (95): 8 Sind L. R. 23, *Divani Chand* v. *Emperor*.
(1918) 1918 Sind 60 (61): 11 S. L. R. 79, *Emperor* v. *Ismail*.
(1902) 4 Bom. L. R. 85 (86), *Emperor* v. *Pema Ranchod*.
(4) (1925) 1925 Pat. 755 (759), *Bengal Nagpur Railway Co.* v. *Makbul*.
(1906) 3 Cri. L. Jour. 94 (95) (All.), *Emperor* v. *Dharam Singh*.
(1924) 1924 All. 185 (185, 186), *Emperor* v. *Ram Jatan*.
(1924) 1924 Bom. 453 (453), *King-Emperor* v. *Gala Mana*.
(1908) 8 Cri. L. Jour. 360 (361): 1 S. L. R. 103, *Emperor* v. *Ahmad Shah*.
(1914) 1914 Sind 94 (95): 8 S. L. R. 23, *Divanichand* v. *Emperor*.
(1930) 1930 Sind 145 (146): 24 S.L.R. 157, *Emperor* v. *Allah Dad*.
(5) (1932) 1932 Rang. 193 (194): 10 Rang. 495, *Emperor* v. *Maung Chit Sein*.
(1872) 18 Suth. W. R. 23 (23), *Mt. Auluchia Dosadin* v. *Musst. Anoop Koonwar*.
(1918) 1918 Mad. 907 (908): 42 Mad. 83, *Crown Prosecutor* v. *Bhagavathi*.
(1900-1902) 1 L. B. R. 259 (260), *Crown* v. *San Pe*.
(6) (1866) 6 Suth. W. R. 2 (2), *Queen* v. *Sohoy Dome*.
(1892) 16 Bom. 580 (583, 585), *Queen-Empress* v. *Abdul Rahiman*.
(1878) 1 Cal. L. R. 141 (142), In the matter of *Gopinath Saha*.
(1033) 142 Ind. Cas. 200 (201) (Lah.), *Emperor* v. *Ujagar Singh*.
(1867) 1 Weir 115 (115).
(1866) 2 Weir 19 (20).
(1871) 2 Weir 20 (21).
(1929) 1929 Oudh 150 (151), *Emperor* v. *Ghura*.
(7) (1876) Ratanlal 110.
(8) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkajee Nadgir*.

S. 206, Notes 6—9.

In all cases coming within the class of offences not exclusively triable by a Sessions Court the Magistrate must state his grounds in the order so that the Court in revision might see whether the discretion has been properly exercised or not.[9]

A Magistrate can commit a case on the ground that in respect of the same transaction another party of accused is to be tried by the Sessions Court;[10] but not if the connection between the two cases is such that the accused will not be prejudiced by his trying the case himself.[11]

Where an accused is charged before a Magistrate with more offences than one, some of which are triable by himself while the others are triable by a Court of Session, the Magistrate will be exercising a proper discretion in committing the accused for trial by the Sessions Court for all the offences, though there is nothing in the Code making it illegal for him to try the accused for the offences triable by him and to commit the accused for the rest of the offences.[12]

7. Discretion in the matter of committing or discharging the accused.--*See S.* 213 *infra.*

8. District Magistrate's interference with the discretion.—When the inquiry is pending before a Subordinate Magistrate the District Magistrate has no power to order committal or otherwise interfere with the discretion of the former.[1] But when a Sub-Magistrate has discharged the accused, the District Magistrate, if satisfied that the discharge was improper, may interfere under S. 436 and order committal.[2]

9. Committal to Sessions Court having no local jurisdiction over the case.—The committal to a Sessions Court having no local jurisdiction in the place where the offence was committed is, according to the High Courts of Allahabad[1] and Bombay,[2] not invalid but is a mere irregularity which will not be set

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(9) (1909) 1 Ind. Cas. 104 (164) (Bom.), *Emperor* v. *Mahamad Khan.*
(10) (1917) 18 Cri. L. Jour. 524 (526): 1917 Pun. Re. No. 13: 1917 Lah. 251, *Emperor* v. *Ali.*
(1868) 1 Weir 448 (449).
(11) (1913) 14 Cri. L. Jour. 657 (658) (Bom.), *Emperor* v. *Asha Bhathi.*
(1933) 1933 Mad. W. N. 550 (551), *Chinnasawmy Nadar* v. *Emperor.*
(12) (1933) 1933 Lah. 500 (501), *Emperor* v. *Ujagar Singh.*
(1921) 61 Ind. Cas. 1008 (1008) (Cal.), *Probodh Kumar Datta* v. *Mohini Chandra Roy.*
(1883) 1883 All. W. N. 199 (199), *Empress* v. *Ramanand.*
(1932) 1932 Lah. 168 (168), *Emperor* v. *Nathu* (But an *apparent* connection of a case under S. 326, Penal Code, with a case under S. 302 is no ground whatsoever for committing it to the Sessions Court when the offence involved is triable and can be adequately punished by a first class Magistrate or one exercising powers under S. 30, Cr. P. Code. If the object of the Magistrate is to avoid a possible conflict of decisions it can be achieved by awaiting the result of the sessions trial in the case under S. 302).
[See (1872) 17 Suth. W. R. 14 (14), In re *Anonto Koyburt* (In the circumstances of this case it was held that the Magistrate ought not to have committed to Sessions with reference to the minor offence).]

Note 8.

(1) (1867) 8 Suth. W. R. 61 (61), *Queen* v. v. *Tilkoo Goala.*
(2) (1904) 1 Cri. L. Jour. 519 (524): 26 All. 564, *Fattu* v. *Fattu.*
(1931) 1931 Cal. 524 (525), *Abdul Aziz Shah* v. *Emperor* (The Sub-Divisional Officer rejected a complaint for an offence under Ss. 497 and 498, I. P. Code. The District Magistrate having been moved, he restored the complaint and added a charge for the new offence to the existing charge for an offence under S. 366, I. P. Code. The Sub-Divisional Officer committed the accused to the Sessions under S. 366, but refused to commit them under Ss. 497 and 498, I. P. Code, saying that the Sessions Judge might if he thought fit add a charge to that effect. Held, that the trying Magistrate had in effect refused to carry out the order of the superior Court and that its order was bad).

Note 9.

(1) (1896) 18 All. 350 (353), *Queen-Empress* v. *Ram Dei* (But the case will be transferred to the proper Sessions Court for trial).
(2) (1884) 8 Bom. 312 (312), *Queen-Empress*

S. 206, Notes 9—11.

aside in the absence of prejudice to the accused. In Madras such a committal was originally held to be invalid.[3] That view has however not been adopted in the undermentioned case.[3-a]

When a person who is charged with having committed an offence in a Native State is brought to the British territory, he will be considered to have been "found" at the place to which he is brought and the Sessions Court having jurisdiction in that place will be competent to try the offence.[4]

10. **Quashing committal.**—*See* S. 215, *infra*.

11. **Sub-S. 2.**—Though the sub-section prohibits committal to the High Court of cases triable by a Court of Session, there is nothing to prevent the High Court from trying cases committed to it by a mofussil Court.[1]

See also the undermentioned cases.[2]

S. 207.

Procedure in inquiries preparatory to commitment.

207.* The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

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*(CODE OF 1882—S. 207.)

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

(CODE OF 1872—S. 189.)

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Procedure in preliminary inquiries.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

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v. *Thaku*.

(1892) 16 Bom. 200 (202), *Queen-Empress* v. *James Ingle*.

(1900) 2 Bom. L. R. 394 (394), *Queen-Empress* v. *Atmaram Govind*.

(3) (1912) 13 Cri. L. Jour. 35 (38): 36 Mad. 387, *Assistant Sessions Judge, North Arcot* v. *Ramammal* (The Bombay and Allahabad rulings dissented from on the ground of the decision of the Privy Council in *Legard* v. *Bull*, 9 All. 191).

(1897) Ratanlal 922 (922, 923), *Queen-Empress* v. *Lagma bin Laxmana*.

(3-a) (1920) 1920 Mad. 824 (825): 42 Mad. 791, In re *Ganapathy Chetty*.

(4) (1882) 6 Bom. 622 (625), *Empress* v. *Magan Lall*.

Note 11.

(1) (1920) 1920 Mad. 824 (825): 42 Mad. 791, In re *Ganapathy Chetti*.

(2) (1882) 5 Mad. 33 (53), *Ward* v. *Queen* (Inasmuch as the High Court of Madras has been duly constituted a Court of original criminal jurisdiction to take cognizance of offences committed by European British subjects being Christians, it may be that, in the absence of any special direction, a commitment to the High Court of such person charged with an offence not punishable with death or transportation for life, committed in Mysore province, would be a good commitment).

(1864) 5 Suth. W. R. Cr. Cir. 1 (When an European British subject and a Native subject are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should not be committed to the High Court, also, but should, in the ordinary manner, be committed in the Sessions Court competent to try the offence).

SYNOPSIS.

	Note No.
SCOPE AND APPLICABILITY OF SECTION	1
OBJECT OF PRELIMINARY ENQUIRY IN SESSIONS CASES ..	2
"OUGHT TO BE TRIED"	3
PROCEDURE WHERE THERE ARE TWO OR MORE OFFENCES ONE OF WHICH IS TRIABLE ONLY BY A COURT OF SESSION	4
JOINT INQUIRY—LEGALITY OF	5

Other Topics.

Cases triable by Magistrates. See Note 1, Pt. 1, also Note 3.
Grounds for committal —Connection with another case. See S. 215.
In the opinion of the Magistrate. See Note 3, Pt. 17.
Procedure on direction by High Court to commit. See Note 1, Pt. 2.
Separate trial on joint commitment. See Note 5, Pt. 1.

1. Scope and applicability of section.—This section contemplates a commitment to the Court of Session in two cases, (*a*) where the offence is exclusively triable by a Court of Session and (*b*) where the offence is triable by a Court of Session as well as by a Magistrate but the Magistrate is of the opinion that it ought to be tried by a Court of Session. Where an offence though triable by a Court of Session is neither exclusively triable by such Court nor one which in the opinion of the Magistrate ought to be tried by a Court of Session, the Magistrate cannot commit it to the Sessions Court.[1] Where an offence is not triable at all by a Court of Session it cannot be committed to the Sessions. (*Vide* S. 206, *ante*.)

A preliminary inquiry as prescribed by this chapter is not necessary where a case is committed to the Court of Session in obedience to the lawful orders of a superior Court.[2]

(CODE OF 1861—S. 179.)

CHAPTER XII.

OF PRELIMINARY ENQUIRY BY THE MAGISTRATE IN CASES TRIABLE BY THE COURT OF SESSION.

Magistrate may issue his warrant.

179. When a complaint is made before a Magistrate that any person has committed, or is suspected to have committed, any of the offences specified in Column 7 of the Schedule annexed to this Act as triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session, it shall be lawful for such Magistrate to issue his warrant to apprehend such person.

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Section 207—Note 1.

(1) (1928) 1928 Pat. 551 (552), *Emperor* v. *Deo Narain Mullick*.

(2) (1880) 2 All. 910 (912), *Queen-Empress* v. *Ilahi Baksh*.
(1925) 1925 Rang. 82 (83): 2 Rang. 447, *Nga Myaing* v. *King-Emperor*.
[See (1912) 13 Cri. L. Jour. 742 (743): 1912 Pun. Re. 7, *Wadhawa Singh* v. *Emperor*.
[But compare (1932) 1932 Cal. 683 (684, 685), *Nagendranath Sarkar* v. *Emperor* (Appellate Court discharging accused, but saying that if the Magistrate wishes to proceed further in the matter, he may commit the accused to the Court of Session—Preliminary enquiry under Chap. 18 necessary before accused can be committed).]

S. 207, Notes 2—3.

2. **Object of preliminary enquiry in Sessions cases.**—*See* S. 206, Note 1.

3. "**Ought to be tried**".—In regard to offences which are triable by a Court of Session as well as by a Magistrate this section leaves it to the discretion of the Magistrate to determine whether the case ought to be committed to the Court of Session for trial or not.[1-a]

There is a conflict of decisions as to the limits within which this discretion is to be exercised. On the one hand, it has been held by the High Courts of Allahabad,[1] Calcutta[2] and Lahore[2-a] and the Courts of Judicial Commissioners of Nagpur[3] and Sind,[4] that the words "ought to be tried" in this section and S. 347, should be read with S. 254 and that under that section, the Magistrate is *bound*, in warrant cases, to try the offence himself and not to commit it to the Court of Session if he is competent to try it and if in his opinion he can award adequate punishment. Hence, according to these Courts, the discretion to commit to the Court of Session conferred by the present section is confined to cases in which the Magistrate is not competent to try or, in his opinion, to adequately punish the offence. In other cases, he has no power to commit an offence to the Court of Session. Under this view where a Magistrate is competent to deal with an offence himself, he cannot commit it to the Court of Session merely because a connected case has been committed to the Sessions[5] or because he has been a witness of the identification proceedings in the case.[6] On a similar reasoning (*vide* S. 245 of the Code), it has been held by the Allahabad High Court that in *summons cases*, a Magistrate has no power at all to commit the accused person to the Court of Session.[7]

On the other hand, it has been held by the High Courts of Bombay,[8]

Note 3.

(1-a) [See (1867) 8 Suth. W. R. 46 (46), *Queen* v. *Doonba Bhoola*.]
(1871) 6 Mad. H. C. App. 16, *High Court Proceedings, 23rd January*, 1871.
(1932) 1932 Bom. 63 (63, 64): 56 Bom. 61, *Hari Moreshwar Joshi* v. *Emperor*.

(1) (1919) 1919 All. 366 (366, 367): 41 All. 454, *Bindeshri Goshain* v. *Emperor*.
(1924) 1924 All. 185 (185), *Emperor* v. *Ramjatan*.
(1910) 11 Cri. L. Jour. 54 (54, 55) (All.), *Emperor* v. *Jagmohan*.
(1906) 3 Cri. L. Jour. 94 (96) (All.), *Emperor* v. *Dharam Singh*.
[See also (1913) 14 Cri. L. Jour. 304 (304) (All.), *Emperor* v. *Baldeo* (Where a Magistrate is of opinion that he cannot adequately punish, commitment is legal and cannot be quashed on mere ground that punishment which Magistrate could have awarded would have been sufficient).]
[But see (1886) 1886 All. W. N. 256 (256), *Empress* v. *Behari* (Commitment in case where Magistrate himself could punish adequately, not illegal).]

(2) (1929) 1929 Cal. 777 (778): 56 Cal. 785, *Emperor* v. *Girish Chandra Kundu*.
(1897) 24 Cal. 429 (431), *Queen-Empress* v. *Kayamulla*.

(2-a) (1932) 1932 Lah. 263 (264), *Kesar* v. *Emperor*.
(1932) 1932 Lah. 168 (169), *Emperor* v. *Nathu*.
[But see (1917) 18 Cri. L. Jour. 524 (525): 1917 Lah. 251: 1917 Pun. Re. 13, *Emperor* v. *Ali*.]

(3) (1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman*.

(4) (1918) 1918 Sind 60 (61): 11 Sind L. R. 79, *Imperator* v. *Ismail*.
(1914) 1914 Sind 94 (95): 8 Sind L. R. 23, *Diwanichand* v. *Emperor*.
(1924) 1924 Sind 61 (63, 64): 17 Sind L. R. 188, *Utilibai* v. *Emperor*.
[See (1909) 10 Cri. L. Jour. 224 (224): 2 Sind L. R. 9, *Emperor* v. *Tarumal* (Case under S. 191, Cr. P. Code—Chief reason for commitment should be that Magistrate cannot adequately punish).]

(5) (1913) 14 Cri. L. Jour. 657 (658) (Bom.), *Emperor* v. *Asha Bathi*.
(1872) 17 Suth. W. R. 14 (14), In re *Anunt Koyburt*.
(1865) 3 Suth. W. R. Cr. 10, In re *Kassim Ally*.
(1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman*.
(1932) 1932 Lah. 168 (169), *Emperor* v. *Nathu*.

(6) (1924) 1924 All. 185 (185), *Emperor* v. *Ram Jatan*.

(7) (1906) 3 Cri. L. Jour. 94 (96) (All.), *Emperor* v. *Dharam Singh*.

(8) (1929) 1929 Bom. 313 (316, 317), *Krishnaji Prabakar Khadilkar* v. *Emperor*.

Madras[8-a] and Rangoon[9] that S. 254, simply lays down the procedure for the trial of warrant cases where the Magistrate considers it proper and right for himself to go on with the trial and is in no way a limitation to the power of a Magistrate under this section and S. 347 to commit the accused to the Court of Session if he thinks it proper to do so. Hence according to these Courts a Magistrate has power to make a commitment to the Court of Session even where he is himself competent to try it and, in his opinion, to adequately punish it, if there are sufficient grounds for committing the case. In this view, a case can be committed to the Court of Session though the Magistrate himself is competent to deal with it, to avoid a possible conflict of decisions, if a connected case is before the Court of Session.[10] Similarly, the fact that the case involves the decision of complicated and difficult questions of law or fact[11] or that the matter is of some peculiar public importance[12] or that a trial with the aid of assessors would be more satisfactory in the particular case, may justify a commitment to the Sessions notwithstanding that the Magistrate may have jurisdiction to try the offence and award an adequate punishment.[13] But even according to this view the mere fact that a *party wishes* for the commitment of the case[14] or that it has created a sensation in the accused's community[15] is not a sufficient ground for committing a case to the Court of Session. The discretion, moreover, under the section, is one to be exercised by the Magistrate himself and not even the Government can, by its resolution control it.[16] S. 207, Note 3.

The discretion under the section is a judicial one which should be exercised not arbitrarily but according to the legal principles. Further, the Magistrate must give reasons for his order of commitment. (*Vide* S. 213). These reasons must show that he has exercised a sound and proper discretion in the matter.[17] He should take a broad and common sense view of the facts and regard them in their true proportion. He should not exaggerate their seriousness for the purpose of committing the case to the Sessions.[18] But if the offence disclosed appears to be a grave one he should not hesitate to order commitment to the Court of Session.[19] Thus cases in which death has been caused by

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(1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*
[See also (1892) 16 Bom. 580 (585), *Empress* v. *Abdul Rahman.*]
[But see (1902) 4 Bom. L. R. 85 (86), *King-Emperor* v. *Pema.*]

(8-a) (1919) 1919 Mad. 907 (908): 42 Mad. 83, *Crown Prosecutor* v. *Bhagawathi.*
[But compare (1933) 1933 Mad. W. N. 550 (551), *Chinnasami Nadar* v. *Emperor.*]

(9) (1925) 1925 Rang. 207 (208): 3 Rang. 42, *King-Emperor* v. *Ishahat.*

(10) (1917) 18 Cri. L. Jour. 524 (525): 1917 Pun. Re. No. 13, *Emperor* v. *Ali.*
(1919) 1919 Mad. 907 (908): 42 Mad. 83, *Crown Prosecutor* v. *Bhagawathi.*
[See (1933) 1933 Lah. 500 (501), *Emperor* v. *Ujagar Singh* (Committal of connected case held justified on ground of convenience).]
[But see (1930) 1930 Lah. 312 (313), *Emperor* v. *Karam Singh.*
(1933) 1933 Mad. W. N. 550 (551), *Chinnasawmi Nadar* v. *Emperor.*]

(11) (1919) 1919 Mad. 907 (908): 42 Mad. 83, *Crown Prosecutor* v. *Bhagavati.*
(1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

(12) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*
(1929) 1929 Bom. 313 (316, 317): 53 Bom. 611, *Krishnaji Prabhakar* v. *Emperor* (Sedition charge against Editor of popular newspaper).

(13) (1919) 1919 Mad. 907 (908): 42 Mad. 83, *Crown Prosecutor* v. *Bhagavati.*

(14) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*
(1926) 1926 Bom. 251 (252), *Emperor* v. *Achaldas Jethamal.*

(15) (1926) 1926 Bom. 251 (252), *Emperor* v. *Achaldas Jethamal.*

(16) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

(17) (1930) 1930 Lah. 312 (313), *Emperor* v. *Karam Singh.*
(1926) (1926) Bom. 251 (252), *Emperor* v. *Achaldas Jethamal.*
(1913) 14 Cri. L. Jour. 609 (610): 38 Bom. 114, *Emperor* v. *Nanji Samal.*

(18) (1923) 1923 Cal. 108 (111), *Emperor* v. *Hari Das Mitra.*
(1909) 9 Cri. L. Jour. 163 (164) (Bom.), *Emperor* v. *Mahammad Khan.*

(19) (1932) 1932 Rang. 193 (194): 10 Rang. 495, *Emperor* v. *Maung Chit Sein.*
(1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

S. 207, Notes 3—5.

violence[20] or cases of cheating or other offences involving huge sums of money should, it has been held, be committed to the Court of Session and should not be tried by the Magistrate.[21]

As to the procedure to be followed in cases where, *after commencing* a case as the trial of a summons or warrant case the Magistrate considers that it ought to be tried by a Court of Session, *see* S. 347 and Notes thereunder.

4. Procedure where there are two or more offences one of which is triable only by a Court of Session.—Where an accused is charged with two or more offences one of which is exclusively triable or ought to be tried by a Court of Session, the procedure should be under this chapter and the proper course is to commit him for trial for *all* the offences.[1] So also, where several persons are jointly charged, in respect of one transaction and it appears from the facts implicating the whole of them, that one has committed an aggravated offence, which must or should be tried by a Court of Session, the Magistrate should commit all the accused for trial.[2]

5. Joint enquiry—Legality of.—There is no provision in the Code requiring a separate inquiry, in respect of each person prior to commitment. The sections relating to joinder of charges, *viz.*, S. 233 to S. 239 refer to trials only. Hence there is no objection to hold a preliminary enquiry against a person jointly with others but the trial on commitment should be separate.[1]

S. 208.

Taking of evidence produced.

208*. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such

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*(CODE OF 1882—S. 208.)

208. The Magistrate shall when the accused appears or is brought before him,

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(1866) 2 Weir 19 (20).
(1875) Rat. 96 (97), *Reg.* v. *Bavaji.*
(1892) 16 Bom. 580 (586), *Empress* v. *Abdul Rahiman* (Grievous hurt of a very serious character).
(20) (1875) 24 Suth. W. R. 24 (24), In re *Narayan Pasi.*
(1900-02) 1 L. B. R. 259 (260), *Crown* v. *San Pe.*
(1877) 1 Cal. L. R. 141 (142), In the matter of *Gopinath Shaha.*
(1888) Rat. 382 (383), *Queen-Empress* v. *Rupaya.*
(1882) 5 C. P. L. R. 7 (7), *Empress* v. *Perman.*
(1869) 12 Suth. W. R. 7 (7), *Criminal Circular No.* 9 *of* 1869.
(1872-92) 1872-92 L. B. R. 89 (90), *Queen-Empress* v. *Lu Maung.*
[But see (1881) 1 Weir 288 (289).]
(21) (1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Dutt* v. *Emperor.*
(1864) Rat. 2 (2), *Reg.* v. *Bapu.*
(1866) 2 Weir 19 (20).
[But see (1926) 1926 Bom. 251 (252): 49 Bom. 362, *Emperor* v. *Achaldas Jathamal* (Fact that large amount was involved is no ground for commitment).]

Note 4.

(1) (1921) 61 Ind. Cas. 1008 (1008) (Cal.), *Probodh Kumar Datta* v. *Mohini Chandar Roy.*
(1918) 1918 All. 126 (126): 40 All. 615, *Hait Ram* v. *Ganga Sahai.*
(1926) 1926 All. 159 (159, 160): 48 All. 166, *Harihar Dat* v. *Maksud Ali.*
(1883) 1883 All. W. N. 199 (199), *Empress* v. *Ramanand.*
(1897) 2 All. 398 (400, 405), *Queen-Empress* v. *Lachman Singh.*
(2) (1881) 1881 All. W. N. 64 (64), *Queen-Empress* v. *Khiali.*
(1899) 2 Weir 258 (258), In re *Kattu Chenchugadu.*
(1868) 1 Weir 448 (449).

Note 5.

(1) (1905) 7 Bom. L. R. 457 (458), *Emperor* v. *Sita.*
(1902) 26 Mad. 592 (594), In the matter of *Govindu.*
(1900) 1900 All. W. N. 206 (206), *Empress* v. *Salamatulla.*
[See (1897) Rat. 915 (915), *Empress* v. *Raghu Valad Hari.*]
[But see (1897) Rat. 925, *Empress* v. *Daulata Dhondi.*]
(1868) 9 Suth. W. R. 33 (35), *Queen-Empress* v. *Durzoolla* (Commitment should be separate).
(1867) 8 Suth. W. R. 47 (52) (F.B.), *Queen* v. *Sheikh Bazu.*

evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate. S. 208.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

Process for production of further evidence.

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Taking of evidence produced.

proceed to hear the complaintant (if any) and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Process for production of further evidence.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

(CODE OF 1872—Ss. 190, 191 and 357, Para. 1.)

Examination of complainant and witnesses for prosecution.

190. When the accused person appears or is brought before the Magistrate, or if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

Examination to be in presence of accused.

191. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent, when his personal attendance is dispensed with and he appears by agent.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses, and to cross-examine the complainant and his witnesses.

INQUIRIES.

In inquiries preliminary to commitment.

357. In inquiries preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered, he shall record his reasons for such refusal.

S. 208, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
OBJECT OF SECTION	2
"WHEN THE ACCUSED APPEARS OR IS BROUGHT BEFORE HIM"	3
'SHALL PROCEED TO HEAR'	4
HEAR THE COMPLAINANT (IF ANY)	5
"TAKE ALL SUCH EVIDENCE"	6
EVIDENCE FOR THE PROSECUTION	7
EVIDENCE FOR THE ACCUSED	8
"IN MANNER HEREINAFTER PROVIDED"	9
SUB-S. (2)—RIGHT OF CROSS-EXAMINATION	10
SUB-SECTION (3)—SUMMONING OF WITNESSES	11
OFFICER CONDUCTING PROSECUTION	12
PROCEDURE WHERE AFTER COMMENCING CASE AS A TRIAL OF A WARRANT OR SUMMONS CASE, THE MAGISTRATE CONSIDERS THE CASE TO BE ONE WHICH OUGHT TO BE COMMITTED TO THE SESSIONS.	13
COMMITMENT BY CIVIL OR REVENUE COURTS IN RESPECT OF OFFENCES COMMITTED BEFORE OR BROUGHT UNDER NOTICE OF SUCH COURT, IN COURSE OF JUDICIAL PROCEEDING	14

Other Topics.

Committal without evidence. See Note 6, Pt. 1, see Note 8, Pt. 1, see Note 11, Pt. (6-a).
Duty of Prosecution. See Note 7, and Note 7, F.N. (1).
Evidence called for by Magistrate. See Note 7, Pt. 3.
Record of Reasons. See Note 11, Pt. 3.
Right of reserving Cross-examination. See Note 10, Pts. 4 to 6.
Valid Reasons. See Note 11, Pts. 2, 4 and 5.

1. **Legislative Changes.**—The Code of 1882 did not contain any provision corresponding to sub-S. (2), though the prior Codes contained such a provision. The sub-section was inserted in the Code of 1898. *See* Note 10, below.

(CODE OF 1861—Ss. 186, 193 and 207.)

Summons to a witness to attend and give evidence.

186. The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall issue his summons to such persons, requiring them to appear at a time and place mentioned in the summons before such Magistrate to testify what they know concerning the complaint made against the accused person.

Examination of the complainant and witnesses for the prosecution.

193. The Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which from the subject-matter of the accusation and the attendant circumstances.

Discretionary with the Magistrate to take evidence for the defence.

207. It shall be at the discretion of the Magistrate to summon any witness who may be offered in behalf of the accused person to answer or disprove the evidence against him.

S. 208, Notes 2—7.

2. **Object of section.**—This section is intended for the benefit of the accused. Its object is that the accused should be made aware of all the evidence that he will have to meet on his trial and also that he should have a full opportunity of convincing the Magistrate that there are not sufficient grounds for committing him for trial.[1]

3. **"When the accused appears or is brought before him".**—It is necessary for a preliminary inquiry under this chapter that there must be an *accused* person. Where an inquiry was held in which a certain person was not put in the situation of an accused person at all but was himself examined on solemn affirmation like other witnesses and was not given any opportunity of cross-examining the other witnesses, and then was committed to the Court of Session on a charge which was the result of the inquiry it was *held* that the commitment was illegal.[1]

The "appearance" of the accused under this section may be voluntary and need not be under any process issued against him under S. 204.[2]

4. **'Shall proceed to hear'.**—Under S. 344, *post*, the Magistrate can *postpone* the commencement of the enquiry for any reasonable cause.

5. **Hear the complainant (if any).**—The section requires that the complainant shall be *heard*, not necessarily examined.[1]

6. **"Take all such evidence".**—In an inquiry under this chapter the Magistrate is bound, before he draws up a charge, to take all such evidence as may be produced (*a*) in support of the prosecution, (*b*) on behalf of the accused or (*c*) as may be called for by the Magistrate,[1] unless the evidence is irrelevant or unnecessary to prove the point in issue.[1-a] He is not absolved from recording all the evidence produced under this section, even in cases where the accused has confessed his guilt inasmuch as such confessions are often retracted later on.[2] It ought to be the endeavour of the Magistrate in the inquiry under this section to ascertain the fact of a *particular offence* and collect evidence thereof before commitment and not to expect convictions at the Court of Session on a vague and multifarious evidence causing suspicion of several offences but yielding proof of none.[3] As to whether the inquiry should be directed to ascertaining the guilt or innocence of the accused definitely or only to find out if there are *prima facie* grounds for believing the accused to be guilty, *see* Notes under S. 209.

7. **Evidence for the prosecution.**—The object of the prosecution is not to secure a conviction at any cost but to see that justice is done. Hence

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Section 208—Note 2.

(1) (1912) 13 Cri. L. Jour. 877 (883): 6 L. B. R. 129, *Emperor* v. *Channing Arnold*.
[See also (1881) 4 Mad. 227 (227, 228), *Queen* v. *Chinna Vedagiri Chetti*.]

Note 3.

(1) (1868) 9 Suth. W. R. 54 (56), *Queen* v. *Kali Charan*.
(2) (1919) 1919 Lah. 389 (390): 1919 Pun. Re. 5, *Emperor* v. *Mt. Ruri*.

Note 5.

(1) (1929) 1929 Cal. 229 (230), *Santiram Mandal* v. *Emperor*.

Note 6.

(1) (1872-1874) 1 Bur. S. R. 538 (539), *Nga Po Se* v. *Queen*.
(1902) 1 L. B. R. 348 (348), *Crown* v. *Po Nyan*.
(1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Dutt* v. *Emperor*.
(1-a) (1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Dutt* v. *Emperor*.
(1933) 1933 All. 690 (695): 55 All. 1040, *S. H. Jhabwala* v. *Emperor*.
(2) (1896) Rat. 842 (842), *Queen* v. *Mehadu Vithoba*.
(3) (1890) 15 Bom. 491 (504), *Empress* v. *Fakirapa*.

S. 208, Notes 7—10.

it is the duty of the prosecution to call as witnesses all persons who have been eye-witnesses or otherwise connected with the transaction although the evidence of any of them may be favourable to the accused, and an adverse inference can be drawn from the failure to call any material witness.[1] But the prosecution is not under any duty to call witnesses whom it regards as false or unnecessary.[2] If the prosecution has not sent up any material witness, it is the duty of the Magistrate to call such witness and examine him himself.[3] The examination of the investigating Police-officer is necessary in all important cases, especially, of murder and dacoity.[4]

As to the right of the prosecution to abstain from examining some witnesses before the committing Magistrate and produce at the sessions trial evidence not produced in the committing Magistrate's Court, *see* Notes under S. 286.

See also the observations in the undermentioned case[5] regarding the precautions to be taken as regards Chemical Examiner's Reports and in proving *post mortem* examinations.

8. **Evidence for the accused.**—Under this section it is the duty of the Magistrate to take all the evidence produced by the accused, before framing a charge. A commitment order passed without taking the evidence produced for the defence is illegal and liable to be quashed.[1]

9. **"In manner hereinafter provided".**—These words refer to Chapter 25.[1]

10. **Sub-S. (2)—Right of cross-examination.**—Section 194 of the Code of 1861 and S. 191 of the Code of 1872 expressly declared the right of the accused to cross-examine the prosecution witnesses before commitment. The 1882 Code omitted this provision as a redundancy, since even under S. 138 of the Evidence Act, 1872, which provides that the opposite party has the right to cross-examine the witnesses examined by a party, the accused can cross-examine the prosecution

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Note 7.

(1) (1884) 10 Cal. 1070 (1072), *Queen* v. *Ram Sahai Lall.*
(1882) 8 Cal. 121 (124, 125), In the matter of *Dhunnokazi.*
(1921) 1921 Cal. 257 (257), *Tenaram Mondal* v. *Emperor.*
(1915) 16 Cri. L. Jour. 170 (172): 42 Cal. 422: 1915 Cal. 545, *Ram Ramjan Roy* v. *Emperor.*
(1916) 17 Cri. L. Jour. 267 (268): 1916 Pun. Re. 12: 1916 Lah. 408, *Kaimi* v. *Emperor.*
(1932) 1932 Lah. 500 (501), *Lachminarain* v. *Emperor.*
(1929) 1929 Pat. 343 (346): 8 Pat. 625, *Mathura Tewary* v. *Emperor.*
(1931) 1931 Mad. W. N. 727 (728), *Nagaratna Thevan* v. *Emperor.*
(2) (1928) 1928 Pat. 46 (48), *Parbhu Dusadh* v. *Emperor.*
(1932) 1932 Bom. 279 (282): 56 Bom. 434, *Vasudeo Balwant Gogte* v. *Emperor.*
(1927) 1927 Mad. 475 (476), *Muthaya Thevan* v. *Emperor.*
(1923) 1923 Oudh 217 (224), *Emperor* v. *Narotan.*
(3) (1926) 1926 Pat. 5 (8), *Pershad Tewari* v. *Emperor.*
(4) (1881) Rat. 173 (173), *Empress* v. *Ramputi.*
(5) (1872-1892) 1872-1892 L. B. R. 634 (635), *Nga Pya* v. *Empress* (When committing cases Magistrate to take care to send up evidence to prove that a body sent to the hospital for *post mortem* examination is really the body of the person referred to in the case under trial, or, that an article analysed by the Chemical Examiner was actually the article sent to him for analysis in the case under trial).

Note 8.

(1) (1898) 20 All. 264 (265), *Empress* v. *Ahmadi.*
(1924) 1924 All. 317 (318): 46 All. 137, *Jaswant Singh* v. *Emperor.*
(1904) 26 All. 177 (178), *Emperor* v. *Muhammad Hadi.*
(1928) 1928 Rang. 299 (299): 6 Rang. 531, *Emperor* v. *Nga Khaing.*
(1934) 1934 Lah. 610 (610), *Thana* v. *Emperor* (Whether or not the examination of the accused's witness by the Magistrate will help him, he is entitled to have the witnesses examined).

Note 9.

(1) (1926) 1926 Pat. 58 (59, 30), *Emperor* v. *Phagunia Bhuian.*

witnesses. But this omission gave room for doubts.[1] Sub-S. (2) was inserted in 1898 in order to remove such doubts. The accused is now, of right, entitled to cross-examine the witnesses for the prosecution during the preliminary enquiry before the charge is framed.[2] The refusal or omission of the Magistrate to give the accused an opportunity to cross-examine the witnesses for the prosecution is a legal flaw and will render the order of commitment liable to be set aside[3] unless the *accused* has reserved the cross-examination to the Sessions Court.[4] S. 208, Note 10.

The proper time to exercise the right of cross-examination is, after the examination in chief of each witness. The accused has no *right* to reserve his cross-examination till the examination in chief of all the prosecution witnesses is over.[5] But the Magistrate has a discretion in the exercise of his inherent power in suitable circumstances to allow the accused, to reserve his cross-examination.[6]

If the Magistrate, in the exercise of his discretion, permits the reservation of cross-examination he cannot then refuse to recall the prosecution witnesses.[7] Thus where the accused applies for copies of statements made by prosecution witnesses to the Police during the investigation with a view to cross-examine the witnesses and the Magistrate has ordered such copies to be furnished under S. 162, he is bound to postpone the cross-examination of the prosecution witnesses till such copies are obtained and then allow cross-examination with reference to such statements.[8]

A Magistrate has no power to curtail the cross-examination of witnesses, by directing the counsel for the accused not to put more than 6 to 8 questions to each withness.[9] The cross-examination of the prosecution witnesses under this section need not be confined to matters elicited in examination in chief.[10] This sub-section speaks of the right of the *accused* to cross-examine the prosecution witnesses. But the *Magistrate* himself can cross-examine them if he thinks it necessary to do so for ascertaining the truth of the prosecution story.[11] (*Vide* S. 165, Evidence Act).

Note 10.

(1) (1894) 21 Cal. 642 (662, 663), *Empress* v. *Sagal Samba Sajao.*

(2) (1924) 1924 Cal. 780 (780): 51 Cal. 442, *Joytsna Nath Sikdar* v. *Emperor.*
(1898) 20 All. 529 (531), *Empress* v. *Brij Narain.*
(1900-1901) 5 Cal. W. N. 110 (113), In the matter of *Surjya Narain Singh.*
(1894) 21 Cal. 642 (662), *Empress* v. *Sagal Samba Sajoo.*
(1930) 1930 Cal. 754 (755): 57 Cal. 945, *Nanooram Goenka* v. *Fulchand Jaypuria.*
(1868) 10 Suth. W. R. Cr. 25 (25), *Empress* v. *Shama Sunker Biswas.*
(1924) 1924 Cal. 780 (780): 51 Cal. 442, *Jyotsna Nath Sikdar* v. *Emperor.*

(3) See cases cited in foot-note 2, above.

(4) (1891) 2 Weir 260 (260), In re *Saradhi Naiko.*

(5) (1919) 1919 L. B. 159 (160): 9 Low. B. R. 109, *Tambi* v. *Emperor.*
(1912) 13 Cri. L. Jour. 443 (445) (All.), *Durga Datt* v. *Emperor.*
(1929) 1929 Cal. 593 (595): 57 Cal. 44, *G. V. Raman* v. *Emperor* (Where Magistrate asked the accused to cross-examine each witness before he left his box and they persistently refused to cross-examine the witnesses and a prayer to reserve cross-examination till a later stage was refused held, the Magistrate had committed no error of law).
(1931) 1931 Bom. 517 (518), *R. R. Bhat* v. *Emperor* (Do.).
(1914) 15 Cri. L. Jour. 29 (30) (Mad.), *Mahomed Kasim*, In re (Do.).
(1927) 1927 Pat. 243 (245): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*

(6) (1929) 1929 Cal. 593 (595): 57 Cal. 44, *G. V. Raman* v. *Emperor.*
(1927) 1927 Pat. 243 (245): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*
(1919) 1919 L. B. 159 (160): 9 Low. B. R. 109, *Tambi* v. *Emperor.*

(7) (1930) 1930 Cal. 754 (755): 57 Cal. 945, *Nanooram Goenka* v. *Fulchand Jaypuria.*

(8) (1927) 1927 Pat. 243 (246): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*

(9) (1912) 13 Cri. L. Jour. 443 (445) (All.), *Durga Datt* v. *Emperor.*
[But see (1929) 1929 Sind 137 (139): 23 Sind L. R. 340, *Emperor* v. *Waldino* (Magistrate not to allow unnecessarily lengthy cross-examination).

(10) (1871) 15 Suth. W. R. 34 (35), *Queen* v. *Ishan Dutt.*

(11) (1915) 1915 Bom. 195 (196), *Emperor* v. *Bai Mahalaxmi.*

S 208, Notes 10—14.

As to whether the accused is entitled to cross-examine the prosecution witnesses *after the charge is framed, see* Notes under S. 213, *infra.*

As to the right of the accused to cross-examine in cases commenced as trials but subsequently considered by Magistrate to be fit to be committed to Sessions, *see* S. 347 and Notes thereunder.

11. **Sub-S. (3)—Summoning of witnesses.**—Under this sub-section, the Magistrate is bound to issue process for the attendance of any witness or the production of any document when such process is applied for, either by the prosecution or the accused[1] unless he deems it unnecessary to do so.[2] If he refuses to issue process, he must record his reasons for his refusal and an omission to record such reasons is an illegality and the subsequent order either of discharge or of commitment is liable to be set aside.[3] Inordinate delay, in applying for summons is a proper reason to refuse process.[4] So also, if it is brought to the notice of the Magistrate that the witnesses were summoned for the purpose of causing vexation to those witnesses, the Magistrate can refuse to issue summons.[5] If the Magistrate has exercised his discretion and recorded his reasons for such refusal the Revisional Court will not interfere with it unless the reason appears on the face of it to be untenable.[6] A Magistrate is bound to take the evidence of the witnesses summoned under this section.[6-a]

The provisions of this sub-section must be read subject to the provisions of S. 204, sub-S. (3) and on private prosecutions the complainant must pay process fees before process can be issued at his instance.[7] As to the right of the accused to call for Police diaries, *see* S. 172 and Notes thereunder.

12. **Officer conducting prosecution.**—*See* S. 495.

13. **Procedure where after commencing case as a trial of a warrant or summons case the Magistrate considers the case to be one which ought to be committed to the Sessions.**—*See* S. 347 and Notes thereunder.

14. **Commitment by Civil or Revenue Courts in respect of offences committed before or brought under notice of such Court in course of judicial proceeding.**—*See* S. 478 and Notes thereunder.

(1884) 7 All. 160 (162), *Empress* v. *Kallu.*
Note 11.

(1) (1924) 1924 All. 317 (318): 46 All. 137, *Kuar Jaswant Singh* v. *Emperor.*

(1903) 26 All. 177 (178), *Emperor* v. *Muhammad Hadi.*

[See (1926) 1926 Jour. 145 (1) (Lah.), *Hira Singh* v. *Emperor* (Court should make every attempt to secure the evidence of persons whose *evidence is extremely important* for the case, either by procuring their attendance or by having their evidence taken on commission).]

(3) (1912) 13 Cri. L. Jour. 778 (780) (Mad.), *Sessions Judge of Coimbatore* v. *Immudi Kumara.*

(1915) 16 Cri. L. Jour. 415 (415): 42 Cal. 608, *Emperor* v. *Sarathi.*

(1927) 1927 Pat. 243 (247): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*

(3) (1927) 1927 Mad. 162 (162, 163), *Kanda Raja* v. *Sangaiya Thevan.*

(4) (1929) 1929 Bom. 269 (272), *Emperor* v. *Yellappa Durgaji Jadhaw.*

(5) (1928) 1928 Mad. 652 (652), *Saminatha* v. *Kuppusami.*

(6) (1929) 1929 Bom. 269 (271), *Emperor* v. *Yellappa Durgaji Jadhaw.*

[But compare (1927) 1927 Pat. 243 (246): 6 Pat. 329, *Sasdat Mian* v. *Emperor* (High Court in revision is not at all concerned as to whether the reasons given would have appealed to another person or not).]

(6-a) (1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Dat* v. *Emperor.*

(7) (1928) 1928 Oudh 226 (227): 3 Luck. 363, *Ram Dulari* v. *Mushtaq Ahmad.*

209.* (1) When the evidence referred to in Section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

When accused person to be discharged.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

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*(CODE OF 1882—S. 209.)

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

When accused person to be discharged.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(CODE OF 1872—S. 195, Para. 1 and Expl. III.)

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under chapters XVI, XVII or XVIII of this Act.

When accused person to be discharged.

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EXPLANATION III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.

(CODE OF 1861—S. 225.)

225. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or for remanding him, he shall discharge him, unless it shall appear to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapter XIV of this Act.

When accused person to be discharged.

S. 209, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2
"WHEN THE EVIDENCE REFERRED TO IN S. 208, SUB-Ss. (1) AND (3) HAS BEEN TAKEN"	3
EXAMINATION OF THE ACCUSED	4
SUFFICIENT GROUNDS FOR COMMITTING THE ACCUSED ..	5
"SHALL DISCHARGE HIM"	6
EFFECT OF ORDER OF DISCHARGE	7
POWER OF MAGISTRATE TO AWARD COMPENSATION TO ACCUSED ON DISCHARGE	8
RECORDING REASONS FOR DISCHARGE	9
ORDER BY SUPERIOR COURT FOR FURTHER INQUIRY OR COMMITMENT TO SESSIONS	10
"UNLESS IT APPEARS . . . ACCORDINGLY"	11
SUB-S. (2)—DISCHARGE WITHOUT COMPLETING INQUIRY WHERE CHARGE IS GROUNDLESS	12
REVISION	13

Other Topics.

Committal when to be made. See S. 206, Notes 5 and 6.

Committal when not to be made. See S. 206, Note 6, Pts. 3 and 4 and 7 and 8.

Competency to give evidence after discharge. See Note 7, Pt. 1.

Discharge without any evidence. See S. 208, Note 6, Pt. 2.

Graver offences—Committal preferable. See S. 206, Note 6, Pts. 2 and 6.

Magistrate's duty. See Note 5, Pt. 2, Note 6, Pts. 1 and 3. See also S. 208, Note 6.

Major and minor offences. See Note 6, Pts. 3 and 4.

Question of mere probabilities or complicated questions—Committal preferable. See S. 206, Note 6, Pt. 5.

Refusal of Magistrate to enquire. See S. 208, Note 8, Pt. 1. See S. 208, Note 11, Pt. 3.

Scope of enquiry. See Notes 5 and 6.

1. Legislative Changes.—

Differences between Codes of 1861 *and* 1872—

(1) The words "or High Court" were added after the words "Court of Session" in the Code of 1872.

(2) If the Magistrate should hold that the accused person should be tried before himself, the Code of 1861 provided that he should proceed under Chapter 14 thereof which related to the procedure to be followed in the trial of warrant cases; but the Code of 1872 provided that in such circumstances the Magistrate should proceed under Chapters 16, 17 or 18 thereof (which laid down the procedure for the trial of summons cases and warrant cases and for summary trials respectively.)

(3) Three explanations were added to the section in the Code of 1872. Explanation I provided that, except in compoundable cases, the absence of the complainant was not in itself a sufficient ground of discharge. Explanation II, provided that a discharge was not

equivalent to an acquittal and did not bar the revival of a prosecution for the same offence. Explanation III provided that an order of discharge could not be made until the evidence of all the witnesses named for the prosecution had been taken.

Changes made in 1882—

(1) The words relating to the taking of evidence referred to S. 208 and the examination of the accused were added at the beginning of the section.

(2) The words "before the Court of Session or High Court, or for remanding him" which occurred after the words "for committing the accused person to take his trial" in the Code of 1872 were omitted.

(3) The words "or some other Magistrate" after the word "himself" were added in the Code of 1882.

(4) The three explanations to the section referred to above which occurred in the Code of 1872 were omitted.

(5) The second paragraph to the section providing for the discharge of the accused before completely taking the evidence for the prosecution and the defence was added.

Changes made in 1898—

(1) The words "if necessary" were added after the words "he has" and before the words "examined the accused".

(2) The words requiring reasons to be recorded for an order of discharge under sub-S. (1) were added.

2. Scope of Section.—This section specifies the procedure to be adopted where, after the evidence referred to in S. 208, has been taken, the Magistrate finds that there are *no* sufficient grounds for committing the accused. Where there *are* sufficient grounds, a charge should be framed under S. 210. There may be a further examination of witnesses after the charge is framed (Ss. 211 and 212), and, if the Magistrate is satisfied after such examination that there are not sufficient grounds for committing the accused to the Court of Session he can cancel the charge and discharge the accused (S. 213.)

The provisions of this section may be compared with those of S. 253 which deals with the discharge of an accused person in the trial of warrant cases. The following are the chief points of distinction between the two sections.

(1) The ground of discharge under this section is that the Magistrate holds that there are not sufficient grounds for *committing the accused* person for trial; under S. 253 the ground of discharge is that the Magistrate holds that *no case has been made out against the accused* which, if unrebutted, would warrant his conviction.

(2) The order of discharge under this section is passed after the evidence for the prosecution as well as that for the defence has been taken; while under S. 253 the order of discharge is passed *before* the evidence for the defence is taken.

S. 209, Notes 2—3.

(3) Under sub-S. (2) of S. 209, as well as of S. 253 the Magistrate can discharge the accused even before the whole of the evidence referred to in sub-S. (1) of the respective sections has been taken. But under S. 209 the Magistrate must record the reasons whether the order of discharge is under sub-S. (1) or under sub-S. (2); while under S. 253 no reasons need be recorded for an order of discharge under sub-S. (1) though reasons have to be recorded only in case of discharge under sub-S. (2).

(4) There is no provision in the trial of warrant cases for cancelling a charge once framed and for discharging of the accused. There is such a provision in the case of preliminary enquiries in Sessions cases (S. 213.)

3. **"When the evidence referred to in S. 208, sub-Ss. (1) and (3) has been taken".**—Except in cases coming under sub-S. (2) the Magistrate must hear all the evidence referred to in S. 208, sub-Ss. (1) and (3), before he can consider whether there are, or are not, sufficient grounds for commitment.[1] Such evidence includes evidence both for the prosecution as well as the defence and hence, it is not open to a Magistrate merely on the evidence for the prosecution and before he has taken the evidence for the defence, to consider whether there are sufficient grounds for committing the accused.[1-a] The contrary view[2] though tenable under the Codes of 1872 and 1861[3] cannot be considered good law under the present Code in view of the express language of this section.

Under sub-S. (3) of S. 208, if the prosecution or the accused applies to the Magistrate to issue summons for the attendance of any witnesses whose evidence may be desired, it is open to the Magistrate to refuse the application, if he thinks fit to do so. This section by requiring the Magistrate to take the evidence referred to in sub-S. (3) of S. 208 before considering if there are sufficient grounds for committing the accused does not deprive him of the discretion he has under that sub-section to refuse to summon any witness whom a party may desire to summon.[4]

Although it is open to an accused to insist on giving his evidence before the Magistrate frames a charge against him or decides to discharge him, yet, an accused is not *bound* to tender any evidence in the preliminary inquiry and his refusal to produce any evidence in such inquiry cannot give rise to any adverse inference against him.[5]

Section 209—Note 3.

(1) (1903) 26 All. 564 (567), *Fattu* v. *Fattu.*
(1899) All. W. N. 135 (135), *Empress* v. *Dukes.*
(1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Datt* v. *Emperor.*
(1872-1892) 1 Bur. L. R. 538 (539), *Nga Po Se* v. *Empress.*
(1874) Pun. Re. No. 17, p. 29, *Nihel Singh* v. *Mohamda.*
[See (1879) 3 Cal. L. R. 263 (264), *Ishun Chunder* v. *Hury Doyal.*
(1876) Rat. 100 (101), *Reg.* v. *Sita.*
(1877) Rat. 121 (121) (Act X of 1872 did not prevent the discharge of an accused person if all the witnesses named for the prosecution who are *forthcoming and accessible* have been examined).
(1865) 2 Suth. W. R. 65 (65), *Queen* v. *R. Anderson.*].
(1-a) (1928) 1928 Rang. 299 (299): 6 Rang. 531, *Emperor* v. *Nga Khaing* (Committing Magistrate is bound to consider the defence evidence if it is tendered and omission on his part to do so is not a mere irregularity but an illegality).
(2) [See (1911) 12 Cri. L. Jour. 20 (20) (Mad.), *Jamal Mahomad* v. *Moideen Sa Rowther.*]
(3) (1865) 2 Suth. W. R. 50 (50), *Queen* v. *Harnath Roy.*
(4) (1912) 13 Cri. L. Jour. 778 (779): 36 Mad. 321, *Sessions Judge of Coimbatore* v. *Immudi Kumara.*
(5) (1927) 1927 Pat. 292 (295), *Kumar Prasad* v. *Emperor.*

Sub-S. (2) expressly reserves the power of the Magistrate to discharge an accused person even before he has taken any evidence if he finds that the charge is *groundless*. This is a new provision. (*See* Note 1, *ante*.) S. 209, Notes 3—5.

4. Examination of the accused.—*See* S. 342 and Notes thereunder.

5. Sufficient grounds for committing the accused.—In commitment proceedings, what the Magistrate has to see is whether there are sufficient grounds for *commitment* and not whether there are sufficient grounds for *conviction*. Hence, where there is a *prima facie* case for commitment the Magistrate is bound to commit the accused and is not empowered to enter into nice questions of the probabilities of the case and discharge the accused on the ground that in his opinion the evidence is not sufficient to sustain a conviction.[1] But for the purpose of determining whether there is a *prima facie* case for committal the Magistrate is entitled, at any rate, to some extent, to weigh the evidence[2] (*see also* Note 3) and if he finds that the evidence against the

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Note 5.

(1) (1887) 11 Bom. 372 (374), *Empress* v. *Namdoo Satvaji*.
(1906) 4 Cri. L. Jour. 66 (67): 28 All. 705, *Emperor* v. *Ram Khilawan*.
(1904) 1 Cri. L. Jour. 56 (57): 26 All. 227, *Chiranji Lal* v. *Ram Lal*.
(1871) 3 N.-W.P. 27 (27), *Queen* v. *Maha Singh*.
(1883) 6 All. 40 (42), *Empress* v. *Ram Lal*.
(1903) 26 All. 564 (567), *Fattu* v. *Fattu*.
(1918) 1918 All. 126 (1) (126): 40 All. 615, *Hait Ram* v. *Ganga Sahai*.
(1919) 1919 All. 9 (10), *Sahdeo* v. *Sarjoo*.
(1903) 27 Bom. 84 (89), *Emperor* v. *Varjwandas*.
(1927) 1927 All. 279 (282): 49 All. 443, *Emperor* v. *Allah Mahr* (If the evidence is balanced then it is a matter to be tried and it is his duty to commit for trial).
(1887) Rat. 319 (320), *Empress* v. *Namdoo*.
(1910) 11 Cri. L. Jour. 692 (693), In re *Bai Parvati*.
(1920) 1920 Cal. 40 (41), *Moze Ali* v. *Emperor*.
(1924) 1924 Cal. 639 (640): 51 Cal. 849, *Tarapada Biswas* v. *Kalipada*.
(1926) 1926 Cal. 528 (528), *Kasim Ali* v. *Sarada Kripa*.
(1908) 8 Cri. L. Jour. 263 (265): 1908 Pun. Re. No. 14, *Hazara Singh* v. *Bishen Singh*.
(1923) 1923 Lah. 337 (338): 4 Lah. 69, *Maulu* v. *Emperor*.
(1929) 1929 Lah. 403 (404), *Emperor* v. *Wafador*.
(1913) 14 Cri. L. Jour. 529 (544, 545), *National Bank of India* v. *Kothandarama Chetty*.
(1927) 1927 Mad. 277 (277), *Chinnammal* v. *Konda Reddy*.
(1925) 1925 Mad. 1061 (1062): 48 Mad. 874, *Mania Manicka Padayachi*, In re.
(1920) 1920 All. 52 (52), *Makhni* v. *Farzand Ali* (Magistrate finding that one or other of accused was concerned in the affair but discharging on ground that there was not sufficient evidence justifying a conviction —Held that he ought not to discharge).
(1920) 1920 Pat. 591 (592), *Dalmackund Das* v. *Emperor*.
(1920) 1920 Mad. 94 (96): 34 Mad. 330, In re *Gandi Apparazu*.
(1916) 1916 Mad. 1226 (1227-1228), *Narasappayya* v. *Narasayya Shanbhogue*.
(1891) 1891 Pun. Re. No. 3 (10), *Queen* v. *Gurdit Singh*.
(1893) 1893 Pun. Re. No. 1 (6), *Mangal Singh* v. *Empress*.
(1925) 1925 Oudh 167 (168), *Chheda Khan* v. *Emperor*.
(1903) 1903 Pun. L. R. No. 148 (611), *Emperor* v. *Mali*.
(1929) 1929 Sind 137 (139): 23 Sind L. R. 340, *Empress* v. *Walidino* (Magistrate not justified in allowing long cross-examination of witnesses as he has only to find whether there was a *prima facie* case for committing to the sessions or not).
(1930) 1930 Sind 99 (103): 24 Sind L. R. 96, *Nur Khan* v. *Emperor*.
(1872-1892) 1 L. B. R. 348 (348), *Crown* v. *Po Nyum*.
(1931) 1931 Cal. 607 (611), *Sher Singh* v. *Jitendranath Sen*.
(1911) 13 Cri. L. Jour. 688 (688) (Cal.), *Fazar Ali* v. *Mazharulla*.
(1915) 1915 All. 86 (86), *Mangat Ali* v. *Emperor*.
(1928) 1928 Bom. 220 (220, 221), *Burjorji Nowroji Kelawalla* v. *Emperor*.
(1881) 2 Weir 652 (653), *H. C. Proceedings, 10th Sept.*, 1881.
(1935) 1935 All. 366 (368), *Alopi Din* v. *Emperor* (Magistrate not to weigh evidence or give benefit of doubt to accused).
[See (1933) 1933 Lah. 39 (39), *Mahamma Khan* v. *Emperor* (Evidence both against and in favour of accused—Magistrate committing to Sessions deliberately leaving it to Sessions Court to decide as to *reliability* of the evidence—Conviction not quashed).]

(2) (1883) 5 All. 161 (162, 163), *Lachman* v. *Juala* (There is nothing in law which prohibits discharge of the accused, even though there is the evidence of witnesses who claim to be eye-witnesses, but whom the Magistrate entirely discredits).
(1907) 6 Cri. L. Jour. 406 (411) (Cal.), *Rash Behari Lal Mandal* v. *Emperor* (Do.).
(1901) 5 Cal. W. N. 110 (112), In the matter of *Surjya Narain Singh* (Do.).
(1899) 21 All. 265 (267), In re *Kalyan Singh*.
(1915) 16 Cri. L. Jour. 429 (431): 37 All. 355, *Dharam Singh* v. *Joti Prasad*.

S. 209, Notes 5—6.

accused is totally untrustworthy and that there are not sufficient grounds for commitment he is bound to discharge the accused under this section.[3] Thus, where there is a case and a counter-case the counter-case cannot be committed to the Sessions merely because the main case stands committed.[4] *See also* Notes to S. 437, *infra* and the undermentioned cases.[5]

6. "**Shall discharge him**".—It has been seen in Note 5 that when the Magistrate finds that there are no sufficient grounds for committing the accused he is bound to discharge him. Hence, where in proceedings against *A*, some of the witnesses say that the offence was committed by *B*, the Magistrate should not suspend the proceedings against *A* and go on with the case against *B*, with a view to commit either the one or the other of them. The Magistrate should go

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(1904) 1 Cri. L. Jour. 519 (524): 26 All. 564, *Fattu* v. *Fattu.*
(1922) 1922 All. 168 (169): 44 All. 57, *Muhammud Abdul Hadi* v. *Baldeo Sahai* (Magistrate is well within his powers in cross-examining prosecution witnesses).
(1915) 16 Cri. L. Jour. 747 (748): 1915 Bom. 195 (Bom.), *Emperor* v. *Bai Mahalaxmi* (Do.).
(1907) 5 Cri. L. Jour. 213 (215) (Bom.), *Emperor* v. *Rawji Hari Yelgaumkar.*
(1933) 1933 Bom. 158 (160): 57 Bom. 430, *Emperor* v. *Parashram Bhika.*
(1924) 1924 Cal. 639 (640): 51 Cal. 849, *Tarapada Biswas* v. *Kalipada Ghose.*
(1926) 1926 Cal. 528 (528), *Kasim Ali* v. *Sarada Kripa Leba.*
(1902-03) 7 Cal. W. N. 77 (79), *Harbans Singh* v. *Fakir Das.*
(1922) 1922 Mad. 43 (44), *Ponniah Tirumalai Vandayya Thevar,* In re (To hold otherwise would be to make the preliminary enquiry directed by the Code, a mere matter of form while it is intended to be a safeguard against false or frivolous cases being sent up for trial and innocent men from being put to the trouble and expense of undergoing a trial in the Court of Sessions).
(1899) 1899 All. W. N. 135 (135), *Empress* v. *Dukes.*
(1910) 11 Cri. L. Jour. 751 (752) (Lah.), *Mir Abdula* v. *Emperor.*
(1910) 11 Cri. L. Jour. 18 (19): 1909 Pun. Re. 10, *Sultani* v. *Emperor.*
(1923) 1923 Lah. 279 (280), *Ahmed* v. *Emperor.*
(1923) 1923 Lah. 337 (338): 4 Lah. 69, *Maulu* v. *Emperor.*
(1926) 1926 Jour. 151 (5) (152), *Ratan Mani* v. *Hans Ram.*
(1920) 1920 Pat. 46 (46), *Sheikh Tincouri* v. *Emperor.*
(1925) 1925 Pat. 279 (280), *Munshi Mander* v. *Karu Mander.*
(1926) 1926 Pat. 5 (8), *Pershad Tewari* v. *Emperor.*
(1914) 1914 Mad. 424 (425), In re *Damappa Palai.*
(1910) 11 Cri. L. Jour. 692 (693, 694): 35 Bom. 163, In re *Bai Parwati.*
(1915) 16 Cri. L. Jour. 307 (308) (Mad.), *Narasappayya* v. *Narasayya Shanbhoge.*
(1918) 1918 U. B. R. 11 (11): 3 U. B. R. 29, *Nga Hmyin* v. *Emperor.*
(1921) 1921 Sind 5 (6): 15 Sind L. R. 1, *Aidas Tekchand* v. *Saban.*
(1925) 1925 Oudh 167 (168), *Chheda Khan* v. *Emperor.*
(1927) 1927 Rang. 74 (78): 4 Rang. 471, *Maung Htin Gyaw* v. *Maung Po Sein.*
(1903) 1903 Pun. L. R. No. 148 (611), *Emperor* v. *Mali.*
(1881) 1 Weir 288 (289).
(1891) 2 Weir 260 (261), *Sankaraya* v. *Kerala Subba Aiyer.*
(1930) 1930 Mad. W. N. 683 (684), *Venkataswami* v. *Bayya Chimpiri.*
(1931) 1931 Mad. W. N. 116 (117), *Chandrakasi Malavirayar* v. *Emperor.*
(1913) 14 Cri. L. Jour. 491 (491) (All.), *Shahzad* v. *Emperor.*
(1924) 1924 All. 664 (665): 46 All. 537, *Ganpat Lal* v. *Emperor.*
(1925) 1925 All. 670 (670, 671), *Akbar Ali* v. *Raja Bahadur.*
(1870) 14 Suth. W. R. 16 (16), *Queen* v. *Krishto Doba.*
(3) (1884) 1884 All. W. N. 14 (14), *Empress* v. *Sumer.*
(1924) 1924 All. 664 (665): 46 All. 537, *Ganpat Lal* v. *Emperor.*
(1895) Rat. 746 (746), *Empress* v. *Vaja Raiji.*
(1910) 11 Cri. L. Jour. 692 (693) (Bom.), In re *Bai Parvati.*
(1867) 7 Suth. W. R. Cr. 1 (1).
(1872) 19 Suth. W. R. 49 (51), *Rajah Nilmonee* v. *Boma Churn.*
(1923) 1923 Lah. 279 (280), *Ahmad* v. *Emperor.*
(1899) 1899 All. W. N. 135 (135), *Empress* v. *Dukes.*
(1915) 16 Cri. L. Jour. 5 (7): 1915 Cal. 715, *Sreemanta Chatterjee* v. *Surendra Nath.*
(1892) 15 Mad. 39 (40), *Empress* v. *Munusami.*
(1878) 1878 Pun. Re. No. 35 (85), *Queen* v. *Fakir Ali.*
(1891) 2 Weir 255 (257), *Chinnasamy Naidu* v. *Veeriah Vaidu.*
(1932) 1932 Rang. 193 (194): 10 Rang. 495, *Emperor* v. *Maung Chit Sen.*
(1905) 2 Cri. L. Jour. 534 (549) (Cal.), *Sheobux Ram* v. *Emperor* (Mere suspicion, even strong suspicion, is not enough for commitment).
(1933) 1933 All. 482 (484), *Mt. Inoyia* v. *Harbans Prasad* (If the Magistrate discharges the accused in such a case the Magistrate cannot be said to usurp the functions of a *trial* Court).
(4) (1932) 1932 Mad. W. N. 692 (697), *Jaggu Naidu* v. *Emperor.*
(5) (1873) Rat. 73 (73), *Reg.* v. *Sangapa* (Magistrate not justified in discharging an accused person merely because he had been illegally arrested by the Police).
(1874) 1874 Pun. Re. No. 17 (29), *Nihal Singh* v. *Mohamda* (Offence disclosed different from offence complained—No ground for discharge).

on with the enquiry against *A*, and proceedings should not be started against *B*, until *A* is either convicted, acquitted or discharged.[1]

S. 209, Notes 6—11.

It has been held that an order of discharge may be presumed to have been made though there is no formal order on the record.[2] Similarly, it has been held that where a person is charged with a major offence and the Magistrate finding that such a charge does not lie frames a charge for a minor offence and proceeds on the basis of such charge his proceeding amounts to a discharge with reference to the major offence so as to enable a Court of revision to direct a further inquiry or a commitment to the Sessions.[3] But, where the prosecution did not press for a charge being framed for a major offence, the mere fact that the accused has been charged with a minor offence does not mean that he has been discharged in respect of the major offence.[4]

7. Effect of order of discharge.—An order of discharge does not operate as an acquittal and does not bar a fresh trial of the accused for the same offence (S. 403). But the person discharged is no longer an accused person and the disqualification of an accused person to give evidence in his own case does not attach to him.[1] A discharge is also such a termination of a prosecution as would entitle the discharged person to maintain an action for damages for malicious prosecution.[2]

See also Notes under Ss. 403 and 435 to 439.

8. Power of Magistrate to award compensation to accused on discharge.—*See* S. 250 and Notes thereunder.

9. Recording reasons for discharge.—The Magistrate must record his reasons when he discharges an accused person under this section.[1] But he need not, however record a formal *judgment* as laid down in S. 367 in such cases.[2] Where there are several accused and different accused are discharged at different stages of the inquiry, it is enough if the reasons for their discharge are recorded at the end of the inquiry.[3]

10. Order by Superior Court for further inquiry or commitment to Sessions.—*See* Ss. 435-439 and Notes thereunder.

11. "Unless it appears . . . accordingly".—Where there are no sufficient grounds for commitment the Magistrate may, in proper cases, try the case himself or send it to any other Magistrate for trial instead of discharging the accused.[1] But where there are good grounds for commitment

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Note 6.

(1) (1929) 1929 Sind 17 (17), *Sher Mahomed* v. *Emperor.*
(2) (1877) 1 Bom. 610 (619), *Reg.* v. *Hanmanta.*
(3) (1919) 1919 All. 66 (66): 42 All. 128, *Sheo Narayan Singh* v. *Radha Ram.*
(1932) 1932 Nag. 85 (85), *Ram Rao* v. *Emperor.*
(4) (1919) 1919 Mad. 847 (847): 41 Mad. 982, *Marappa Goundan*, In re.

Note 7.

(1) (1908) 9 Cri. L. Jour. 370 (372): 4 Low. B. R. 362, *Aung Min* v. *Emperor.*
(2) (1881) 6 Bom. 376 (380), *Venu* v. *Ooorya Narayan.*

Note 9.

(1) (1927) 1927 Rang. 74 (78): 4 Rang. 471, *Maung Htim Gyaw* v. *Maung Po Sein.*
(2) (1918) 1918 All. 126 (126): 40 All. 615, *Hait Ram* v. *Ganga Sahai.*
(3) (1922) 1922 Mad. 195 (196), In re *Naramban.*

Note 11.

(1) (1899) 22 Mad. 459 (460), *Empress* v. *Rangamani.*
(1884) 10 Cal. 85 (86), *Empress* v. *Paramanand* (Section 209 empowers a Magistrate holding an enquiry to try the case himself if he thinks that only an offence within his jurisdic-

S. 209, Notes 11—13.

the Magistrate is bound to frame a charge and commit the case to the *Court of Session*. He has no power in such cases to send the case to a Magistrate with special powers under S. 30, although such specially empowered Magistrate may have jurisdiction to try the offence.[2]

12. **Sub-S. (2): Discharge without completing inquiry where charge is groundless.**—S. 195 of the Code of 1872 expressly forbade a Magistrate in a preliminary inquiry under this chapter to discharge an accused person before completely taking the evidence for the prosecution. This provision has been omitted in the latter Codes and sub-S. (2) has been added which expressly permits the Magistrate to discharge an accused person at any stage of the inquiry if he finds that the charge is groundless although he has not fully taken the evidence either for the prosecution or for the accused.[1] Thus, when the account given by the prosecutor himself, of a transaction is of such a nature as to deprive it of a criminal character the Magistrate is justified in concluding that the charge is groundless and in discharging the accused immediately without proceeding further with the inquiry.[2] But an order of discharge under this sub-section can only be passed by a Magistrate who is legally seised of the case. Thus, where a case cannot be taken cognizance of, for want of a complaint from the proper source under S. 195, the Magistrate cannot discharge the accused under this sub-section.[3]

13. **Revision.**—*See* Ss. 435 to 439 and Notes thereunder.

S. 210. **210.*** (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

(2) As soon as *such* charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained, and copy furnished to accused.

***(CODE OF 1882—S. 210.)**

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

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tion has been committed. But this course should be very rarely, if ever, taken by any officer invested with special powers under S. 30).

(2) (1902-03) 7 Cal. W. N. 457 (460), *Amir Khan* v. *Emperor*.

Note 12.

(1) (1884) Rat. 201 (201), *Dhanjibhoy* v. *Pyarji*.

[See also (1933) 1933 All. 690 (694): 55 All. 1040, *S. H. Jhabwala* v. *Emperor*.

(2) (1928) 1928 Lah. 945 (946), *Amar Nath* v. *Emperor*.

(1884) Rat. 201 (201), *Dhanjibhoy* v. *Pyarji*.

(3) (1933) 1933 Mad. 413 (416), *Subramanya Ayyar* v. *Swami Kannu Chetti*.

SYNOPSIS.

S. 210.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2
"WHEN UPON SUCH EVIDENCE BEING TAKEN" ..	3
EXAMINATION OF THE ACCUSED	4
"IS SATISFIED THAT THERE ARE SUFFICIENT GROUNDS FOR COMMITTING THE ACCUSED"	5
"HE SHALL FRAME A CHARGE"	6
FORM AND CONTENTS OF CHARGE	7
JOINDER OF CHARGES	8
POWER OF SESSIONS COURT TO ADD TO OR ALTER CHARGE FRAMED BY COMMITTING MAGISTRATE	9
PLEA OF INSANITY RAISED IN DEFENCE—PROCEDURE ..	10
SUB-S. 2—CHARGE TO BE READ AND EXPLAINED TO ACCUSED	11
RIGHT OF ACCUSED TO CROSS-EXAMINE PROSECUTION WITNESSES AFTER CHARGE IS FRAMED ..	12

Charge to be explained, and copy furnished, to accused.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

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(CODE OF 1872—S. 198, Para. 1 and S. 199.)

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

Contents of charge.

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199. As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him; and a copy or translation thereof shall be furnished to him, if he so require.

Copy of charge to be furnished to accused.

(CODE OF 1861—Ss. 227 and 233.)

227. As soon as the charge on which the accused person is to be tried, has been prepared as hereinafter directed, it shall be read to him, and a copy or translation of it shall be furnished to him, if he require it. * * *

Copy of charge to be furnished to accused person.

CHAPTER XIII.

OF THE CHARGE.

233. When the Magistrate has determined to send the accused person before the Court of Session for trial, he shall make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct the accused person to be tried by such Court on such charge. A copy of this instrument shall be forwarded with the record of the preliminary inquiry to the Court of Session before which the accused person is to be tried, and a copy shall also be sent to the Public Prosecutor or to the officer appointed to conduct the prosecution.

What the charge is to contain.

S. 210, Notes 1—2.

Other Topics.

Addition or Amendment of charges. See Note 2, Pt. 3.
Committal where some to be committed and others who need not be committed. See S. 206, Note 6, Pt. 10.
Discharge even after charge. See Note 2, Pt. 2.
Duties of Magistrate under this chapter. See Ss. 209 to 213 also S. 209, Notes 5 and 6. S. 208, Note 6, Pt. 3.
Duty of framing charge is with Magistrate. See Note 6, Pt. 1.
Framing charge as opposed to committal. See Note 2.
Improper addition of charges. See Note 6, Pt. 5.
Jurisdiction of District Magistrate to interfere. See S. 206, Note 8.
Object of the section. See S. 206, Notes 3 and 4.
Scope of enquiry. See S. 209, Notes 5 and 6.
Sessions Court without jurisdiction. See S. 206, Note 9.

1. Legislative Changes.—

Differences between Codes of 1861 *and* 1872—

Referring to the circumstances under which a case could be committed to the Sessions, S. 226 of the Code of 1861 used the words "When evidence has been given before a Magistrate which appears to be sufficient for the *conviction* of the accused" whereas the words used in S. 196 of the Code of 1872 were "When evidence has been given before a Magistrate which appears to justify him in sending the accused person to *take his trial*....".

Changes made in 1882—

(1) The opening words of the section were added in order to make it clear that the Magistrate must consider the evidence for the accused also before determining the question whether he should discharge the accused or whether he should frame a charge against him.

(2) The provision for the supply of a *translation* of the charge to the accused which occurred in the prior Code (S. 199) was omitted.

(3) The provision that the supply of a copy of the charge to the accused should be *free of cost* was new.

(4) The Code of 1872 provided that the order for commitment should be made in the charge itself (S. 198 of the Code) whereas the Code of 1882 provided for a separate order of commitment (S. 213).

Changes made in 1898—

Sub-S. (2) to S. 213 was newly added providing for the cancellation of a charge already framed by the Magistrate and the discharge of the accused even after a charge is once framed against him.

2. Scope of section.—Section 209 lays down when an accused person may be discharged in commitment proceedings. This section provides for the framing of a charge in such proceedings. A charge under this section should be framed only if the Magistrate is satisfied that there are good grounds for

commitment. But the mere framing of a charge does not by itself amount to a commitment which should be made by a separate order under S. 213.[1] It may also be noted that the order of commitment under S. 213 cannot be made immediately on a charge being framed without anything further being done. There is a further procedure to be followed under Ss. 211-213 before an order of commitment can be made. Moreover, it is open to a Magistrate to take further evidence after the charge is framed and if upon such evidence being taken he finds there are not sufficient grounds for committing the accused he can cancel the charge and discharge the accused.[2] It is also open to a Magistrate to amend the charge after it is framed and proceed to try the case himself instead of committing it to the Sessions.[3]

S. 210, Notes 2—5.

3. **"When upon such evidence being taken".**—This expression refers to the evidence mentioned in S. 208, sub-Ss. (1) and (3). The section requires that the Magistrate should consider whether there are sufficient grounds for committing the accused to the Sessions only after such evidence has been taken. Hence, the Magistrate has no power to frame a charge under this section until he has taken all the evidence which the accused may desire to produce.[1] But this does not mean that a Magistrate is *bound to summon* any witness that a party may desire to call; under sub-S. (3) of S. 208 the Magistrate has a discretion to refuse an application for summons to any witness.[2] Similarly, the Magistrate need not go on recording evidence when it is *unnecessary* to do so. Thus, when the evidence already let in by the prosecution is sufficient to establish a *prima facie* case against the accused, the Magistrate is not bound to take the rest of the prosecution evidence also.[3] S. 208, sub-S. (1) empowers the Magistrate to call for any evidence that he may consider necessary and it is open to him to call witnesses himself and take their evidence for the purpose of finding out if the case is a fit one for committal to the Sessions.[4]

As to power of a Magistrate to frame a charge on the basis of evidence recorded by another Magistrate, *see* Notes under S. 350.

See also Notes under Ss. 208 and 209.

4. **Examination of the accused.**—*See* S. 342 and Notes thereunder.

5. **"Is satisfied that there are sufficient grounds for committing the accused".**—A charge must be framed under this section only on the Magistrate being satisfied that there are sufficient grounds for commitment.[1] As to

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Section 210—Note 2.

(1) (1885) 15 Cal. 608 (622), *Hari Dass* v. *Saritulla.*
(1910) 11 Cri. L. Jour. 486 (487) (Bom.), *Emperor* v. *Venkatesh Sadashiv.*
(1914) 1914 Cal. 312 (312), *Arjun Naik* v. *Bira Bhoi.*
(2) See cases cited in foot-note 1.
[But see (1881) 1881 Rat. 161, In re *Mari* (Cases under Prior Code not good law).]
(3) (1910) 11 Cri. L. Jour. 486 (487, 488) (Bom.), *Emperor* v. *Venkatesh Sadashiv.*

Note 3.

(1) (1898) 20 All. 264 (265), *Empress* v. *Ahmadi.*
(1904) 1 Cri. L. Jour. 357 (357, 358): 26 All. 177, *Emperor* v. *Muhammad Hadi.*
(2) (1912) 13 Cri. L. Jour. 778 (779, 780): 36 Mad. 321, *Sessions Judge of Coimbatore* v. *Immudi Kumara Kangaya.*
(3) (1933) 1933 All. 690 (694): 55 All. 1040, *S. H. Jhabwala* v. *Emperor.*
(1866-1867) 3 Mad. H. C. App. 2 (3).
(4) (1926) 1926 Pat. 5 (8), *Parshad Tewari* v. *Emperor.*

Note 5.

(1) (1881) 1881 Pun. Re. No. 6, p. 6, *Empress* v. *Gyano.*

S. 210, Notes 5—11.

what are sufficient grounds for commitment, *see* Notes under S. 209 and the undermentioned cases.[2] *See also* Notes under S. 207.

6. **"He shall frame a charge".**—The task of framing a charge is thus the duty of the Magistrate and is not that of the prosecutor.[1] The Magistrate must base the charge on the materials before him and not merely on the allegations of the complainant or prosecutor. He may frame a charge for any offence disclosed on the evidence though it may be different from that mentioned in the complaint.[2] In framing a charge the Magistrate must confine his attention to the question as to what offence is disclosed on the materials before him and should not be influenced by any considerations as to what would be the *effect* of framing a charge for a particular offence.[3] Further, the Magistrate should be careful not to mention anything in the charge in a form which is not justified by the materials before him.[4]

Though a Magistrate is at liberty to frame a charge for any offence disclosed on the materials before him he cannot frame a charge which would amount to his prejudging the case which has to be tried by another Court. Thus, where an accused was charged with the offence of wrongful confinement and he raised the defence that he had lawful excuse for his act because the person confined was caught in his house under circumstances which led to the belief that he had committed house-breaking by night, and the Magistrate committed the accused, not only for wrongful confinement, but, disbelieving the defence, also for fabricating false evidence and making a false charge. *Held*, that the commitment in respect of the two last charges was illegal inasmuch as in putting the accused on his trial on such charges the Magistrate was really prejudging the defence which the accused had raised to the first charge.[5]

7. **Form and contents of charge.**—*See* Ss. 221 to 232.

8. **Joinder of charges.**—*See* Notes under S. 207 and Ss. 233-239.

9. **Power of Sessions Court to add to or alter charge framed by committing Magistrate.**—*See* Notes under S. 226.

10. **Plea of insanity raised in defence—Procedure.**—*See* S. 469.

11. **Sub-S. (2)—Charge to be read and explained to accused.**—This sub-section requires that after the charge is framed it must be read and explained

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(2) (1892) 15 Mad. 323 (327), *Srinivasa* v. *Annaswami* (Charge under I. P. Code, S. 372, against manager of temple for appointing dancing-girl for temple—Finding that dancing-girls of temple lived partly at least by prostitution—Held, that charge must be framed).
(1881) 6 Cal. 582 (583), *Empress* v. *Salik Roy* (Charge under S. 211, I. P. Code, bringing false charge—Commitment not illegal because there was no judicial investigation of the charge made by the accused where he had made no complaint to the Magistrate but only report to the police who found it to be baseless).

Note 6.

(1) (1889) 1889 Pun. Re. No. 26, p. 86 (89), (F.B.), *Empress* v. *Sant Singh*.
(2) (1869) 12 Suth. W. R. Cr. 40 (41), *Kalidas Bhuttacharjee* v. *Mohendranath Chatterjee*.
(1898) 11 C. P. L. R. 9 Cr. (10), *Local Government* v. *Sukha Musalman*.
(3) (1901) 1901 Pun. Re. No. 5, p. 15, *Mukerji* v. *Empress*.
(4) (1889) 1889 Pun. Re. No. 26, p. 86 (89) (F.B.), *Sant Sing* v. *Empress*.
(5) (1879) 4 Cal. L. R. 338 (340), In the matter of *Turibullah*.

to the accused. A mere framing of the charge is not enough.[1] S. 210, Notes 11—12.

12. Right of accused to cross-examine prosecution witnesses after charge is framed.—*See* Notes under S. 213.

211*. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial. S. 211.

List of witnesses for defence on trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

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*(CODE OF 1882—S. 211.)

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time; and where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

(CODE OF 1872—S. 200, Paras. 1 and 3.)

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

List of witnesses for defence on trial.

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It shall be in the discretion of the Magistrate, subject to the provisions of S. 359, to allow the accused person to give in any further list of witnesses at a subsequent time.

Further list.

(CODE OF 1861—S. 227.)

227. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session or Supreme Court. It shall be in the discretion of the Magistrate to allow the accused person to give in any further list of witnesses at a subsequent time.

Witnesses for the defence on the trial.

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Note 11.

(1) (1865) 2 Suth. W. R. 50 (50), *Empress* v. *Hurnath Roy*.

S. 211, Notes 1—3.

SYNOPSIS.

	Note No.
"THE ACCUSED SHALL BE REQUIRED"	1
"AT ONCE"	2
RIGHT OF ACCUSED FILING THE LIST	3
REFUSAL OF MAGISTRATE TO SUMMON WITNESSES ..	4
RESERVING OF DEFENCE BY THE ACCUSED	5
FAILURE OF THE ACCUSED TO GIVE A LIST—EFFECT OF.	6
FURTHER LIST	7

Other Topics.

List after committal. See Note 7, See also S. 219.

Summoning documents. See S. 208, Note 11, Pt. 1.

1. "The accused shall be required".—After the charge framed against the accused has been read and explained to him, under S. 210, sub-S. (2) above, the Magistrate is *bound* under this section to require the accused to give into Court a list of witnesses, if any, whom he wishes to be summoned to give evidence on his trial in the Court of Session.[1] The accused must be clearly and specifically asked for a *list of witnesses*. It is not enough to put the question "Have you any evidence"? Such a question is ambiguous and might suggest to the accused, only an enquiry as to whether he has witnesses ready in Court.[2]

The language of the section is imperative, and a failure to ask an accused person to give in his list of witnesses, will render his conviction liable to be quashed, even though he has been tried along with others who had been so asked.[3]

It is also necessary that the names of witnesses for the defence must appear on the record. Where a Magistrate omits to enter the names of witnesses for the defence, on the record, and the omission is brought to the notice of the Sessions Judge, he ought not to try the accused, in the absence of such witnesses.[4]

2. "At once".—It is ordinarily incumbent on the accused to file his list of witnesses at once, that is, on the day when the order of commitment was made.[1]

3. Right of accused filing the list.—The accused is entitled, as a matter of right, to have the witnesses named by him in the list, summoned and examined on his behalf at the trial.[1] In the event of the witnesses ignoring or

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Section 211—Note 1.

(1) (1865) 2 Suth. W. R. 50 (50), *Empress* v. *Hurnath Roy*.
(1905) 7 Bom. L. R. 723 (724), *Emperor* v. *Kondi Raghu*.
(1934) 1934 Lah. 23 (23), *Mahomed Sharif* v. *Emperor* (Accused must be informed of the necessity of giving in his list of witnesses at any time or of the fact that he has a right to give in any such list).
(2) (1905) 7 Bom. L. R. 723 (723), *Emperor* v. *Kondi Raghu*.
(3) (1868) 10 Suth. W. R. 7 (7), *Bhugwan* v. *Doyal Gope*.
(4) (1872) 18 Suth. W. R. 20 (20), *Empress* v. *Rajnarain Mytee*.

Note 2.

(1) (1930) 1930 Cal. 188 (189), *Kali Bilash Hazra*.

Note 3.

(1) (1865) 2 Suth. W. R. Cr. 6 (6), *Empress* v. *Bhoobun Isher Goosame*.
(1865) 3 Suth. W. R. Cr. 35 (36), *Empress* v. *Abdul Satar*.
(1871) 15 Suth. W. R. 7 (7), *Ram Sahie* v. *Sankara Bahadoor*.
(1871) 15 Suth. W. R. Cr. 15 (15), *Mohima Chunder Shah*, In re.
(1875) 23 Suth. W. R. Cr. 56 (56), *Empress* v. *Prosanna Kumar Moitro*.
(1931) 1931 Cal. 6 (7): 58 Cal. 412, *Emperor* v. *Ram Mamud Sarkar*.

not complying with the summons, the accused is entitled to have their attendance enforced[2] and the Crown is charged with the duty of securing their attendance.[3] The examination of such witnesses cannot be refused on the ground that it would be inconvenient to adjourn the case in order to secure their attendance.[4] When some of the witnesses named in the list given by the accused do not appear, an application for enforcing their attendance should not be refused though made when the case is ready for arguments.[5] A conviction will not however be set aside on the ground that the attendance of some of the witnesses was not enforced unless the accused has been thereby prejudiced.[6] S. 211, Notes 3—5.

4. Refusal of Magistrate to summon witnesses.—A Magistrate may, under the second proviso to S. 216, *infra*, refuse to summon any witness mentioned in the list on the ground that such witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice. He cannot, however, refuse to summon a witness on the ground that he is suspected to be implicated in the offence with which the accused is charged[1] or that the Magistrate entertains doubts as to the value of the evidence of such witness[2] or that the list contains a large number of witnesses.[3] Where a *further list* is given under sub-S. (2), subsequent to the order of commitment the Magistrate is bound on receipt of such list to exercise his discretion and state distinctly whether he would summon the witnesses or not. If he is of opinion that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice the Magistrate ought to proceed under the second proviso to S. 216.[4]

5. Reserving of defence by the accused.—Though the language of the section is imperative there is nothing in it which enables the Magistrate to prevent the accused person from reserving his defence for the Court of Session.[1] As a matter of fact the accused is entitled to reserve his defence, and refuse to disclose the names of witnesses whom he intends to call at the trial.[2] Thus where an accused on being asked to give a list of witnesses, does not give one, but says he will file one subsequently, the Magistrate would be acting with sound judicial judgment and in accordance with law, if he does not cross-examine the accused as to the names of his witnesses and what those witnesses would be called to prove.[3] This is because there may be the danger in some cases of the accused running the risk of his witnesses being tampered with. In such a case, it will be wise on the part of the accused to decline to give a list

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(1930) 1930 Cal. 188 (188, 190), *Kali Bilash* v. *Emperor*.
(2) (1930) 1930 Cal. 188 (190), *Kali Bilash* v. *Emperor*.
(1931) 1931 Cal. 6 (7): 58 Cal. 412, *Emperor* v. *Ram Mamud Sarkar*.
(3) (1931) 1931 Cal. 6 (7): 58 Cal. 412, *Emperor* v. *Ram Mamud Sarkar*.
(4) (1931) 1931 Cal. 6 (7): 58 Cal. 412, *Emperor* v. *Ram Mamud Sarkar*.
(5) (1920) 1920 Cal. 531 (531): 47 Cal. 758, *Foizuddin* v. *Emperor*.
(6) (1930) 1930 Cal. 188 (190), *Kali Bilash Hazara* v. *Emperor*.

Note 4.

(1) (1870-71) 15 Suth. W. R. 7 (7), *Ram Shahai Chowdhry* v. *Sankar Bahadur*.
(2) (1871) 15 Suth. W. R. 15 (15), *Mohima Chunder Shah*.
(3) (1885) 11 Cal. 762 (766), *Hurendro Narain Singh Chowdhury* v. *Bhobaniprea Banvari*.
(4) (1871) 16 Suth. W. R. 14 (15), *Empress* v. *Rajeswar*.

Note 5.

(1) (1870) 13 Suth. W. R. Cr. 1 (11), In the matter of *Mohesh Chunder Banerjee*.
(2) (1892) 14 All. 242 (245), *Empress* v. *Hargobind Singh*.
(3) (1892) 14 All. 242 (245), *Empress* v. *Hargobind Singh*.

S. 211, Notes 5—7.

to the Magistrate, and to reserve his defence for the Court of Session.[4] It is also the policy of the law, that the Magistrate should not ordinarily go into the defence evidence in a case exclusively triable by a Court of Session, and where the prosecution has made out a *prima facie* case for committal to the Court of Session, the Magistrate would be taking upon himself the duties of a superior Court, if he went into the defence evidence.[5]

But an accused person who has reserved his defence cannot claim to keep back any of his witnesses mentioned in the list from being examined by the Magistrate under S. 212 on the ground, that his right of reserving the defence would be prejudicially affected thereby.[6]

6. **Failure of the accused to give a list—Effect of.**—If an accused person on being asked by the Magistrate to give in a list of his witnesses, declines to give in such a list, he cannot compel the Magistrate after committal, to issue summonses for witnesses on his behalf. He is however entitled under S. 291 to call any witness in the Court of Sessions and examine him, if he is in attendance in such Court, whether or not, he has caused such witness to be summoned.[1] Thus where an accused person has reserved his defence, he might bring his own witnesses, but is not entitled as of right, to have the assistance of the Court to compel their attendance.[2] To entitle him to have his witnesses summoned by the Court, he must satisfy the Sessions Judge, that such witnesses are material for his defence.[3]

Where an accused person gives no list of witnesses to the committing Magistrate and applies at a late stage of the trial in the Sessions Court for an adjournment thereof in order to procure the attendance of witnesses for his defence, it would be perfectly legal for the Court to refuse the application.[4]

7. **Further list.**—It has been seen that for an accused to have his witnesses summoned as of right, he must give in a list under this section. But where the accused has not given such a list, the Magistrate has under sub-S. (2), a discretion, to allow him to file it at a subsequent time.[1] When a further list has been allowed be filed by the Magistrate under sub-S. (2), it is governed by the same principles as a list under sub-S. (1).[2]

An accused committed for trial before a High Court is entitled under sub-S. (2) to give to the Clerk of the Crown at any time before his trial a further list of witnesses for his defence.

Where a Magistrate finds at the end of a trial, that the evidence discloses an offence triable exclusively by a Court of Session and consequently acts under S. 347, and commits the accused for trial before a Court of Session, the proceedings must be treated as under this chapter and the accused should not be deprived of his rights therein.[3] It is submitted that the accused will be entitled in such a case to give a further list of defence witnesses.

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(4) (1897) 19 All. 502 (504), In the matter of *Shakir Ali*.
(5) (1911) 12 Cri. L. Jour. 20 (20) (Mad.), *Jamal Mahomed Rowther* v. *Moideensa Rowther*.
(6) (1896) 18 All. 380 (381), In the matter of *Rudra Singh*.

Note 6.

(1) (1897) 19 All. 502 (503, 504), In the matter of *Shakir Ali*.
(2) (1892) 14 All. 242 (245), *Empress* v. *Hargobind Singh*.
(3) (1897) 19 All. 502 (503, 504), In the matter of *Shakir Ali*.
(4) (1925) 1925 Lah. 557 (557), *Nazir Singh* v. *Emperor*.
(1924) 25 Cri. L. Jour. 97 (Pesh.), *Abdul Wahab* v. *Emperor*.

Note 7.

(1) (1931) 1931 All. 434 (435): 53 All. 692, *Ram Ghulam* v. *Emperor*.
(2) (1930) 1930 Cal. 188 (189), *Kali Bilash* v. *Emperor*.
(3) (1931) 1931 All. 434 (435): 53 All. 692, *Ram Ghulam* v. *Emperor*.

212*. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under Section 211.

Power of Magistrate to examine such witnesses.

S. 212, Note 1.

SYNOPSIS.

Note No.
SCOPE OF THE SECTION 1

Other Topics.

Committal at direction of superior Courts illegal—Quashed. See S. 206, Note 8, Pt. 1.
Discretion. See Note 1, Pts. 3-7.
Discretion not to prejudice accused. See Note 1, Pt. 7.
Even if accused reserves defence. See Note 1, Pt. 3.
Object of the section. See Note 1, Pts. 1 and 2.

1. Scope of the section.—The object of the section is twofold: *Firstly* to prevent any hasty commitment and to ensure a thorough enquiry previous to the commitment[1] and, *secondly* to prevent the concoction of false evidence after the commitment.[2] In order to achieve this object the section gives the Magistrate the widest possible discretion to summon and examine any witness named in the list given by the accused under S. 211. Thus he may summon and examine the witnesses for the defence even when the accused has reserved his defence for the Court of Session.[3] The discretion thus vested entitles the Magistrate to ascertain, after weighing the evidence[4] whether there is a presumption of guilt against the accused or whether he is innocent,[5] for it is possible that after hearing the witnesses for the defence the enquiry may result in the discharge of the accused under S. 213, sub-S. (2).[6] But this discretion has to be exercised sparingly and cautiously as any inconsiderate or

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*(CODE OF 1882—S. 212.)

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under S. 211.

(CODE OF 1872—S. 200, Para. 2.)

200. * * * * * *

List of witnesses for defence on trial.

The Magistrate may, if he thinks proper, summon the person so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

(CODE OF 1861—S. 207.)

Discretionary with the Magistrate to take evidence for the defence.

207. It shall be at the discretion of the Magistrate to summon any witness who may be offered in behalf of the accused person to answer or disprove the evidence against him.

Section 212—Note 1.

(1) (1870) 14 Suth. W. R. 16 (16), *Empress* v. *Kristo Doba*.
[But see (1870) 13 Suth. W. R. 1 (11), *Mohesh Chunder*, In re.]
(2) [See (1870) 13 Suth. W. R. 1 (11), *Mohesh Chunder*, In re.]
(3) (1896) 18 All. 380 (382), In the matter of *Rudra Singh*.
(4) (1910) 11 Cri. L. Jour. 751 (752) (Lah.), *Mir Abdullah* v. *Emperor*.
(5) (1870) 14 Suth. W. R. 16 (16), *Empress* v. *Kristo Doba*.
(1912) 13 Cri. L. Jour. 778 (780): 36 Mad. 321, *Sessions Judge of Coimbatore* v. *Immudi Kumar Kangayya*.
(6) (1906) 4 Cri. L. Jour. 452 (452) (All.), *Emperor* v., *Mathura*.

S. 212, Note 1.

premature examination of witnesses may prejudice the accused in his defence at the trial in the Sessions Court.[7]

The accused has no *right* to have his witnesses summoned and examined *after the charge* is framed under S. 210.[8] And a Magistrate is not required to *record* his reasons for acting or refusing to act under this section.[9]

S. 213.

Order of commitment.

213.* (1) When the accused, on being required to give in a list under Section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under Section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

***(CODE OF 1882—S. 213.)**

213. When the accused, on being required to give in a list under S. 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under S. 212,

Order of Commitment.

the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(CODE OF 1872—S. 198, Para. 1 & S. 200, Para. 2.)

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

Contents of charge.

200. * * * *

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

List of witnesses for defence on trial.

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(7) (1870) 13 Suth. W. R. 1 (11), *Mohesh Chunder*, In re.

(8) (1927) 1927 Pat. 243 (246): 6 Pat. 329, *Sasdat Mian* v. *Emperor*.
(1912) 13 Cri. L. Jour. 778 (780): 36 Mad. 321, *Sessions Judge of Coimbatore* v. *Immudi Kumar Kangaya*. [See (1914) 15 Cri. L. Jour. 704 (704) (Mad.), In re *Sessions Judge of Madura*.

(9) (1896) 18 All. 380 (381), *Rudra Singh*, In the matter of.

SYNOPSIS.

	Note No.
"MAY MAKE AN ORDER COMMITTING THE ACCUSED" ..	1
COMMITMENT BY MAGISTRATE HAVING NO TERRITORIAL JURISDICTION—EFFECT	2
COMMITMENT TO SESSIONS COURT HAVING NO TERRITORIAL JURISDICTION TO TRY THE OFFENCE—EFFECT	3
REASONS FOR COMMITMENT	4
POWER OF MAGISTRATE TO CANCEL CHARGE AND DISCHARGE ACCUSED OR TO TRY HIM HIMSELF ..	5
"AFTER HEARING THE WITNESSES FOR THE DEFENCE" ..	6
RIGHT OF ACCUSED TO CROSS-EXAMINE PROSECUTION WITNESSES AFTER CHARGE IS FRAMED	7
PRACTICE	8

Other Topics.

Compromise by Prosecutor after committal. See Note 5, F.N. (5).

Committal in cases of several persons jointly charged. See S. 206, Note 6, Pt. 10.

Committal of a case triable by Magistrate. —Record of reasons. See Note 4, Pt. 2.

Committal of some and trial of the rest. See Note 5, F.N. (7).

Defence evidence includes cross-examination of prosecution evidence. See Note 7, F.N. (4).

Duty of Magistrate to weigh evidence. See Note 5, Pt. 4.

Legislative Changes. See Note 5, Pt. 1.

No cancellation after committal. See Note 5, Pt. 5.

No discharge after committal. See Note 5, Pt. 5.

1. "May make an order committing the accused".—This section leaves it to the discretion of the committing Magistrate whether or not to commit an accused to the Sessions. Hence, even after a charge is framed with a view to commitment, the Magistrate may change his mind and proceed to try the case himself[1] or cancel the charge and discharge the accused. *See* sub-S. (2.)

2. Commitment by Magistrate having no territorial jurisdiction—Effect: *see* S. 531 and Notes thereunder.

(CODE OF 1861—Ss. 226 and 227.)

226. When evidence has been given before a Magistrate which appears to be sufficient for the conviction of the accused person of an offence which is triable exclusively by the Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the Court of Session, the accused person shall be sent for trial by the Magistrate before the Court of Session. * * *

When defendant to be committed for trial.

227. * * * *

The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the accused person is to be tried. The provisions of Ss. 187, 188, 189, 190, 191, and 192; so far as they relate to the attendance of witnesses, shall be applicable to witnesses named by the accused person in the list above mentioned.

Witnesses for the defence on the trial.

Section 213—Note 1.

(1) (1910) 11 Cri. L. Jour. 486 (487) (Bom.), *Emperor* v. *Venkatesh Sadashiv.*

S. 213, Notes 3—5.

3. Commitment to Sessions Court having no territorial jurisdiction to try the offence—Effect: *see* Notes under Ss. 215 and 531.

4. Reasons for commitment.—The section requires the committing Magistrate to record his reasons for committing a case to the Court of Session.[1] Where the offence is not exclusively triable by a Court of Session, the reasons must disclose grounds not only for not discharging the accused but also for committing the case to the Court of Session instead of its being tried by the Magistrate himself.[2] As to what are proper grounds for committing a case, *see* Notes to Ss. 206, 207, 209 and 210.

5. Power of Magistrate to cancel charge and discharge accused or to try him himself.—The enactment of sub-S. (2) in the Code of 1898 makes it clear that even after a charge is framed with a view to commitment the Magistrate has power to cancel the charge and discharge the accused if, in view of the evidence of the defence witnesses examined subsequent to the charge, the Magistrate considers that there are not sufficient grounds for committing the case.[1] The decisions prior to the Code of 1898, which held that the Magistrate had no such power[2] are no longer good law. But the sub-section is only intended to provide for cases in which the evidence recorded after a charge so changes the aspect of the case as to leave no reasonable doubt that a conviction is not sustainable. It does not apply when the evidence merely casts some doubt on the case.[3] But when the Magistrate comes to the conclusion that the evidence of the defence witnesses examined subsequent to the charge rebuts that produced for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and pass an order of discharge.[4] (*See also*, S. 209, Notes 3 and 5 and S. 210, Note 5.)

The power to cancel a charge and discharge the accused applies only *before* the case is committed. Once the case has been committed, the Magistrate becomes *functus officio* and cannot thereafter change his mind and cancel the

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Note 4.

(1) [See (1865) 2 Suth. W. R. 65 (65), *Empress* v. *Anderson* (Magistrate making an inquiry with a view to commit is bound to record specially the evidence on which the commitment is made).]
(1866) 5 Suth. W. R. Cr. 6 (6), *Empress* v. *Kodai* (Magistrate in his grounds of commitment should specifically note with exactness and precision the proof against each particular prisoner and the manner in which it is supported).
(1866) 5 Suth. W. R. 17 (18), *Empress* v. *Ishur* (Order should state particulars of the case, *e.g.*, the evidence by which and the dates when, it was brought to light).
(2) (1914) 1914 Bom. 237 (238): 38 Bom. 114, *Emperor* v. *Nanji Samal*.

Note 5.

(1) (1925) 1925 Oudh 547 (548), *Pandit Bishambhar Nath* v. *Emperor*.
(1918) 1918 U. B. 11 (11): 3 U. B. R. 29, *Nga Hmyin* v. *Emperor*.
(1914) 1914 Cal. 312 (312), *Arjun Naik* v. *Bira Bhoi* (Commitment not complete before commitment order is formally drawn up—Even after recording that the accused was committed, if before the commitment order is drawn up, accused's pleader wants to examine witnesses and the committing Magistrate yields to his request, he can, thereafter discharge the accused).
(1910) 11 Cri. L. Jour. 486 (487) (Bom.), *Emperor* v. *Venkatesh Sadashiv* (Mere framing of a charge as required by S. 210 is distinct from and does not amount to an order of commitment which has to be made under S. 213. The framing of the charge alone does not divest the Magistrate of his jurisdiction to proceed with the case and to try the case himself instead of committing it).
(2) (1881) Rat. Un. Re. Cr. Cas. 161 (162), In re *Mari*.
(3) (1900-02) 1 L. B. R. 348 (348), *Crown* v. *Po Nyan*.
(4) (1922) 1922 All. 168 (169): 44 All. 57, *Muhammad Abdul Hadi* v. *Baldeo Sahai*.
(1915) 1915 All. 186 (188): 37 All. 355, *Dharam Singh* v. *Joti Prosad*.
(1925) 1925 All. 670 (670), *Akbar Ali* v. *Raja Bahadur*.

S. 213, Notes 5—7.

commitment or discharge the accused.[5] Moreover, the Magistrate's power under the sub-section arises only in cases where he has taken further evidence after the framing of the charge; where he has *not taken such further evidence* he cannot cancel the charge once framed and discharge the accused.[6] The power of cancelling a charge once framed and discharging the accused does not apply to trials of *warrant cases*; the only course open to a Magistrate who after framing a charge in such cases finds that the charge is unsustainable, is to acquit the accused.[7] (*See* S. 258 and Notes thereunder.) *See also* Note 1, *ante* and Notes to S. 210.

6. **"After hearing the witnesses for the defence".**—The power of the Magistrate under sub-S. (2) to cancel the charge and discharge the accused arises only in cases in which after framing the charge the Magistrate *examines further defence witnesses*; where further evidence is not taken by him, he cannot cancel the charge and discharge the accused.[1]

As to whether the phrase "witnesses for defence" in sub-S. (2) is wide enough to cover evidence elicited by cross-examination of prosecution witnesses, *see* Note 7, *infra*.

7. **Right of accused to cross-examine prosecution witnesses after charge is framed.**—Under the general principles of evidence (*See* Evidence Act, S. 138) and the specific provision contained in S. 208, Cl. (2), *ante*, the accused in preliminary inquiries in Sessions cases is entitled as of right to cross-examine the witnesses for the prosecution. Ordinarily, the cross-examination of each witness must be made immediately after his examination in chief is over; it cannot be reserved till the examinations in chief of all the witnesses for a side are over, though the Court can, in the exercise of its discretion allow such reservation. Hence, an accused, who has declined to cross-examine the prosecution witnesses then and there and who has not been permitted by the Magistrate to reserve his cross-examination till a later stage, is not *entitled*, to cross-examine the prosecution witnesses after the charge is framed;[1] a *fortiori*, if he has already cross-examined the prosecution witnesses under S. 208, *ante*, before the charge was framed, he is not *entitled* to cross-examine them again after the charge is framed.[2] (Contrast the right of an accused in the trial of

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(5) (1905) 2 Cal. L. Jour. xxxiii (xxxiii), *Makan Das* v. *Jogeswar Singh*.
7 Bur. 269, *Nga Shwe*.
(1865) 2 Suth. W. R. Cr. 57 (57), *Empress* v. *Salim Sheik* (Committal once made cannot be annulled by allowing the prosecutor to file a compromise).
(1881) 4 All. 150, *Empress* v. *Jangbir* (Do.).

(6) (1902-1903) 2 Low. Bur. R. 140 (140), *Emperor* v. *Nga Po Saw*.

(7) (1925) 1925 Oudh 547 (548), *Pandit Bishambarnath* v. *Emperor* (Magistrate finding that there is no proof that accused has committed a part of the offence but that there are *prima facie* grounds for believing that he committed the other part and that the circumstances require a commitment to the sessions—In committing the case to the sessions with regard to the latter part of the offence, the Magistrate cannot discharge the accused with reference to the former part of the offence but must acquit the accused. It is only in respect of the offence which is committed to the sessions that the proceedings are taken out of the purview of Ch. 21 under S. 347 and with reference to the other part of the offence, the procedure under that chapter alone should be followed and after a charge is framed an accused can only be acquitted and cannot be discharged. S. 347 does not authorise such a discharge).

Note 6.

(1) (1903-04) 2 Low. Bur. R. 140 (140), *Emperor* v. *Nga Po Saw*.

Note 7.

(1) (1929) 1929 Cal. 593 (595): 57 Cal. 44, *G. V. Raman* v. *Emperor*.
(1931) 1931 Bom. 517 (518), *K. R. Bhat* v. *Emperor*.
(1919) 1919 Low. Bur. 159 (160): 9 Low. Bur. R. 109, *Tambi* v. *Emperor*.
(1917) 18 Cri. L. Jour. 105 (105): 19 Oudh Cas. 239, *Baldeo Prasada* v. *Emperor*.

(2) See (1931) 1931 All. 434 (435): 53 All. 692, *Ram Ghulam* v. *Emperor*.

S. 213, Notes 7—8.

warrant cases under S. 256). The expression "witnesses for the defence" in sub-S. (2) refers to witnesses whom the Magistrate in his discretion examines under S. 212, *ante;* that expression does *not* include the witnesses for the prosecution who are cross-examined, and therefore, does not confer any right on the accused to cross-examine the prosecution witnesses after the charge is framed.[3] But the Magistrate has an *inherent power* to allow the accused an opportunity to cross-examine the prosecution witnesses after the charge is framed.[4] Further, if the accused did not have an opportunity of cross-examining the prosecution witnesses before the charge was framed, he is entitled to cross-examine them after the charge is framed and before the order for commitment is passed.[5]

As to the right of an accused to cross-examine prosecution witnesses in cases where the proceedings are started as a trial of a warrant case but subsequently the Magistrate decides to commit the case to the Court of Session, *see* S. 347 and Notes thereunder.

8. **Practice.**—*See* the undermentioned cases.[1]

S, 214.

214. If any person (not being an European British subject) is accused before a Magistrate of other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Person charged outside Presidency towns jointly with European British subject.

214. *Repealed by S.* 10 *of Crim. Law Am. Act XII of* 1923.

***(CODE OF 1882—S. 214.)**

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Person charged outside Presidency towns jointly with European British subject.

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(3) (1929) 1929 Cal. 593 (595): 57 Cal. 44, *Raman* v. *Emperor* (It was contended that "witnesses for the defence" included prosecution witnesses who are cross-examined by the accused).

(4) (1929) 1929 Cal. 593 (595): 57 Cal. 44, *Raman* v. *Emperor.*

(1919) 1919 Low. Bur. 159 (160): 9 Low. B. R. 109, *Tambi* v. *Emperor.*

(1912) 13 Cri. L. Jour. 774 (774): 39 Cal. 885, *Jogendranath* v. *Motilal* (The words "witnesses for the defence" in S. 213 (2) are wide enough to cover evidence extracted by cross-examination from the witnesses for the prosecution).

(5) [See (1930) 1930 Cal. 754 (755): 57 Cal. 945, *Nanooram Goenka* v. *Fulchand Jaypuria.*]

Note 8.

(1) (1866) 6 Suth. W. R. 9 (10), *Empress* v. *Khooda Sonthal* (The grounds of commitment and the remarks of the Committing Officer should be entered or copied in the calendar which ought to be complete in itself).

(1868) 9 Suth. W. R. Cr. 5 (7), (Magistrate should be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing session, in order to avoid the needless detention of accused persons for prolonged periods).

who is about to be committed for trial, or to be tried before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial, before the High Court, and not before the Court of Session.

S. 214.

This section was repealed by S. 10 of Act 12 of 1923. The provisions of this section have been partly incorporated in S. 443, *infra*.

215.* A commitment once made under Section 213 or Section 214 by a competent Magistrate or by a Court of Session under Section 477, or by a Civil or Revenue Court under Section 478, can be quashed by the High Court only, and only on a point of law.

Quashing commitments under Section 213 or Section 214.

215. A commitment once made under Section 213 * * * by a competent Magistrate * * or by a Civil or Revenue Court under Section 478, can be quashed by the High Court only, and only on a point of law.

S. 215.

(CODE OF 1872—S. 197.)

When commitment to be to a High Court.

197. If such accused person (not being a European British subject)

is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,

he shall commit such accused person to take his trial before such High Court, and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

(CODE OF 1861—S. 226.)

226. * * * *

When defendant to be committed for trial.

If the Magistrate is a justice of the peace and the accused person is European British subject, he shall be sent for trial before the Supreme Court of Judicature.

***(CODE OF 1882—S. 215.)**

Quashing commitments under S. 213 or S. 214.

215. A commitment once made under S. 213 or S. 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

S. 215, Note 1.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF THE SECTION	2
"ONCE MADE"	3
UNDER S. 213, ETC.	4
COMPETENT MAGISTRATE	5
CIVIL OR REVENUE COURT UNDER S. 478	6
'BY THE HIGH COURT ONLY'	7
ON A POINT OF LAW	8
GROUNDS HELD INSUFFICIENT FOR QUASHING COMMITMENT	9
TIME FOR QUASHING COMMITMENT	10
EFFECT OF QUASHING COMMITMENT	11

Other Topics.

Commitment made to the prejudice of accused. See Note 9, Pt. 2.

Commitment of an approver. See Note 9, Pt. 19.

Commitment of an European British subject. See Note 9, Pt. 35.

Commitment under Opium Act. See Note 8, F.N. 11.

Commitment without discretion. See Note 8, Pts. 15 to 17.

Insufficient evidence how far a ground. See Note 8, Pts. 30-40, Note 9, Pts. 21-24.

Irregularities in procedure how far vitiate the trial. See Note 7, Pt. 8.

Issuing a warrant instead of summons. See Note 9.

Joint enquiry does not vitiate commitment. See Note 9, Pt. 2.

Joint inquiry and investigation. See Note 9, Pt. 8.

Jurisdiction of criminal appellate Bench of the High Court to quash commitment. See Note 2, Pts. 8, 9.

No application to quash commitment will lie after commencement of trial. See Note 10, Pts. 3-7.

Not giving reasons may invalidate. See Note 8, Pts. 27-29.

Refusal to allow cross-examination. See Note 8, Pt. 8.

Section does not apply to directions to commit but the High Court may revise. See Note 2, Pt. 5.

Transferring case without commitment. See Note 9, Pts. 37-38.

Want of sanction under S. 195 and lapse of sanction. See Note 8, Pts. 21-23.

When commitment cannot be quashed. See Note 10.

When Sessions Court can discharge without trial. See Note 7, Pts. 2-4, F.N. 41.

Withdrawal having the effect. See Note 7, Pts. 1 and 4.

1. Legislative Changes.—

(1) There was no section corresponding to this in the Code of 1861.

(2) The explanation to S. 197 of the Code of 1872, which corresponded to this section did not contain the equivalent of the words "under S. 213" and "or by a Civil or Revenue Court under S. 478."

(3) In S. 215 of the Code of 1882 the words "under S. 213 or 214" were for the first time introduced and even that section did not

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(CODE OF 1872—S. 197, Expln.)

197. * * * * * * *

Explanation.—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to S. 196.

(CODE OF 1861—Nil.)

contain the words "or by a Civil or Revenue Court under S. 478".

(4) In the present Code the words "or by a Court of Session under S. 477 or by a Civil or Revenue Court under S. 478" were introduced after the word 'Magistrate'.

(5) The section was amended in 1923. The words "Or S. 214" were removed by S. 11 of the Criminal Law Amendment Act XII of 1923 consequent to the repeal of S. 214. Likewise the words "or by a Court of Session under S. 477" were removed by S. 59 of the Criminal Procedure Code Amendment Act XVIII of 1923, consequent upon the repeal of S. 477.

2. Scope of the section.—Where a commitment is made—

(1) under S. 213 by a competent Magistrate, or

(2) by a Civil or Revenue Court under S. 478, *infra*, it can be quashed by the *High Court* and only on a *point of law*.[1]

When the commitment is not made under S. 213 the section does not apply. Thus a commitment under S. 437, *infra*[2] or by the Appellate Court under S. 423[3] or by the High Court under S. 526[4] is not one under S. 213 and the High Court can, in revision, consider the propriety of the order of commitment on points both of law and of fact. An order of commitment under S. 347, however, falls within the purview of S. 213 and can be quashed, if at all, only under this section.[5]

When a commitment is *not* made by a *competent* Magistrate the commitment may be quashed under S. 532, *infra*, which does not apply when the commitment is made by a competent Magistrate.[6]

The section is intended *inter alia* to empower the High Court to quash a committal made to the Sessions Court in all cases in which a Judge of the High Court trying a Sessions case would stay proceedings under S. 273, *infra*.[7] It does not, however, take away any power to quash commitment *prima facie* incident to any superior Court receiving commitments from lower Courts as basis of its own jurisdiction,[8] nor does it in any way restrict the powers of the High Court to pass any orders subsequent to the quashing of the commitment.[9] This section does not control S. 494, *infra*.[10]

Section 215—Note 2.

(1) (1924) 1924 Rang. 165 (2) (167): 1 Rang. 526, *Mahomed Moidin* v. *King-Emperor*.
(1920) 1920 Mad. 144 (145): 43 Mad. 361, *Venkatagiri Aiyer* v. *N. M. Firm* (Commitment under S. 478).

(2) (1907) 6 Cri. L. Jour. 406 (408) (Cal.), *Bash Behari Lal* v. *Emperor*.
(1904) 1 Cri. L. Jour. 275 (277): 27 Mad. 54, In re *Kalgava Bapiah*.
(1903) 7 Cal. W. N. 327 (327, 328), *Prithi Chand Lal* v. *Sampatia*.
(1919) 1919 Low. Bur. 146 (147, 148): 9 L. B. R. 208, *Tami* v. *Emperor*.
(1910) 11 Cri. L. Jour. 527 (528) (Mad.), *Acting Sessions Judge* v. *Kalagara Bapiah* (Commitment by the High Court under S. 526 cannot be even revised).

(3) (1922) 1922 Low. Bur. 40 (40): 11 L. B. R. 375, *King-Emperor* v. *Nga Thet She*.

(4) (1904) 1 Cri. L. Jour. 275 (277): 27 Mad. 54, In re *Kalgava Bapiah*.

(5) (1924) 1924 Sind 61 (63): 17 S. L. R. 188, *Utlibai* v. *Emperor*.

(6) (1918) 1918 Bom. 117 (118): 43 Bom. 147, *Emperor* v. *Madhav Laxman*.

(7) (1932) 1932 Sind 157 (159): 26 Sind L. R. 407, *Maniram Manghanmal* v. *Emperor*.

(8) (1929) 1929 Cal. 756 (759, 760) (F.B.), *Girish Chandra* v. *Emperor*.

(9) (1933) 1933 Bom. 494 (495), *Emperor* v. *Sher Alam Khan Sahib*.

(10) (1932) 1932 Cal. 699 (703), *Giri Bala Dasi* v. *Mader Gazi*.

S. 215, Notes 3—5.

3. "**Once made**".—This section refers only to commitments actually made. But where the Sessions Judge acting under S. 437, sets aside the order of discharge and *directs* a commitment to be made, the High Court can interfere in its revisional jurisdiction and can consider questions of law and *fact*.[1]

4. **Under S. 213, etc.**—Commitments are authorised by the Code under Ss. 213, 339, 346, 347, 348, 423, 437, 439, 446, 469, 478, 526. As seen in Note 2 above this section applies only in cases of commitments made under S. 213 or 478.

5. **Competent Magistrate.**—The phrase "competent Magistrate" has been held to include for the purposes of this section—

(1) a Magistrate to whose file a case has been transferred from that of another Magistrate;[1]

(2) the District Magistrate to whom a case had been transferred under S. 349, *infra*;[2]

(3) a Magistrate to whose notice an offence contemplated under S. 195, *ante*, is brought in a judicial proceeding;[3]

(4) a first class Magistrate who had been appointed as a special Magistrate to try the case since he has powers to commit ordinarily under S. 206, *supra*.[4]

But where a Magistrate commits accused persons who are residents of a different district for an offence committed outside his district, he has no jurisdiction to commit and is not a competent Magistrate and in such cases no reference to the High Court is necessary.[5] Similarly, where a Magistrate who has become disqualified to try a case under S. 556 holds a preliminary enquiry and commits the case without the leave necessary under that section[6] or where a Magistrate holds the enquiry in cases in which a sanction to prosecute is necessary and commits the case without such sanction[7] it has been held that the commitment is not by a "competent Magistrate" within the meaning of this section. However, where a case has been pending before a Magistrate, and he has not been restrained from going on with the enquiry by any order staying the proceedings, his jurisdiction to commit is not ousted and he does not cease to be a competent Magistrate merely on the ground that, after the records had been called for by and sent to, the superior Court, he took advantage of a short interval when the records were sent to him for the purpose of recording the evidence of a particular witness, and completed the enquiry and committed the accused.[8]

Note 3.

(1) (1907) 5 Cri. L. Jour. 100 (100, 101): 30 Mad. 224, In re *Muthiah Pillai*.

Note 5.

(1) (1914) 1914 All. 45 (45, 46): 36 All. 315, *Emperor* v. *Nanhua*.

(2) (1887) 1887 Rat. 350 (353), *Queen-Empress* v. *Bapuda*.

(3) (1894) 1894 Rat. 704 (705), *Queen-Empress* v. *Ganpat*.

(4) (1931) 1931 Bom. 517 (518, 519), *K. R. Bhat* v. *Emperor*.

(5) (1882) 11 Cal. L. R. 55 (56), *Empress* v. *Alim Mandle* (No reference to the High Court necessary).

(1880) 3 All. 258 (260), *Empress* v. *Jagan Nath* (Section 532 does not apply to these cases).

(6) (1904) 2 L. B. R. 209 (211), *Emperor* v. *Maung Lat*.

(7) (1893-1900) 1893-1900 L. B. R. 377 (378), *Queen-Empress* v. *Sit Law*.

(8) (1905) 2 Cri. L. Jour. 534 (539, 543), *Sheobak Ram* v. *Emperor*.

6. Civil or Revenue Court under S. 478.—As to the circumstances when a Civil or Revenue Court can make an order of commitment, *see* S. 478. As to the procedure of such Courts in these cases, *see* S. 479. As to what are Civil or Revenue Courts, *see* Ss. 478 and 195.

7. 'By the High Court only'.—It is only the High Court that can quash a commitment under this section. The committing Magistrate himself cannot, after he has once committed the case, quash the commitment and discharge the accused on the ground that the complainant wants either to withdraw or compound the case.[1] Nor can the Sessions Judge to whom a case is committed, quash the commitment and direct a retrial[2] even if the commitment had been in pursuance of his direction.[3] The only course open to the Judge in such cases is to proceed with the trial and acquit the accused if there is no proof of his guilt or if the public prosecutor withdraws the prosecution with the leave of the Court.[4] But when a Magistrate commits an accused who is a foreign subject for an offence in a foreign territory, the commitment is void *ab initio* and the Sessions Judge can discharge the accused or refer the matter to the High Court for orders.[5]

The Judicial Commissioner of Sind, sitting in the Sessions Division is not divested of his dual capacity as a High Court Judge and he can quash commitments under this section even when sitting as a Sessions Judge.[6] Similarly a single Judge of the High Court exercising original criminal jurisdiction has jurisdiction to quash a commitment made to that Court under this section.[7]

The principles laid down in S. 537, *infra*, should generally guide the High Court in dealing with an application under this section.[8]

Note 7.

(1) (1882) 4 All. 150 (152), *Empress of India* v. *Jangbir.*
(1865) 2 Suth. W. R. 57 (57), *Queen* v. *Lazim Sheik.*
7 Bur. 269.
(2) (1907) 5 Cri. L. Jour. 99 (100) (Mad.), In re *Bheema.*
(1900-1902) 1 L. B. R. 88 (88), *Crown* v. *Nga Sawe Yank.*
(1897) 10 C. P. L. R. 13 (14), *Empress* v. *Bali Ram.*
(1900) 13 C. P. L. R. 126 (129), *Empress* v. *Ghulam Kadir Khan.*
(1926) 1926 Mad. 865 (870): 49 Mad. 525, *Public Prosecutor* v. *Ratnavelu Chetty.*
(1888) 12 Mad. 35 (36), *Queen-Empress* v. *Sivaram.*
(1887) 10 Mad. 233 (239) (F. B.), *Queen-Empress* v. *Beari.*
(1919) 1919 Lah. 389 (390): 1919 Pun. Re. Cr. 5, *Emperor* v. *Mt. Ruri.*
(1874) 1874 Pun. Re. No. 3, p. 5, *Crown* v. *Jamal.*
(1867) 1867 Pun. Re. 24, p. 45, *Crown* v. *Geonga* (Under Code of 1861 Chief Court only had the power).
(1901) 5 Cal. W. N. 411 (413), *Jogeshwar Ghose* v. *Emperor.*
(1918) 1918 Bom. 117 (118): 43 Bom. 147, *Emperor* v. *Madhav Laxman.*
(1872) 4 N.-W.P. 6 (6), *Queen* v. *Mata Dyal.*
(1901) 3 Bom. L. R. 703 (703), *Emperor* v. *Pandureng.*
(1882) 1882 All. W. N. 165 (165): 5 All. 62, *Empress* v. *Ram Baksh.*
(1872) 1872 Pun. Re. Cr. No. 28, p. 37, *Crown* v. *Alya* (Deputy Commissioner to whom case had been committed under Code of 1872 had no power to quash).
(1881) 1881 All. W. N. 60 (60), *Empress* v. *Sunder* (Sessions Judge cannot release a person committed without putting him on trial without taking his defence).
(3) (1875) 7 N.-W.P. 211 (213), *Queen* v. *Hassan Roza Khan.*
(4) (1881) 1881 All. W. N. 60 (60), *Empress* v. *Sunder.*
(5) (1897) Rat. 922 (923), *Queen-Empress* v. *Lagmabin Laxamana.*
(6) (1924) 1924 Sind 61 (62): 17 S. L. R. 188, *Utlibai* v. *Crown.*
(1932) 1932 Sind 157 (159): 26 S. L. R. 407, *Maniram Manghanmal* v. *Emperor.*
(7) (1929) 1929 Cal. 777 (778): 56 Cal. 785, *Emperor* v. *Girish Chandra Kundu.*
(1908) 8 Cri. L. Jour. 221 (223): 36 Cal. 48, *Panindra Nath Mitra* v. *Emperor.*
(8) (1926) 1926 Cal. 470 (477, 478): 53 Cal. 350, *Emperor* v. *Colin Mackenzie* (Contra: Not good law in view of later Full Bench decision).
(1911) 12 Cri. L. Jour. 320 (321) (Sind), *Emperor* v. *Jhamandas.*

S. 215, Note 8.

8. **On a point of Law.**—A commitment can be quashed only on a point of law.[1] The test is to see from the judgment of the Magistrate what his findings on the evidence are and whether those findings are capable *prima facie* of sustaining the charges he has framed and on which the commitment to the Court of Session is made.[2] Commitment should only be quashed when on the face of it there is something of the nature of a fatal flaw in the prosecution.[3] In dealing with an application under this section the High Court is not required to appreciate the evidence, but it proceeds on the assumption that the facts as stated in the order of commitment will be proved at the trial. All that the High Court is required to apply its mind to, is to see whether, assuming the facts are proved, do they justify the conviction of the accused or not.[3-a] The following are illustrative instances of errors of law justifying the quashing of the commitment:—

(1) Where the commitment is made without any enquiry or examination of the prosecution witness[4] or on an enquiry so imperfect as to result in prejudice to the accused.[4-a]

(2) Where the charge framed is altered or added to at a late stage and the commitment is made without re-examining the witnesses as required by S. 213 and without allowing the production of evidence with reference to the altered or added charge.[5]

(3) Where the commitment is made in the absence of the accused[6] or without giving him a reasonable opportunity of showing cause against the committal[7] or of cross-examining the prosecution witnesses[8] or without examining the witnesses tendered by the

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Note 8.

(1) (1905) 2 Cri. L. Jour. 432 (433) (Bom.), *Emperor* v. *Sita.*
(1914) 1914 All. 191 (192): 36 All. 4, *Sailani* v. *Emperor.*
(1912) 13 Cri. L. Jour. 842 (844): 37 Bom. 146, *Emperor* v. *Intya Salabat Khan.*
(1903) 26 Mad. 139 (142), In re *Chennan Goud.*
(1929) 1929 Cal. 428 (429), *Mahendra Nath Das* v. *Emperor.*
(1929) 1929 Sind 250 (251), *Wahid Bux* v. *Emperor.*
(1934) 1934 All. 963 (969), *Emperor* v. *Mohammad Mehdi.*
(2) (1929) 1929 Bom. 269 (269), *Emperor* v. *Vellappa Durgaji.*
(3) (1925) 1925 All. 751 (751), *Gulab Singh* v. *Emperor.*
(3-a) (1932) 1932 Sind 157 (159): 26 S. L. R. 407, *Mani Ram Mangannal* v. *Emperor.*
(1919) 1919 Bom. 160 (160): 43 Bom. 842, *Murarji Raghunath* v. *Emperor.*
(4) (1882) 4 Mad. 227 (228), *Queen* v. *Chinna Vedagiri Chetty.*
(1912) 13 Cri. L. Jour. 443 (444) (All.), *Durga Datt* v. *Emperor.*
(1906) 1906 All. W. N. 306 (307), *Emperor* v. *Mathura* (A committal without examining witnesses on the ground of an order of superior Court is illegal and will be quashed).
(1876) Rat. 100 (101), *Reg.* v. *Sita.*
(4-a) (1881) 1881 Pun. Re. No. 6, p. 6, *Empress* v. *Mussammat Gyano.*
(5) (1924) 1924 All. 665 (666), *Mohan Lal* v. *Emperor.*
(1874) 22 Suth. W. R. 14 (16), *Queen* v. *Musst. Itwarya.*
(1921) 1921 All. 148 (148), *Damarcha* v. *Emperor.*
(1927) 1927 Pat. 243 (246): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*
[See also (1872) 17 Suth. W. R. 44 (44), *Queen* v. *Mooktaram.*]
(6) (1901) 5 Cal. W. N. 110 (113), In the matter of *Surjya Narain Singh* (It was found here that the Committing Magistrate was prejudiced against the accused).
(1881) 1881 Pun. Re. No. 22, *Empress* v. *Aibat* (Not even the Sessions Judge can order committal of accused not present before the Magistrate at the original enquiry).
(7) (1913) 14 Cri. L. Jour. 605 (605) (Lah.), *Anokha Singh* v. *Emperor.*
(1901) 28 Cal. 434 (437), *Raiby* v. *King-Emperor.*
(8) (1893) 21 Cal. 642 (663), *Queen-Empress* v. *Sagal Samba Sajoo.*
(1915) 1915 All. 411 (412): 38 All. 29, *Rustom* v. *Emperor.*
(1870) 13 Suth. W. R. 21 (22), *Queen* v. *Hari Doss.*
(1927) 1927 Pat. 243 (246): 6 Pat. 329, *Sasdat Mian* v. *Emperor.*
(1930) 1930 Cal. 754 (755, 756): 57 Cal. 945, *Nandoram Goenka* v. *Fulchand Jagpuria.*
(1912) 13 Cri. L. Jour. 877 (883, 887, 888): 6 L. B. R. 129 (F. B.), *Emperor* v. *Chanming Arnold.*

accused.[8-a]

(4) Where the commitment is made on evidence legally inadmissible[9] such as evidence taken even prior to the apprehension of the accused.[10]

(5) Where the commitment is made to a Court of Session or High Court which has no authority to try the case.[11]

(6) Where the commitment is made by a Magistrate who is disqualified under S. 556, *infra*,[12] but not when he has merely taken part in the identification parade.[13]

(7) Where the commitment is made by a Magistrate who has no jurisdiction to do so.[14]

(8) Where the commitment is made on no legal ground. Thus a commitment on the ground that it is done on the request of the accused, or that the case had created a sensation or that the amount involved is large[15] or that the District Judge or District Magistrate has directed a committal[16] or that it is in accordance with a Government resolution.[17]

(9) Where the commitment is for the abetment in British India of an offence outside British India which is not punishable under the Penal Code.[18]

(10) Where the commitment is made on the ground that the accused had been committed in some other connected case, without the

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(1898) 20 All. 264 (265), *Queen-Empress* v. *Ahmadi.*

(8-a) (1904) 1 Cri. L. Jour. 357 (358): 26 All. 177, *Emperor* v. *Muhammad Hadi.*

(1906) 4 Cri. L. Jour. 452 (452, 453) (All.), *Emperor* v. *Mathura.*

(1932) 1932 Mad. 502 (503), *Lakshminarayana* v. *Suryanarayana.*

(9) (1868) 10 Suth. W. R. 56 (56), In re *Munger Bhooyan.*

(1934) 1934 Mad. 691 (692), *K. Belli Gowder* v. *Emperor* (Separate trials and convictions of two persons—Order for commitment of both to sessions for joint trial for conspiracy—Commitment on evidence taken in former trials).

(1929) 1929 Sind 250 (251, 252), *Wahid Bux* v. *Emperor.*

(10) (1904) 2 Weir 259 (260), In re *Chinnappan.*

(1906) 3 Cri. L. Jour. 94 (96) (All.), *Emperor* v. *Dharam Singh.*

(11) (1910) 11 Cri. L. Jour. 54 (55) (All.), *Emperor* v. *Jagmohan* (Where the offence consists in the giving of false information to the Police and the case does not go further than a Police enquiry, the offence falls within the first paragraph of S. 211 and not the second paragraph of S. 211. Committal is therefore bad in law).

(1868) 5 Bom. H. C. 7 (8), *Reg.* v. *Ravlojirao Bin Hanamantrao* (The commitment to the sessions of a case of an offence under S. 91 of the Act is not illegal).

(1897) 19 All. 465 (465, 466), *Queen-Empress* v. *Sehade.*

(1869-1870) 5 Mad. H. C. R. 277 (279), *Regina* v. *Donoghue.*

(12) (1903-04) 2 L. B. R. 209 (211), *King-Emperor* v. *Maung Lat* (Superintendent of Police who had personal interest in the investigation committed in his capacity as a District Magistrate).

(13) (1932) 1932 Lah. 196 (198): 13 Lah. 461, *Bhola Ram* v. *Emperor.*

(1927) 1927 Oudh 369 (377): 2 Luck. 631, *Ram Prasad* v. *Emperor.*

(14) (1914) 1914 L. B. 9 (9), *Emperor* v. *Nga Taung Thu.*

(15) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

(1926) 1926 Bom. 251 (252, 253), *Emperor* v. *Achaldas Jethamal.*

(16) (1882) 1882 All. W. N. 105 (105), *Empress* v. *Muhammad Eakat* (Sessions Court).

(1892) 15 Mad. 39 (40), *Queen-Empress* v. *Munisami* (District Magistrate).

(17) (1917) 1917 Bom. 33 (34): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

(18) (1895) 19 Bom. 105 (110), *Queen-Empress* v. *Ganpatrao Ramchandra.*

Note.—Under the new S. 108-A of the Penal Code the abetment is now punishable and the decision is no longer law.

S. 215, Note 8.

Magistrate being of opinion that he cannot himself award adequate punishment.[19]

(11) Where two sets of accused are committed on the ground that one or the other of them is guilty of the offence.[20]

(12) Where, in cases requiring previous sanction or complaint, the commitment is made on an enquiry held without such sanction or complaint[21] or on an enquiry held *prior* to the grant of the sanction[22] or on an inquiry based on an invalid sanction[23] or on inquiry started after the lapse of six months from the date of the sanction.[24] In the undermentioned case[25] of the Madras High Court it was, however, held that the question whether a sanction was obtained or not is not a question of law and that a commitment cannot be quashed on the ground of want of sanction. The Bombay High Court has also in the case noted below[26] held that where the certificate from the Political Agent (required under S. 188, *ante*) was received before the commitment was actually made, the commitment was not without jurisdiction and cannot be quashed in the absence of prejudice to the accused.

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(19) (1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman.*

(20) (1907) 17 Mad. L. Jour. 46, p. 46.

(21) (1917) 18 Cri. L. Jour. 548 (551): 1917 Pun. Re. No. 19, *Emperor* v. *Gurditta.*

(1869) 6 Bom. H. C. Cr. 54 (54), *Reg.* v. *Muhammad Khan* (Where a false evidence was given before a Magistrate who himself committed the accused for trial by the Sessions Court, held that no formal sanction was necessary as it could be implied in such cases. Moreover, the objection as to want of sanction was taken only in appeal in this case).

(1931) 1931 Mad. W. N. 361 (363), *Bakthavatsalu Naidu* v. *Emperor* (By the amended S. 227 (*a*) of the Local Boards Act which came into force in August, 1930, the previous sanction of the Local Government is necessary for the Court to take cognizance of any offence alleged to have been committed by the President or Member of a Local Board. Where, however, the Magistrate has taken up the case prior to the amendment when no such sanction was necessary, the order of commitment made by him is not illegal merely because after the initiation of the proceedings and prior to the order of commitment, the amendment had come into force).

(1912) 13 Cri. L. Jour. 609 (612) (Cal.), *Pulin Behary Das* v. *Emperor* (An order of committal will not be quashed on the mere ground that the sanction is vague especially when such an objection has not been taken in time).

(1915) 1915 All. 110 (111): 37 All. 283, *Zahir Singh* v. *Emperor.*

(1917) 1917 Bom. 33 (33): 42 Bom. 172, *Emperor* v. *Bhimaji Venkaji Nadgir.*

(1872-1876) 18 Suth. W. R. 32 (32), *Queen* v. *Dinanath Burooa.*

(1887) 10 Mad. 154 (158), In re *Venkatachala Pillai* (Sub-Registrar's sanction was found necessary for prosecuting for forgery of a will which was registered under S. 41 of the Registration Act).

(1901) 24 Mad. 121 (123), *Queen-Empress* v. *Munda Shetti.*

(1933) 1933 Pat. 273 (274): 12 Pat. 353, *Hari Charan Misra* v. *Emperor.*

[See also (1884) 1884 All. W. N. 85 (85), *Empress* v. *Chan* (Certificate from the Political Agent of the State not obtained).

(1897) 19 All. 109 (110), *Queen-Empress* v. *O'Brien* (Do.).

(1902) 24 All. 256 (257), *Emperor* v. *Kali Charan* (Even though the certificate had been actually issued but not reached the Magistrate when enquiry began).

(1890) 13 Mad. 423 (426), *Queen-Empress* v. *Kdthaperumal* (Even though the committing Magistrate had the dual capacity of the Political Agent who should have issued the certificate).

(1925) 1925 Lah. 185 (186): 5 Lah. 416, *Ram Charan* v. *Emperor.*]

(22) (1882) 1882 Pun. Re. No. 28, p. 35 (36), *Empress* v. *Mulla Abdul Rahim.*

(23) (1881) 6 Cal. 584 (585), *Empress* v. *Shibo Behara.*

(1893) 16 Mad. 468 (473, 474), *Queen-Empress* v. *Samuvier.*

(24) (1895) 22 Cal. 176 (178), *Rajchunder Mozumdar* v. *Gour Chunder Mozumdar.*

(25) (1919) 1919 Mad. 190 (190), In re *The Sessions Judge of Tanjore.*

[See however (1935) 1935 Mad. 326 (327), *Fakhrulla Khan* v. *Emperor* (Commitment was quashed on the ground of want of sanction).]

(26) (1906) 4 Cri. L. Jour. 49 (52, 53) (Bom.), *Emperor* v. *Mahommed Buksh.*

S. 215, Note 8.

(13) Where the commitment is made without proper reasons in cases, not triable exclusively by the Court of Session and in which the Magistrate can pass an adequate sentence such as summons cases[27] and warrant cases.[28] But if the Magistrate considers that he cannot award an adequate sentence or on some other proper grounds considers that the case ought to be tried by the Sessions Court, committal is not illegal and will not be quashed.[29]

(14) There is a difference of opinion as to whether a commitment made when there is no evidence at all to convict the accused, can be quashed. According to the High Courts of Calcutta,[30] Allahabad,[31] Patna[32] and Rangoon[32-a] and the Chief Courts of Lower Burma[33] and Oudh[34] it can be done. The decisions of the Lahore High Court are conflicting.[35] The High Courts of Bombay[36] and Madras[37] and the Court of the Judicial Commissioner at Nagpur[38] hold that want of evidence to sustain the charges is not a ground for quashing the commitment. *See also* the undermentioned case.[39] The *appraisement* of evidence

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(27) (1906) 3 Cri. L. Jour. 94 (95, 96) (All.), *Emperor* v. *Dharam Singh.*

(28) (1900-02) 1 L. B. R. 158 (159, 160), *Crown* v. *Major Hodges.*
(1913) 14 Cri. L. Jour. 657 (658) (Bom.), *Emperor* v. *Asha Bathi* (Here the connection with another sessions case was found to be remote as not to embarrass the accused if separately tried. So commitment quashed).
(1872) 17 Suth. W. R. 14 (14), *Queen* v. *Anant Koybust.*
(1902) 4 Bom. L. R. 85 (86), *King-Emperor* v. *Pema Ranchand.*
(1929) 1929 Cal. 756 (761, 762): 57 Cal. 1042, *Emperor* v. *Girish Chunder.*
(1929) 1929 Cal. 777 (778): 56 Cal. 785, *Emperor* v. *Girish Chandra Kundu.*
(1932) 1932 Lah. 263 (264), *Kesar* v. *Emperor.*
(1934) 1934 Lah. 95 (95), *Emperor* v. *Mir Alam.*
(1897) 24 Cal. 429 (432), *Empress* v. *Kayemullah Mandal.*
(1910) 11 Cri. L. Jour. 54 (54, 55) (All.), *Emperor* v. *Jagmohan.*
(1930) 1930 Sind 145 (146): 24 S. L. R. 157, *Emperor* v. *Allahdal* (Even if the death of a person is involved in the offence).
(1914) 1914 Sind 94 (95): 8 S. L. R. 23, *Diwan Chand* v. *Emperor.*
(1924) 1924 Sind 61 (63, 64): 17 S.L.R. 188, *Ulibai* v. *Emperor.*
(1917) 18 Cri. L. Jour. 524 (526): 1917 Pun. Re. 13, *Emperor* v. *Ali* (That opposite party has been committed to the sessions in respect of the same transaction is a good reason).

(29) (1918) 1918 Nag. 141 (142), *Emperor* v. *Hanuman.*
(1920) 1920 Sind 55 (56, 57): 14 S.L.R 85, *Ghani Yacub* v. *Emperor.*
(1913) 14 Cri. L. Jour. 304 (304) (All.), *Emperor* v. *Baldeo.*
(1886) 1886 All. W. N. 256 (256), *Empress* v. *Behari.*
(1919) 1919 Mad. 907 (909): 42 Mad. 83, *Crown Prosecutor* v. *Bhagavathi.*
(1934) 1934 Oudh 185 (185), *Emperor* v. *Umrai.*
(1883) 1883 All. W. N. 199 (199), *Empress* v. *Ramanand.*

(30) (1901) 5 Cal. W. N. xc (xci), *Kali Kant Biswas* v. *The Empress.*
(1901) 5 Cal. W. N. 411 (412), *Jogeshwar Ghose* v. *King-Emperor.*
(1905) 2 Cri. L. Jour. 383 (386) (Cal.), *Emperor* v. *Chandra Kumar Misser.*
(1905) 2 Cri. L. Jour. 534 (548, 549) (Cal.), *Sheobux Ram* v. *Emperor.*

(31) (1884) 6 All. 98 (101), *Empress* v. *Narotam Das.*
(1884) 1884 All. W. N. 14 (14), *Empress* v. *Sumer.*

(32) (1924) 1924 Pat. 754 (755), *Mussl. Gobindia* v. *Emperor.*

(32-a) (1924) 1924 Rang. 165 (167): 1 Rang. 526, *Mahomed Moidin* v. *The Crown* (But not if there is some evidence).

(33) (1919) 1919 L. B. 146 (147): 9 L. B. R. 208, *Thambi* v. *Emperor.*

(34) (1926) 1926 Jour. 191 (4) (192) (Oudh), *Emperor* v. *Jagannath.*

(35) (1931) 1931 Lah. 467 (467), *Hassan Din* v. *Emperor* (No.).
(1930) 1930 Lah. 545 (545), *Gansham Das* v. *Emperor* (Yes).

(36) (1931) 1931 Bom. 517 (519), *K. R. Bhat* v. *Emperor.*
(1911) 12 Cri. L. Jour. 256 (257) (Bom.), *Emperor* v. *Sulaiman Ibrahim Nakhuda.*
(1935) 1935 Cal. 605 (606): 62 Cal. 475, *S. K. Ghose* v. *Ajahar Mandal* (Omission to examine accused—If ground for quashing commitment).
(1935) 1935 Oudh 9 (9), *Emperor* v. *Chhedammi* (Two dacoity cases—Material witnesses examined separately—Carbon copies of statements of merely formal witnesses in one case filed in the other is merely irregularity—Sessions Judge can rectify it by summoning and examining them).

(37) (1914) 15 Cri. L. Jour. 665 (665) (Mad.), In re *Sessions Judge of Coimbatore.*

(38) (1925) 1925 Nag. 409 (412), *Ismail* v. *Emperor.*

(39) (1914) 1914 P. C. 67 (71): 41 Cal. 972 (P.C.), *Herandralal Roy* v. *Hari Dasi Debi.*

S. 215, Notes 8—9.

is however only a question of fact.[40] *See also* the undermentioned cases.[41]

9. **Grounds held insufficient for quashing commitment.**—The following have been held not to be grounds for quashing a commitment:—

(1) Where the Magistrate finds subsequent to the order of committal that he should not have committed the accused.[1]

(2) Where a joint commitment is made of several accused when, with reference to S. 233, *infra*, they should have been committed separately. In such cases the Sessions Court can try the accused separately or amend the charge.[2]

(3) Where the committing Magistrate acts on the evidence recorded by the Magistrate from whose file the case has been transferred to his own Court (S. 350, *infra*, applies to such a case).[3]

(4) Where the commitment is made merely on wrong exercise of discretion.[4]

(5) Where the only evidence against the accused is the uncorroborated testimony of an accomplice. The reason is that acting upon such evidence in proper cases is not illegal.[5] Where the commitment is made to the same Sessions Judge who gave the direction for prosecution of the accused for the offence of giving false evidence before him, when there is no assistant or additional Sessions Judge in the District.[6]

(6) Where the First Class Magistrate who had discharged the accused under S. 209, committed him as per orders of the District

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(40) (1929) 1929 Pat. 121 (121), *Emperor* v. *Nawal Kishore Missir*.
[See also (1900) 27 Cal. 1041 (1047), *Nemai Chattoraj* v. *Queen-Empress* (Whether the act of kidnapping was complete).
(1926) 1926 Pat. 493 (494): 5 Pat. 536, *Nanhak Sao* v. *King-Emperor* (Whether the act of kidnapping was complete).]

(41) (1912) 13 Cri. L. Jour. 257 (259): 39 Cal. 409, *Abdul Gani* v. *Azizul Haq*.
(1903) 2 Weir 262 (262), In re *Jagathambal*.
(1899) 23 Bom. 493 (494), *Queen-Empress* v. *Bhan*.
(1892) 14 All. 336 (339), *Queen-Empress* v. *Sudra*.
(1898) 20 All. 529 (531), *Queen-Empress* v. *Brij Narain Man*.
(1906) 4 Cri. L. Jour. 142 (143): 29 All. 24, *Emperor* v. *Budhan*.
(1908) 8 Cri. L. Jour. 153 (153): 31 Mad. 272, In re *Arunachallam*.
(1883) 1883 All. W. N. 257 (257): 6 All. 129, *Empress* v. *Zaharia*.
(1883) 1883 All. W. N. 39 (39): 5 All. 293, *Empress* v. *Sheodin*.
(1897) Rat. 925 (926), In re *Daulata*.
(1885) 9 Bom. 288 (300), *Queen-Empress* v. *Amortan and Moorteza Ali*.
(1873) 1873 Pun. Re. No. 17, p. 20, *Empress* v. *Piram Ditta*.
(1932) 1932 Sind 157 (159): 26 S.L.R. 407, *Mani Ram Maghanmal* v. *Emperor*.
(1911) 12 Cri. L. Jour. 66 (66, 67) (Cal.), *Lal Behari Singh* v. *Emperor*.

Note 9.

(1) (1885) 1885 All. W. N. 53 (53), *Queen-Empress* v. *Madari*.
(2) (1900) 1900 All. W. N. 206 (206), *Queen-Empress* v. *Salamatullah Khan*.
(1905) 2 Cri. L. Jour. 432 (433) (Bom.), *Emperor* v. *Sita*.
(1903) 26 Mad. 592 (594), In re *Govinda*.
(1916) 17 Cri. L. Jour. 369 (369) (Mad.), In re *T. S. Krishnamurthi Ayyar*.
(3) (1914) 1914 All. 45 (45, 46): 36 All. 315, *Emperor* v. *Nanhua*.
(4) (1918) 1918 All. 296 (296), *Emperor* v. *Goda Ram*.
(1929) 1929 Cal. 593 (595): 57 Cal. 44, *G. V. Raman* v. *Emperor* (Mere erroneous exercise of discretion not a ground).
(1932) 1932 Bom. 63 (64): 56 Bom. 61, *Hari Moheshwar Joshi* v. *Emperor*.
(1876) Rat. 110 (110), *Sholapur Session Judge's Letter No.* 838.
(5) (1927) 1927 All. 90 (91): 49 All. 181, *Balchand* v. *Emperor*.
(6) (1876) 1 Bom. 311 (313), *Reg.* v. *Gafi Kan Ramu* (In such cases it would be better for the Magistrate in district where there is no Assistant or Joint Sessions Judges to try the case himself and if the sentence which the Magistrate can pass is insufficient, the Sessions Judge should refer the case for enhancement to the High Court).

Magistrate passed under S. 436, *infra*. The reason is that the order of such Magistrate was not without jurisdiction.[7] **S. 215, Note 9.**

(7) Where a civil suit is pending in respect of a document in connection of which the accused had been committed by the Civil Judge under S. 478, *infra*, for using a forged document.[8] In such cases, it would however, be desirable to postpone further criminal proceedings till the decision of the civil suit.[9]

(8) Irregularities of procedure before the Magistrate who transfers the case to a superior Magistrate under S. 349, does not vitiate the committal by the latter Magistrate.[10]

(9) The fact of the common sanction against several accused being set aside by the High Court at the instance of one of the accused is not a ground for quashing the commitment of other accused on merits.[11]

(10) Where the commitment for trial in one and the same case, of some accused is for robbery and of some, for receiving property stolen in that robbery.[12]

(11) Where the commitment is made by a Civil Court (as opposed to Military Court) of a British Born European Soldier, on proceedings taken at the request and consent of Military authorities.[13]

(12) Commitment in two different cases, for offences under S. 193, Penal Code in one, and under S. 471-109 of the same Code in another, with respect of the same act, though it is not desirable that there should be two trials in respect of the same act.[14]

(13) Non-observance of the provisions of S. 360, *infra*, before the committing Magistrate and partly before the Court of Session.[15]

(14) After the commitment to the Sessions, the fact that graver charges triable by the Court of Session have been withdrawn is no ground for quashing the commitment in respect of the minor charges triable by the Magistrate and thereby take away the right for trial by jury.[16]

(15) Omission to issue notice under S. 204, *supra*, where the accused is present.[17]

(16) Where the case is triable by a Court of Session the mere fact that the Magistrate did not give reasons for commitment when there was a specially empowered Magistrate who could try the case.[18]

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(7) (1885) 9 Bom. 100 (104), *Queen-Empress v. Pirya Gopal.*
(8) (1894) 18 Bom. 581 (584), In re *Devji.* (1893) Cr. Rg. 39 Bom., In re *Dewaji.*
(9) (1894) 2 Weir 260 (261), *Sankarayya v. Kerala Subba Aiya.*
(10) (1887) Ratanlal 250 (253).
(11) (1894) Ratanlal 718 (718), *Queen-Empress v. Kila.*
(12) (1897) Rat. Un. Re. Cr. C. 915 (916), *Queen-Empress v. Raghu.*
(13) (1874) 22 Suth. W. R. 20 (24), *Queen v. William Jackson.*
(14) (1925) 1925 Oudh 610 (610, 611), *Emperor v. Jagadher Prasad.*
(15) (1925) 1925 Cal. 928 (928, 929), *Abdur Rahim v. Emperor.*
(16) (1927) 1927 Cal. 199 (200), *Emperor v. Monmotha Nath Mitter.*
(17) (1919) 1919 Lah. 389 (390): 1919 Pun. Re. No. 5, *Emperor v. Mt. Rurl.*
(18) (1934) 1934 Lah. 326 (327), *Indoo v. Emperor.* (1918) 1918 Nag. 141 (142), *Emperor v.*

S. 215, Note 9.

(17) Where an approver whose pardon has been withdrawn has been committed, the mere fact that he was examined as a witness only in the preliminary enquiry and not in the trial before the Sessions Judge or the fact that the pardon had been withdrawn by the District Magistrate and not by the Sessions Judge is not a ground for quashing the commitment.[19]

(18) The fact that some of the co-accused are not yet arrested.[20]

(19) The fact that the evidence is doubtful[21] or that it is insufficient[22] or that the evidence is not direct but circumstantial.[23] The test to be applied, in such cases to decide whether a committal ought or ought not to be made on the facts is this—assuming that the whole evidence telling against the accused is true, is there a case which a Judge at a trial could leave to a jury? If the evidence is such that the Judge would have been bound to rule that there was no evidence on which a jury could convict then a committal ought not to be made. If there was any evidence which called for an answer—however great the preponderance in favour of the prisoner might be—then the committal was proper.[24]

(20) Where the Magistrate discharged the accused but subsequently becoming aware of the presence of another witness, cancelled his order of discharge took further evidence and committed the accused. It was held there was no *prejudice* to the accused.[25]

(21) Records disclosing only an offence triable by the Magistrate himself[26] or an offence other than the one charged.[27]

(22) The order for further enquiry under S. 437, *infra*, which ended in the commitment being made without notice to the accused.[28]

(23) Not examining the defence witnesses under S. 208 for reasons recorded.[29]

Hanuman (The committing Magistrate himself was specially empowered in this case).

(1913) 14 Cri. L. Jour. 609 (610): 38 Bom. 114, *Emperor* v. *Nanju Samal* (Case exclusively triable by Court of Session).

(19) (1901) 24 Mad. 321 (323, 325), *Queen-Empress* v. *Ramasami*.

(20) (1910) 11 Cri. L. Jour. 333 (333) (Mad.), In re *Ramasami Servai*.

(21) (1914) 1914 L. B. 9 (9), *Emperor* v. *Nga Taung Thu*.

(1928) 1928 Bom. 220 (221), *Burjorji Nowroji Kelwalla* v. *Emperor*.

(22) (1864) 1 Suth. W. R. 8 (8), *Queen* v. *Gokul Bandari*.

(1922) 1922 Oudh 109 (109), *Mahabir* v. *Emperor*.

[See also (1918) 1918 U. B. 11 (12), *Nga Hmyin* v. *Emperor*.]

(23) (1900) 4 Cal. W. N. 116 (116) (Note), *Empress* v. *Ananda Kishore Chowdhuri*.

(24) (1905) 2 Cri. L. Jour. 534 (548) (Cal.), *Sheobux Ram* v. *Emperor*.

(1924) 1924 Rang. 165 (167): 1 Rang. 526, *Mahomed Moidin* v. *Emperor*.

(25) (1874) 2 Weir 258 (259), *High Court Proceedings, 23rd November*, 1874.

(26) (1910) 11 Cri. L. Jour. 333 (333) (Mad.), In re *Sessions Judge of Trichinopoly*.

(1882) 1882 Pun. Re. No. 22, p. 29, *Empress* v. *Mallu*.

(27) (1871) 16 Suth. W. R. 63 (63), *Queen* v. *Firman*.

(28) (1901) 3 Bom. L. R. 703 (703), *King-Emperor* v. *Pandurang*.

(29) (1924) 1924 Cal. 780 (780): 51 Cal. 442, *Jyotsna Nath Sikdar* v. *Emperor*.

(1908) 8 Cri. L. Jour. 221 (223): 36 Cal. 48, *Phanindra Nath Mitra* v. *Emperor*.

(1912) 13 Cri. L. Jour. 778 (780): 36 Mad. 321, *The Sessions Judge of Coimbatore* v. *Immudi Kumara Kangaya*.

(1865) 2 Suth. W. R. Cr. 50 (50), *Queen* v. *Hurnath Roy*.

(1915) 16 Cri. L. Jour. 415 (415): 42 Cal. 608, *Emperor* v. *Surath*.

(1914) 15 Cri. L. Jour. 704 (704) (Mad.), In re *Sessions Judge, Madura*.

(1931) 1931 Bom. 517 (517), *K. R. Bhat* v. *Emperor*.

(1898) Ratanlal 975 (975, 976), In re

(24) Commitment for an offence under S. 211 of the Penal Code by reason of the Magistrate proceeding on the report of the Police that the complaint was false, without making a judicial enquiry into the complaint.[30] S. 227, Notes 9—10.

(25) Vagueness of sanction to prosecute.[31]

(26) Absence of an order for retrial by the Sessions Judge who set aside the conviction in appeal is not a ground for quashing the commitment by another Magistrate on fresh proceedings.[32]

(27) The omission by the Magistrate to weigh the evidence and express any opinion whether the guilt had been proved.[33]

(28) A commitment by the Munsif under S. 478, *infra*, for offences under Ss. 467 and 471, Indian Penal Code, cannot be quashed because the document in question had not been given in evidence.[34]

(29) The commitment of an European British Subject to the Court of Session by the Extra Assistant of Commissioner of Beluchistan is not without jurisdiction and cannot be quashed.[35]

See also the following cases.[36]

There is a difference of opinion as to whether the want of territorial jurisdiction in the committing Magistrate is a ground for quashing the commitment, some cases holding that it is not a valid ground[37] and some cases that it is,[38] S. 531, *infra*, shows that the want of territorial jurisdiction is not a ground for setting aside any order in the absence of prejudice to the accused.

10. Time for quashing commitment.—The High Court can, according to the view taken by the Patna High Court, quash the commitment *at any stage* of the proceeding.[1] The Calcutta High Court had in an earlier case[2] taken a

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Clive Durant.

(30) (1881) 6 Cal. 582 (583), *Empress* v. *Salik Roy.*

(31) (1918) 1918 Bom. 117 (118): 43 Bom. 147, *Emperor* v. *Madhav Laxman.*

(32) (1902) 29 Cal. 412 (413, 414), *Abdul Ghani* v. *Emperor.*

(33) (1933) 1933 Lah. 39 (39), *Mahommad Khan* v. *Emperor.*

(34) (1895) 22 Cal. 1004 (1005, 1006), *Akil Chandra* v. *Queen-Empress.*

(35) (1907) 6 Cri. L. Jour. 108 (111): 1907 Pun. Re. No. 5, *Emperor* v. *Arthur Mercer.*

(36) (1914) 15 Cri. L. Jour. 704 (704) (Mad.), In re *Sessions Judge, Madura.*

(1909) 9 Cri. L. Jour. 146 (146): 32 Mad. 218, *Palaniandy Goundan* v. *Emperor.*

(1930) 1930 Sind 145 (146): 24 S.L.R. 157, *Emperor* v. *Allahdad* (If a Magistrate without any adequate reason commits a case to the sessions in which he could adequately punish the accused himself, it would be a point of law and the High Court can quash the commitment).

(1913) 14 Cri. L. Jour. 657 (658) (Bom.), *Emperor* v. *Asha Bhathi* (Do.).

(1928) 1928 Bom. 22 (23), *Uka Mahedu Barase* v. *Emperor.*

(1901) 28 Cal. 211 (215), *Queen-Empress* v. *Dolegobind Dass.*

(1898) 20 All. 529 (530), *Queen-Empress* v. *Brij Narain Das.*

(1900-02) 1 L. B. R. 88 (88), *Crown* v. *Nga Sawe Yan.*

(37) (1896) 18 All. 350 (352, 353), *Queen-Empress* v. *Ram Dei.*

(1884) 1884 All. W. N. 31 (31): 6 All. 186 (F. B.), *Empress* v. *Dewan Singh.*

(1884) 8 Bom. 312 (312), *Queen-Empress* v. *Thaku.*

(1892) 16 Bom. 200 (201, 202), *Queen-Empress* v. *James Ingle.*

(1914) 1914 L. B. 9 (9), *Emperor* v. *Nga Taung Thu.*

(1903) 26 Mad. 640 (643), *Rayan Kutti* v. *Emperor.*

(38) (1911) 12 Cri. L. Jour. 533 (533) (Mad.), *Sadaya Pillai* v. *Emperor.*

(1912) 13 Cri. L. Jour. 35 (38): 36 Mad. 387, *Assistant Sessions Judge, North Arcot* v. *Ramammal.*

(1873) 19 Suth. W. R. 31 (32), *Queen* v. *Asgar Mullick.*

(1919) 1919 Oudh 69 (69): 23 Oudh Cas. 87, *Emperor* v. *Sheo Dyal.*

Note 10.

(1) (1933) 1933 Pat. 273 (275): 12 Pat. 353, *Hari Charan Misra* v. *Emperor.*

(2) (1881) 6 Cal. 584 (585), *Empress* v. *Shibo Behara.*

S. 215, Notes 10—11.

similar view but has, in recent cases[3] expressed the view that a commitment cannot be quashed after the accused has been put on his trial and pleads to the charge as it is then too late to object to the commitment. This latter view is shared also by the High Courts of Madras,[4] Lahore[5] and the Court of the Judicial Commissioner of Sind.[6] Where the accused is put on his trial and pleads to the charge the Judge should proceed according to law and dispose of the case under Chap. XVIII-E of the Code, or the Public Prosecutor may, with the consent of the Court withdraw the prosecution under S. 494, *infra*.[7]

11. Effect of quashing commitment.—The primary effect of the order quashing the commitment is to supersede any action taken by the Magistrate under S. 210, and his proceedings subsequent thereto. In such a case it is necessary for the Magistrate to go back to the point at which he took cognizance of the complaint. The order does not amount to discharge of the accused and no fresh complaint is necessary.[1] The accused may be charged again with the offence.[2]

S. 216.

216*. When the accused has given in any list of witnesses under Section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed:

Summons to witnesses for defence when accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may

Refusal to summon unnecessary witness unless deposit made.

***(CODE OF 1882—S. 216.)**

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under S. 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed.

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(3) (1926) 1926 Cal. 410 (411), *Kasem Molla* v. *Emperor*.
(1883) 12 Cal. L. R. 120 (121), *Empress* v. *Sagambur*.
(4) (1902) 2 Weir 262 (262), *The Sessions Judge of Trichinopoly, Arokia Padayachi*.
(5) (1925) 1925 Lah. 557 (557), *Nazir Singh* v. *Emperor*.
(6) (1909) 9 Cri. L. Jour. 250 (250, 251): 1 S. L. R. Cr. 6, *Crown* v. *Haji*.
(7) (1902) 2 Weir 262 (262), *Sessions Judge of Trichinopoly* v. *Arokia Padayachi*. **Note 11.**
(1) (1929) 1929 Cal. 756 (761) (F.B.), *Girish Chandra* v. *Emperor*.
(2) (1914) 15 Cri. L. Jour. 665 (665) (Mad.), In re *The Sessions Judge of Coimbatore*.

require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal) or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses. S. 216.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE AND APPLICABILITY OF SECTION	2

Provided that where the accused has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Refusal to summon unnecessary witness unless deposit made.

(CODE OF 1872, Ss. 358 & 359.)

358. In such inquiries, when the person accused is to be committed for trial, and has given in the list of witnesses mentioned in S. 200, the Magistrate shall summon the witnesses to appear before the Court before which the accused person is to be tried.

When accused person is to be committed.

359. If the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material.

Refusal to summon unnecessary witness, unless deposit made.

If the Magistrate be not so satisfied, he shall not be bound to summon the witness; but, in doubtful cases, he may summon such witness, if such a sum is deposited with the Magistrate as he thinks necessary to defray the expense of obtaining the attendance of the witness.

(CODE OF 1861—S. 228.)

228. If the Magistrate shall be of opinion that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable grounds for believing that such witness is material, and if the Magistrate be not so satisfied, he shall not be bound to summon the witness, unless such a sum shall be deposited with the Magistrate as he shall consider necessary to defray the expense of obtaining the attendance of the witness.

Magistrate may refuse to summon unnecessary witness, unless a deposit be made to defray the expenses of such witness.

S. 216, Notes 1—2.

Note No.
REFUSAL TO SUMMON UNNECESSARY WITNESS .. 3
EXPENSES OF EXPERT WITNESSES 4

Other Topics.

Duty of Magistrate is to summon, save in excepted cases. See Note 2, Pts. 1 and 2.
Magistrate to fix amount to be deposited. See Note 4, F. N. 1.
Questions by Magistrate. See S. 165, Evidence Act.
Reasons for refusal should be evidence is not material. See Note 3, Pt. 3.
Sessions Court to enforce attendance. See Note 2, Pt. 5. See also S. 291.
Witnesses not included in the list. See Note 2, Pt. 4. See also S. 291.
Witnesses that appeared. See S. 217.

1. Legislative Changes.—

Differences between Codes of 1861 *and* 1872—

In S. 228 of the Code of 1861 it was provided that if the Magistrate was not satisfied that there were reasonable grounds for believing that a particular witness was material, he was not bound to summon the witness "*unless such a sum shall be deposited with the Magistrate as he shall consider necessary to defray the expenses of obtaining the attendance of the witness.*" Hence, even if the Magistrate was not satisfied that a witness was a material witness, he was bound to summon him if the accused was prepared to pay his expenses and deposited the expenses with the Magistrate.[1] This position was altered in the Code of 1872 which left it to the discretion of the Magistrate to summon a witness and empowered him to refuse to summon a witness even though the accused might be willing and prepared to bear the expenses of the witnesses.

Changes made in 1882—

The provision as to leaving it to the Clerk of the Crown to summon the witnesses in cases of commitment to the High Court was new.

Changes made in 1898—

The words "and all other proper expenses" were added at the end of the section.

2. Scope and applicability of section.—It is the duty of the committing Magistrate to see that all the evidence available whether for the prosecution or the defence is before the Sessions Court.[1] The procedure provided in this section is to *summon* the witnesses named by the accused to give evidence at the trial in the Sessions Court. This applies to the witnesses named by the accused who have *not* been examined by the Magistrate. The next section applies to the complainant and the witnesses for the prosecution and such of the witnesses for the accused *as have appeared* and given evidence before the committing Magistrate. In their case, the next section provides that the Magistrate should require them to *execute bonds* for their appearance and for giving evidence in the Sessions Court at the trial.

Section 216—Note 1.

(1) (1868) 4 Mad. H. C. 81 (83), *In re Subraya Mudali.*

Note 2.

(1) (1920) 1920 Pat. 165 (166), *Ajodhya Prosadh Sahu* v. *Emperor.*

S. 216, Notes 2—4.

Under this section, the Magistrate is *bound* to summon the witnesses named by the accused,[2] except in the cases mentioned in the two provisos. But the duty arises only in the case of persons named by the accused in the list supplied by him to the Magistrate under S. 211, *ante*.[3] Hence, where, on being asked to give such list, the accused declines to do so, the Magistrate is not bound to summon any witnesses that he may desire to be called subsequent to the commitment.[4]

Under S. 291, *infra*, the Sessions Judge is *bound* to enforce the attendance of the witnesses summoned under this section, who fail to appear at the trial.[5]

3. Refusal to summon unnecessary witness.—The Magistrate has no power to refuse to summon a witness on the ground that his evidence will not be material,[1] unless he considers that the witness is included in the list merely for purposes of vexation or delay or of defeating the ends of justice. But where the Magistrate considers that the witness is included in the list for any such purpose, he can require the accused to show how the evidence of the witness will be material. Where he is not satisfied that the evidence of the witness will be material, he may refuse to summon him[2] recording his reasons for doing so.[3] In such a case, he can also summon the witness on the accused depositing the expenses necessary for calling the witness.

4. Expenses of expert witnesses.—

See the undermentioned cases.[1]

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(2) (1871) 15 Suth. W. R. 34 (35), *Queen* v. *Ishan Dutt*.
(1865) 2 Suth. W. R. 6 (6), *Queen* v. *Bhoban*.
(1870) 13 Suth. W. R. 1 (11), In the matter of *Mohesh Chunder Bannerjee*.
(1875) 23 Suth. W. R. 56 (56), *Queen* v. *Prosunno Coomar*.
(1935) 1935 Sind 69 (71): 29 S. L. R. 64, *Kundanlal* v. *Emperor* (List of defence witnesses submitted by accused has a right to have them summoned).
(3) (1871) 16 Suth. W. R. 28 (30), *Queen* v. *Jadhunath Mookerjee*.
(4) (1897) 19 All. 502 (503), *Queen-Empress* v. *Shakir Ali*.
(5) (1920) 1920 Cal. 531 (531): 47 Cal. 758, *Faizuddin* v. *Emperor*.
(1931) 1931 Cal. 6 (7): 58 Cal. 412, *Ramanund Sirkar* v. *Emperor* (Sessions Judge cannot refuse to secure attendance of absent witnesses on the ground it will cause inconvenience).
[See also (1872) 18 Suth. W. R. 20 (20), *Queen* v. *Raj Narain Mytee*.
(1930) 1930 Cal. 362 (363), *Muktal Hossein* v. *Emperor*.
(1896) 19 Mad. 375 (382), *Queen-Empress* v. *Virasami*.

Note 3.

(1) (1868) 8 All. 668 (671), In the matter of *Rajah of Kantit*.
(1882) 2 Weir 263 (264), In re *Marinagi Reddi*.
(1865) 3 Suth. W. R. Cr. L. 16, In re *Ram Kishore*.
(1891) 15 Bom. 491 (498), *Queen-Empress* v. *Fakirapa*.
[See also (1934) 1934 All. 735 (737), *Raghubar Dayal* v. *Emperor* (Magistrate has no right to arbitrarily limit number of defence witnesses).]
(2) (1868) 4 Mad. H. C. 81 (83), In re *Subharaya Mudali*.
(3) (1886) 8 All. 668 (671), In the matter of *Rajah of Kantit* (Reason must state that the evidence is not material).

Note 4.

(1) (1932) 1932 Lah. 481 (482), *Ram Narain Sharma* v. *Emperor* (In warrant cases ordinarily it is the Government that must pay expenses both for the Crown and the defence. It is no doubt open to a Magistrate to direct that a particular witness named in order to delay the case should not be summoned. . . It is the duty of the Magistrate to fix fees of expert witnesses and he cannot leave it to the parties to negotiate with the witnesses and fix their fees. If an expert witness on payment of a reasonable fee fixed by the Magistrate declines to give evidence there is ample power in the Magistrate to compel him to do so).

S. 217. **217***. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

***(CODE OF 1882—S. 217.)**

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance, when called upon, at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

(CODE OF 1872—S. 360.)

360. Prosecutors, and witnesses for the prosecution and defence, whose attendance is necessary before the Court of Session or High Court, shall execute before the Magistrate recognizances, in the form (F) given in the second schedule to this Act, or to the like effect, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Recognizances of prosecutors and witnesses.

If any prosecutor or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such recognizance, or until the time when his attendance at the Court of Session or High Court is required, when the Magistrate shall send him under custody to the Court of Session or High Court.

Detention in custody in case of refusal to attend or to execute recogni-

SYNOPSIS.

SCOPE OF SECTION .. .. Note No. 1

Other Topics.

All witnesses to attend until discharged by Court. See Note 1, Pt. 4.

Complaint cannot withdraw or compromise after committal. See S. 213, Note 5, F.N. 5.

Hostile witness—Recognisance but not bail. See Note 1, Pt. 1.

Only necessary witnesses to be bound over. See Note 1, Pt. 5.

Practice. See S. 213, Note 8, F.N. 1.

1. Scope of section.—This section empowers the committing Magistrate to compel the complainant, the witnesses for the prosecution and the witnesses for the defence who have appeared in his Court to give evidence, to execute bonds for their appearance in the Sessions Court at the trial and for giving evidence there. If any of these persons refuses to execute the bond the Magistrate has the power to detain him in custody till he executes the bond or till he can be sent to the Sessions Court for giving evidence there. But where a witness has not refused to attend or to execute the bond required of him the Magistrate has no power to demand bail from him instead of a recognizance merely because he has been declared hostile.[1] Though the section does not expressly empower the Magistrate to *summon* a witness, it has been held in the undermentioned case that the Magistrate has the power under this section to summon a witness to give evidence before the Sessions Court.[2] The prosecution is not bound to examine in the Sessions Court all the witnesses for whose attendance a bond is taken under this section; it is open to the prosecution to decline to examine any witness whom it has reason to believe to be false or unnecessary.[3] But all the witnesses executing bonds under this section must be in attendance at the trial in the Sessions Court till they are discharged by the Court.[4] Under this section the Magistrate is not bound to take bonds from all the witnesses who have been examined in his Court. Only such of the witnesses as are 'necessary' have to execute the bonds under this section.[5]

(CODE OF 1861—S. 232.)

Recognizances of prosecutors and witnesses.

232. Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session, shall execute before the Magistrate recognizances in the Form (E) given in the appendix, or to the like effect, to be in attendance when called upon at the Court of Session, to prosecute or to give evidence as the case may be. If any prosecutor or witness shall refuse to attend before the Court of Session or to execute the recognizance above directed, it shall be competent to the Magistrate to detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session.

Section 217—Note 1.

(1) (1894) 21 Cal. 642 (664), *Queen-Empress* v. *Sagal.*

(2) (1920) 1920 Pat. 165 (166), *Ajodhya Prasad* v. *Emperor.*

(3) (1930) 1930 Lah. 82 (84), *Amar Singh* v. *Emperor.*

(1892) 14 All. 521 (523, 524), *Queen-Empress* v. *Stanton and Flynn.*

(1894) 16 All. 84 (86, 87) (F. B.), *Queen-Empress* v. *Durga.*

(4) (1894) 16 All. 84 (87) (F. B.), *Queen-Empress* v. *Durga.*

[See also (1922) 1922 Lah. 1 (11, 12): 3 Lah. 144, *Mahant Narain Das* v. *Emperor.*]

(5) (1883) 1883 All. W. N. 37 (37), *Queen* v. *Naik.*

S. 218.

218*. (1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Commitment when to be notified.

and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, etc., to be forwarded to High Court or Court of Session.

(2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

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*(CODE OF 1882—S. 218.)

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Commitment when to be notified.

and shall send the charge, the record of the inquiry, and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, etc., to be forwarded to High Court or Court of Session.

When the commitment is made to the High Court, and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

(CODE OF 1872—S. 198, Paras. 2, 3 and 4 and S. 202, Para. 1.)

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A copy of such instrument shall be forwarded, with the record of the original inquiry to the Court of Session before which the accused person is to be tried; and a copy shall also be sent to the Public Prosecutor or other officer appointed to conduct the prosecution.

Copy of Charge.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted to the Court of Session.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article, shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English a translation thereof in English shall be forwarded therewith.

219. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear, and give evidence.

Power to summon supplementary witnesses.

219*. (1) *The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section* 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

S. 219.

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202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the Public Prosecutor, Government pleader or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.

When commitment made Magistrate to give notice to Government Prosecutor.

(CODE OF 1861—Ss. 229 and 231.)

229. When a commitment is made to the Court of Session, the record of the Magistrate shall be forwarded to such Court, together with any weapon or other article of property connected with the case. When a commitment is made to the Supreme Court of Judicature, such record and such weapon or other article shall be forwarded to the Clerk of the Crown, and if any part of such record shall not be in the English language, a translation thereof in the English language shall be forwarded therewith.

Record to be forwarded to the Superior Court.

231. When the accused is committed to take his trial before the Court of Session, the Magistrate shall issue an order to the Government Pleader or other officer appointed by the Government to conduct prosecutions before the Court of Session, notifying such commitment, and stating the offence in the same form as the charge.

When commitment is made, Magistrate to give notice to Government pleader, etc.

* * * * * * * * *

***(CODE OF 1882—S. 219.)**

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused, so require, be given to him free of cost.

S. 219, Notes 1—2.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall be given to *the accused* free of cost.

SYNOPSIS.

	Note No.
LEGISLATIVE CHANGES	1
SCOPE OF SECTION	2
FREE COPY OF EVIDENCE TO BE GIVEN TO ACCUSED ..	3

Other Topics.

Additional evidence, *suo motu* or at direction of Sessions Court. See Note 2, Pt. 3.

In cases of confession also. See Note 2, Pt. 4.

No power after commencement of trial. See Note 2, Pt. 2.

Object of the section. See Note 2, Pt. 4.

Or at request of parties. See Note 2, Pt. 5.

1. Legislative Changes.—

Changes introduced by the amendments of 1923—

(1) For the word "Magistrate" in sub-S. (1) the words "The committing Magistrate . . . S. 206" were substituted.

(2) For the words "shall, if the accused so require, be given to him free of cost" in sub-S. (2) the words "shall be given to the accused free of cost" were substituted.

2. Scope of section.—This section empowers the Magistrate *even after a case has been committed*, to call and examine supplementary witnesses and forward their evidence to the Sessions Court.[1] But the power cannot be exercised by any and every Magistrate; it is confined to the committing Magis-

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(CODE OF 1872—S. 357, Para. 2.)

357. * * * * * * * * *

Power to summon supplementary witnesses.

The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person and in every case a copy of the examination of such witnesses shall be given him free of cost.

(CODE OF 1861—Nil.)

Section 219—Note 2.

(1) (1935) 1935 All. 267 (268), *Motilal* v. *Emperor* (Magistrate can require complainant as witness under S. 219). [See (1894) 21 Cal. 97 (103), *Queen-Empress* v. *Sukee Kaur.*]

S. 219, Notes 2—3.

trate or any other Magistrate empowered to commit cases to the Sessions. Moreover, the power exists only till the commencement of the trial in the Sessions Court. Where the trial has actually commenced, the Magistrate has no power to add to the record by examining additional wtnesses under this section even under the orders of the Sessions Court.[2] But before the commencement of the trial, this power can be exercised at any time. The Magistrate can exercise the power on his own accord or on being directed o do so by the Sessions Judge who, on examining the record finds gaps in te evidence which he deems it necessary to be filled up.[3] Even in cases in which the accused has confessed his guilt, the Magistrate is justified in examining supplementary witnesses so as to have on the record all the material evidence.[4] The additional evidence can be taken either at the request of the prosecution or of the defence; but the Magistrate should be fair to both the sides and if he examines additional witnesses on one side he should allow the other side to let in rebutting evidence if it desires to do so.[5] Under this section the Magistrate can only supplement the *evidence* already taken. He has no power to add to or alter the charge after the order of commitment. Similarly, the power to amend or add to the charge under S. 226, applies only to cases where the charge is imperfect as at the date of commitment. That section cannot justify the charge being amended or added to on the basis of supplementary evidence taken under this section.[6]

Under S. 215, commitment can only be quashed on a ground of law. The insufficiency of the evidence is not a point of law so as to justify a commitment being quashed. But the insufficiency may be made up by taking additional evidence under this section.[7]

3. Free copy of Evidence to be given to accused.—The section provides that when the Magistrate is not a Presidency Magistrate a copy of the evidence recorded under this section should be given to the accused free of cost. Such copies are also exempt from Court-fees under S. 35, Court-Fees Act, 1870.[1]

S. 220.

220*. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

Custody of accused pending trial.

***(CODE OF 1882—S. 220.)**

Custody of accused pending trial. 220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

(CODES OF 1872 and 1861—Nil.)

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(2) (1888) 1888 Pun. Re. No. 29, p. 62, *Hasan v. Empress.*
(3) (1892) 1892 Pun. Re. No. 10, p. 10, *Awal Khan v. Empress.*
(4) (1896) Rat. 842 (842), *Queen-Empress v. Mahadav* (Because confessions are often retracted).
(5) (1933) 1933 Pat. 577 (578), *Brijnandan Prasad Singh v. Emperor.*
(6) (1933) 1933 Mad. 247 (250), *Bhogi Reddi Ankamma, In re.*
(7) (1922) 1922 Oudh 109 (109), *Mahabir v. Emperor.*

Note 3.
(1) (1934) 1934 Bom. 487 (487), *Emperor v. Dhondiba Santoo.*

S. 220, Note 1.

SYNOPSIS.

DISCHARGE FROM CUSTODY ON ACQUITTAL .. .. Note No. 1

Other Topics.

For bail. See chapter 39.

Place of custody. See S. 541.

1. Discharge from custody on acquittal.—A prisoner is entitled to be discharged from custody immediately on a judgment of acquittal being pronounced and his further detention is illegal.[1] (*See* S. 367.) As to whether a formal warrant of release is necessary, *see* the undermentioned case.[2]

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(1) (1869) Section